

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellee, the State of Michigan, by and through the undersigned attorneys, submits the following designation of additional items to be included in the record on appeal in connection with Notice of Appeal filed by the Police and Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit [Dkt. #2096] from the Court's Opinion Regarding Eligibility [Dkt. #1945] and Order for Relief Under Chapter 9 of the Bankruptcy Code [Dkt. #1946].

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
1.	438	8/19/2013	Objection To The City of Detroit's Eligibility To Obtain Relief Under Chapter 9 of the Bankruptcy Code filed by creditor Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (Attachments: Affidavit/Declaration of Steven Kreisberg; Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 12; Exhibit A; Exhibit B; Exhibit C)
2.	497	8/19/2013	Objection filed by interested party Detroit Retired City Employees Association, Shirley V. Lightsey, Retired Detroit Police and Fire Fighters Association, Donald Taylor, Creditors Shirley V. Lightsey, Donald Taylor (Attachments: Index of Exhibits; Exhibit A – Declaration of Shirley V. Lightsey in Support of Consolidated Objection of the Retiree Association Parties to Eligibility; Exhibit B – Declaration

			of Donald Taylor in Support of Consolidated Objection of the Retiree Association Parties to Eligibility)
3.	517	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by creditor Michigan Auto Recovery Service, Inc.
4.	565	8/22/2013	Objection to Chapter 9 Bankruptcy filed by creditors Carl Williams, Hassan Aleem
5.	1217	10/17/2013	Order Regarding Further Briefing on Eligibility
6.	1354	10/24/2013	Amended Final Pre-Trial Order
7.	1428	10/28/2013	Addendum to Objections filed by creditors Hassan Aleem, Carl Williams
8.	1480	10/31/2013	Amendment to Objections filed by creditors Hassan Aleem, Carl Williams
9.	1695	11/13/2013	Supplemental Brief on Good Faith Negotiations filed by creditor Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
10.	1698	11/13/2013	Brief Regarding "Good Faith Negotiations" filed by interested

			party State of Michigan
11.	1704	11/13/2013	Brief (on Good Faith Negotiations) filed by interested parties Detroit Retired City Employees Association, Retired Detroit Police and Fire Fighters Association
12.	1707	11/13/2013	Debtor's Memorandum Regarding Good Faith Under 11 U.S.C. Section 109(c)(5)(B), Labor Law, and 11 U.S.C. Sections 1113, 1114
13.	1709	11/13/2013	Supplemental Brief on Good Faith Negotiations filed by creditor International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
14.	1711	11/13/2013	Supplemental Brief Regarding "Good Faith" Negotiations filed by creditors Detroit Fire Fighters Associations, I.A.F.F. Local 344, Detroit Police Command Officers Association, Detroit Police Lieutenants and Sergeants Association, Detroit Police Officers Association
15.	1717	11/14/2013	Memorandum Regarding Supplemental Authority filed by interested party State of Michigan (Exhibit 1 – Schimmel (12-2087) 11-8-2013 Order)

Respectfully submitted,

/s/Matthew Schneider

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Michigan Department of

Attorney General

Dated: January 3, 2014

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**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
1.	10	7/18/2013	Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code



support of its Objection, AFSCME (a) submits the Declaration of Steven Kreisberg (the “**Kreisberg Declaration**”) and (b) respectfully states as follows:

**PRELIMINARY STATEMENT**

“The public can comment [on the City’s proposed financial restructuring plan], but it is under the statute, it is my plan and it’s within my discretion and obligation to do it. **This isn’t a plebiscite, we are not, like, negotiating the terms of the plan.** It’s what I’m obligated to do.” -- Kevyn D. Orr, May 12, 2013<sup>1</sup>

1. The City’s petition for relief under chapter 9 of the Bankruptcy Code should be dismissed. First, chapter 9 of the Bankruptcy Code violates federalism under the United States Constitution through an unholy alliance permitting federal encroachment on the states’ governance rights over fiscal affairs in exchange for an unlawful extension of state power which denies Michigan citizens their constitutional right to make the rules for their own bankruptcy. Second, Michigan Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL § 141.1541, *et seq.* (“**PA 436**”) purportedly authorizing the Emergency Manager to file for chapter 9 protection runs afoul of the Michigan Constitution by not explicitly prohibiting the impairment of vested pension rights in bankruptcy, which rights are prescribed in the Michigan Constitution, and further offends the Constitutional rights of individual Detroit citizens to local self-governance. Third, the City fails to establish that it engaged in good faith negotiations with the City’s creditors or that these negotiations were impracticable under section 109(c) of the Bankruptcy Code, and indeed the entire chapter 9 petition was filed in bad faith. Fourth, the City does not qualify for chapter 9 relief because it failed to establish that it is insolvent. Further, the Bankruptcy Court lacks jurisdiction over matters related to the federal constitutionality of chapter 9 of the Bankruptcy Code.

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<sup>1</sup> Kevyn D. Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/>.



2. The City, led by its unelected, politically appointed Emergency Manager, Kevyn D. Orr (“**Orr**” or the “**EM**”), hastily commenced this unconstitutional, unlawfully authorized chapter 9 proceeding seeking the haven of bankruptcy to illegally attempt to slash pension and other post-employment benefit obligations and cram such reductions down the throats of current and former City employees such as the AFSCME Detroit Employees. These proceedings were commenced without **any** good faith negotiations with the City’s retirees or unions such as AFSCME, and the chapter 9 filing was a *fait accompli* long prior to the appointment of Orr as the City’s EM – in fact, at a time when Orr was still a partner at the City’s lead counsel’s law firm.

3. This is all against the backdrop of:

- the average non-uniformed employee pension currently at an average of slightly less than \$18,000 per year (according to a June 30, 2012 General Retirement System of the City of Detroit pension valuation report); and
- The AFSCME Retirees and AFSCME Active Employees look to their government pension and City-provided medical benefits for retiree benefits. Unlike private sector employees and retirees with defined benefit pension benefits, whose pension benefits are protected even in bankruptcy by government insurance through the Pension Benefit Guaranty Corporation, or those with multiemployer pension benefits, where even if one employer withdraws or goes bankrupt the vested pension benefits to the retirees continue unchanged by that withdrawal, the AFSCME Retirees and AFSCME Active Employees’ pensions are not backstopped. **Therefore, if this Court allows the chapter 9 proceeding to go forward with the ultimate result of the pension or other retiree benefits being lost, they are lost without a safety net.**

4. In light of recent Supreme Court precedent, chapter 9 of the Bankruptcy Code violates the United States Constitution and should be struck down by an Article III Court with authority to make this crucial Constitutional law determination. Under *Stern v. Marshall*, 131 S. Ct. 2594 (2011), such a decision is plainly outside the realm of authority properly delegated to an Article I tribunal like this Court.

5. However, to the extent this Court disagrees and determines that it has jurisdiction to uphold the Constitutionality of chapter 9 generally, this Court should find that the City is not eligible for relief under chapter 9 pursuant to sections 109(c) and 921(c) of the Bankruptcy Code for the following reasons.

6. *First*, under section 109(c)(2) of the Bankruptcy Code, **as already determined by at least one state court ruling** issued against the Governor prior to entry of the Stay Extension Order [Docket No 166], the purported authorization by the Governor permitting the chapter 9 filing by the EM was and remains an overt act by the Governor and others in violation of the Michigan Constitution, as the filing seeks to impair or diminish the AFSCME Detroit Employees' pension benefits. Additionally, the very law purporting to allow the EM to unconditionally file for chapter 9 protection, PA 436, violates several provisions of the Michigan Constitution, including (i) Article IX, Section 24 because PA 436 does not explicitly prohibit the diminishment or impairment of vested pension rights in bankruptcy; (ii) Article VI, Section 29 because PA 436 delegates power to the EM in excess of that possessed by the legislature; and (iii) Article VII because PA 436 strips power from the electors of each city and village and runs ramshackle over the principles of local self-government firmly embedded in Michigan law.

7. *Second*, despite factual arguments to the contrary in the City's Eligibility Brief, the City has failed to establish that it has negotiated in good faith or that such negotiations were impracticable as required under section 109(c)(5) of the Bankruptcy Code. In fact, AFSCME submits that based on facts AFSCME is aware of now (discussed herein and in the Kreisberg Declaration) and further facts AFSCME expects to develop through discovery, the evidence shows (and AFSCME expects will further show) that the City conducted **no good faith**

**negotiations** with significant unions such as AFSCME prior to the filing. Rather, the City commenced this proceeding in **bad faith** and in haste in violation of section 921(c) of the Bankruptcy Code, with the sole goal of preventing a “bad” state court ruling (i) upholding the Michigan Constitution and (ii) preventing the City from taking the very inappropriate and unconstitutional journey it now seeks to embark on.

8. If the Court ultimately were to find that the City satisfied the eligibility requirements, the EM will seek (i) to unconstitutionally and illegally abridge pension and other AFSCME Detroit Employee benefits; (ii) to proceed under section 365 of the Bankruptcy Code and illegally seek to reject vested pension and other retiree benefits; and/or ultimately (iii) to propose a chapter 9 plan of adjustment that reduces pension and other benefits but that cannot possibly be better for creditors like AFSCME Detroit Employees than the alternative of staying out of chapter 9 where pensions are guaranteed protection under the state constitution - a clear breach of the chapter 9 “best interests test.” Such an outcome should not be countenanced.

9. Finally, AFSCME reserves the right to argue, following additional discovery, that the City is solvent and does not qualify for chapter 9 relief pursuant to section 109(c)(3) of the Bankruptcy Code, particularly when certain un-monetized assets and other financial considerations which may be revealed through discovery are taken into account. The City’s assertions in the Eligibility Brief that it is insolvent must be highly and independently scrutinized and challenged, including through the efforts of the Retiree Committee, once appointed, and its retained professionals.

## RELEVANT BACKGROUND

10. Orr currently serves as the EM of the City under PA 436.

11. The Governor appointed Orr as EM for the City on March 14, 2013, effective as of March 25, 2013. On March 28, 2013, upon the purported effectiveness of PA 436, Orr became, and continues to act as, EM for the City under PA 436.

12. On June 14, 2013, Orr issued a "Proposal for Creditors" which expressly stated that "there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons." The same day, Orr publicly threatened, in an interview with the Detroit Free Press Editorial Board,<sup>2</sup> that vested pension benefits would not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits would "not . . . protect" retirees in bankruptcy court. The EM stated as follows in the interview:

Q You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?

A. The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law. Which the Ninth Circuit agrees with for now.

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A. It is what it is - so we said that in a soft way of saying, "Don't make us go into bankruptcy." If you think your state-vested pension rights, either as an employee or a retiree - that's not going to protect you. If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism, will trump state law or negotiate. The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy.

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<sup>2</sup> See *Q&A with Kevyn Orr: Detroit's Emergency Manager Talks About City's Future*, Detroit Free Press (June 16, 2013), available at <http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis>.

The City has since filed with this Court its *Motion for the Entry of an Order Directing the Appointment of a Committee of Retired Employees* [Docket No. 20], the plain intent of which is to seek to negotiate a reduction or impairment of accrued pension benefits.

**A. The Webster Litigation**

13. On July 3, 2013, against the backdrop of the threatening statements made by Orr regarding Michigan state law and protected pension benefits, plaintiffs (the “**Webster Plaintiffs**”) Gracie Webster (a City retiree) and Veronica Thomas (a current employee of the City) commenced a lawsuit against the State of Michigan, the Governor and the State Treasurer seeking: (a) a declaratory judgment that PA 436 violated the Constitution of the State of Michigan to the extent that it purported to authorize chapter 9 cases within which vested pension benefits might be sought to be compromised; and (b) an injunction preventing the defendants from authorizing any chapter 9 case for the City within which vested pension benefits might be sought to be reduced. *See Webster v. State of Mich.*, No. 13-734-CZ (Ingham County Cir. Ct. July 3, 2013) (the “**Webster Litigation**”).<sup>3</sup>

14. In briefing submitted in support of a preliminary injunction and declaratory order against the Governor, the Webster Plaintiffs explained that Article IX, Section 24 of the Michigan Constitution provides that “[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby;” that there could not be a more clear and plain constitutional mandate; and that Article IX, Section 24 means what it says: accrued pension benefits shall not be reduced.

15. Further, as the Webster Plaintiffs noted, the Official Record of the 1963 Michigan Constitutional Convention makes clear that no governmental entity or its officials can

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<sup>3</sup> Two additional lawsuits were also filed raising similar issues in addition to the Webster Litigation.

do anything to diminish or impair vested pension benefits: “This is a new section that requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a contractual obligation which cannot diminished or impaired by the action of its officials or governing body.” 2 Official Record, Constitutional Convention 1961, p. 3402.

16. The Webster Plaintiffs also noted that PA 436 explicitly recognizes that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. For example:

- Section 11 of PA 436 requires that an emergency manager develop a written financial and operating plan for the local government and that such plan “shall provide” for “the timely deposit of required payments to the pension fund for the local government.”
- Section 13 of PA 436 authorizes the emergency manager to eliminate the salary, wages or other compensation and benefits of the chief administrative officer and members of the governing body of the local government, but expressly provides that “[t]his section does not authorize the impairment of vested pension benefits.”
- Section 12(m) of PA 436 authorizes an emergency manager under certain circumstances to be appointed as the sole trustee of a local pension board and to replace the existing trustees, and requires that “the emergency manager shall fully comply with . . . Section 24 of Article IX of the state constitution . . .” when acting as the sole trustee.

17. But, in violation of Article IX, Section 24 of the Michigan Constitution, PA 436 fails to similarly forbid the Governor explicitly from authorizing a chapter 9 bankruptcy filing if accrued pension benefits may be sought to be diminished or impaired as a consequence of that filing. Section 18 of PA 436, which purportedly empowers the Governor to authorize a municipality to file for bankruptcy under chapter 9, nowhere prohibits the Governor from authorizing such a filing if accrued pension benefits may be sought to be diminished or impaired. Clearly, the Legislature understood and honored the Michigan constitutional mandate not to diminish or impair accrued pension benefits outside of bankruptcy. Just as clearly, the Legislature omitted any constitutional protection against the impairment or

diminishment of accrued pension benefits when the Governor purports to authorize a chapter 9 bankruptcy filing under Section 18 of PA 436.

18. In other words, if accrued pension benefits may be diminished or impaired, in violation of Article IX Section 24 of the Michigan Constitution, the section of PA 436 purporting to authorize this bankruptcy, Section 18, must be unconstitutional.

19. On July 18, 2013, the same date this chapter 9 case was commenced, the Ingham County Circuit Court for the State of Michigan (the “**State Court**”) entered a temporary restraining order (the “**TRO**”, attached to the Kreisberg Declaration, Exhibit A) enjoining the Governor, the State Treasurer and the other defendants in the Webster Litigation from authorizing a chapter 9 filing and taking any further action “with respect to any filing which has already occurred” including the authorizing of an “unconditional” chapter 9 filing (*i.e.* one in which the EM would represent himself as having authority to modify and/or terminate pension obligations without limit in derogation of the Michigan Constitution).

20. Despite the issuance of the TRO and the State Court’s clear directive to the Governor regarding not authorizing any further filings by the City, the Governor did not seek to prevent the City from filing all of its “first day pleadings.” Indeed, the Governor authorized and the EM directed the chapter 9 filing just minutes before the July 18, 2013 TRO hearing was set to begin (and during a brief delay in the TRO hearing requested by the Governor’s attorney) in order to potentially “cut off” any argument that the filing was not properly authorized (because the Governor knew and the EM expected that the State Court Judge was prepared to grant the TRO).

21. On July 19, 2013, the State Court held a further hearing on the Webster Litigation and entered an Order of Declaratory Judgment (the “**Declaratory Judgment**,”

attached to the Kreisberg Declaration as Exhibit B). The Declaratory Judgment (a) finds PA 436 unconstitutional and of no force and effect to the extent it permits the Governor to authorize the EM to proceed under chapter 9 in any manner that threatens to diminish or impair pension benefits and (b) rules that the Governor must direct the EM “to immediately withdraw the chapter 9 petition ... and ... not authorize any further chapter 9 filing which threatens to diminish or impair accrued pension benefits.” *See* Declaratory Judgment at 3.

22. To the extent there was any authorization for the chapter 9 filing, the State Court clearly ordered that the Governor revoke it to the extent it was intended to lead to the diminishment or impairment of accrued pension benefits. However, subsequent to the issuance of the Declaratory Judgment, on July 25, 2013, this Court granted the City’s motion to extend the automatic stay, which, *inter alia*, stayed pending appeals of the Declaratory Judgment (and other similar state court proceedings). *See* Docket No. 166.

**B. The City’s Pre-petition Machinations And Subsequent Meetings (But Not Negotiations) With Creditors Such As AFSCME**

**(i) The City’s Bankruptcy Was Discussed Prior To The EM Was Even Hired**

23. In emails that surfaced following the City’s chapter 9 filing going back to January 2013, long prior to any alleged good faith negotiations with creditors (more about this point below), secret discussions were being held between Detroit and officials in the Governor’s office and the City’s legal counsel suggesting that the best course for the City would be to send it through chapter 9 bankruptcy. These emails expose Orr’s and the City’s charade of pre-petition “negotiations” (in reality, one-sided meetings) in the month prior to the City’s chapter 9 filing. In fact, all along the clear goal was for the City to end up in chapter 9.

24. For example, Orr communicated as early as January 2013 regarding his proposed appointment as EM and discussed with his law firm at the time how to go about



leading the City into chapter 9. In an email (attached to the Kreisberg Declaration, Exhibit 1) dated January 31, 2013, Orr’s colleague at the firm stated in an email to Orr that the “ideal scenario would be that [Michigan Governor] Snyder and [Detroit Mayor] Bing both agree that the best option is simply to go through an orderly Chapter 9. This avoids an unnecessary political fight over the scope/authority of any appointed Emergency Manager appointed and, moreover, moves the ball forward on setting Detroit on the right track.” *Id.*<sup>4</sup>.

25. Orr’s colleague then stated his own reservations about whether an emergency manager would be useful outside of bankruptcy where his “ability to actually do anything is questionable given the looming political and legal fights” *Id.* In contrast, he observed in an earlier email, “[m]aking this a national issue . . . provides political cover for the state politicians” and gives them an “incentive to do this right” because “if it succeeds, there will be more than enough patronage to allow [them] to look for higher callings—whether Cabinet, Senate, or Corporate.” *See* Kreisberg Declaration, Exhibit 2.<sup>5</sup>

26. Others involved in the discussions prior to the chapter 9 filing included the Governor’s Transformation Manager, Richard Baird (“**Baird**”). In an email also dated January 31, 2013, Orr, in anticipated of a conversation he was to have with Baird “in a few minutes” about whether to accept the EM position, observed that PA 436 “is a clear end-around the prior initiative” to repeal the previous Emergency Manager statute, Public Act 4, “that was rejected

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<sup>4</sup>See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

<sup>5</sup>See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

by the voters in November.” See Kreisberg Declaration, Exhibit 3.<sup>6</sup> According to Orr “although the new law provides the thin veneer of a revision it is essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for a chapter 9 filing.” *Id.*

27. In a further email dated January 31, 2013, Orr indicated that Baird wanted Orr to be hired as the EM and his firm to represent the City (regardless of whether Orr took the EM job), and that Orr indicated that he would be glad to work together with the City, even if not as EM, indicating that “I [Orr] and the firm are committed to working in lockstep with the [C]ity.” See Kreisberg Declaration, Exhibit 4.<sup>7</sup>

**(ii) No Good Faith Negotiations Took Place Following The Appointment Of The EM With Parties Such As AFSCME Prior To The City’s Chapter 9 Filing**

28. As indicated above, the die was cast for the City’s inevitable chapter 9 filing prior to the March appointment of Orr as EM. Following Orr’s appointment, the City and Orr maneuvered to establish the veneer of formal pre-petition creditor negotiations, when in reality, Orr and the Governor knew all along that the non-interactive meetings would be held on a *pro forma* basis so the City could attempt to establish alleged good faith negotiations.

29. The facts belie the notion of any pre-filing negotiations, whether in good faith or otherwise. Indeed, the City itself admitted both in letters and at the meetings held in the month or so prior to the filing that the City was only interested in one-way discussions, not negotiations.

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<sup>6</sup> See also Matt Helms, *Detroit bankruptcy, Kevyn Orr's doubts discussed weeks before EM was hired, e-mails show*, <http://www.freep.com/article/20130722/NEWS01/307220086/Kevyn-Orr-Detroit-bankruptcy-emails> (last visited on August 19, 2013).

<sup>7</sup> See also Kate Long, *Who is representing Detroit?* <http://blogs.reuters.com/muniland/2013/07/25/who-is-representing-detroit/> (last visited on August 19, 2013).

30. On June 14, 2013, the City held a meeting of representatives of the City's creditors (the "**June 14 Meeting**") to present the City's comprehensive restructuring plan/ "Proposal for Creditors" (the "**Restructuring Plan**", attached to the Kreisberg Declaration as Exhibit C). Even prior to these meetings, Orr confirmed that the City's discussions of its Restructuring Plan would not involve any negotiations, explaining that "it is under the [PA 436] statute, it is my plan and it's within my discretion and obligation to do it. **This isn't a plebiscite, we are not, like, negotiating the terms of the plan.** It's what I'm obligated to do." See Kevyn Orr Interview to Detroit WWJ Newsradio 950/AP, *Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually*, May 12, 2013, available at <http://detroit.cbslocal.com/2013/05/12/kevin-orr-releases-financial-plan-for-city-of-detroit/> (emphasis added).

31. On June 17, 2013, Steven Kreisberg, AFSCME's director of collective bargaining and health care policy, submitted a letter requesting from the EM various categories of information, assumptions, and data for AFSCME to honestly review all the information presented and begin good faith negotiations. See Kreisberg Declaration, Exhibit 5. AFSCME made this request prior to a scheduled June 20, 2013 meeting with unions (including AFSCME) representing the City's non-uniform employees regarding the City's pensions. At that meeting, the City represented that the meeting was "not a negotiation." See Kreisberg Declaration, ¶ 17. Furthermore, the letter inviting AFSCME to the June 20 meeting characterized the purpose of the meeting as being to "review" the Restructuring Plan (not negotiate it) and to have AFSCME "learn" about the Restructuring Plan. Kreisberg Declaration, Exhibit 6.

32. In a letter dated June 27, 2013 to an AFSCME local union, the City indicated that it was posting certain information to a data room and was looking forward to the unions'

“feedback” (again not negotiation) with respect to the EM’s retiree benefits restructuring proposal. *See* Kreisberg Declaration, Exhibit 7.

33. In a follow up letter to the City dated July 2, 2013, Mr. Kreisberg again reiterated his request for information and data, including the backup data supporting the City retiree benefits proposal (support for which previously consisted of only a one-page financial summary). AFSCME requested relevant information and the opportunity (in conjunction with a meeting scheduled with the City’s unions on July 10-11) to begin meaningfully engaging “in a good faith negotiation of these issues.” *See* Kreisberg Declaration, Exhibit 8.

34. In a response letter to Mr. Kreisberg on July 3, 2013, the City advised that it would not meet separately with AFSCME, and that the July 10, 2013 scheduled meeting with the unions would be a “discussion” (again not a negotiation). *See* Kreisberg Declaration, Exhibit 9. Similarly, in an email dated June 28, 2013, the City confirmed that it wanted to meet on July 10, 2013 to “discuss” its “developing pension restructuring proposal,” clearly implying that the proposal itself was not even complete yet. *See* Kreisberg Declaration, Exhibit 10.

35. At the July 10, 2013 meeting, the City announced at the inception that the meeting would be a discussion but not a negotiation. *See* Kreisberg Declaration, ¶ 18. At a similar meeting held with AFSME and certain and other unions held on July 11, 2013, again there was no negotiation.

**(iii) The City’s Bad Faith Refusal To Negotiate With Unions Such As AFSCME Has Continued Following The City’s Bankruptcy Filing**

36. The City’s pattern of bad faith refusal to negotiate any of its proposals regarding pensions or health insurance benefits changes has continued postpetition.

37. For example, on August 2, 2013, the City convened a meeting of local union representatives and discussed active health insurance. *See* Kreisberg Declaration, ¶ 19.

However, during that meeting, the City specifically advised those in attendance (including AFSCME representatives) that the meeting was not a negotiation. *Id* at ¶ 20. Mr. Kreisberg sent a follow up letter to the City on August 6, 2013 requesting good faith bargaining, and referenced cost savings estimates which AFSCME previously proposed in prior negotiations with the City before the development of the Emergency Manager’s initial financial restructuring plan in May. *See* Kreisberg Declaration, Exhibit 11. In an August 8, 2013 response, the City advised that it would not engage in collective bargaining with AFSCME, but rather simply “discuss any feedback they may have regarding its health care restructuring plans.” *See* Kreisberg Declaration, Exhibit 12.

38. On August 14, 2013, the City held a follow up meeting with AFSCME on the subject of active medical benefits but did not accept any counterproposals or suggestions, but simply responded by further explaining its current intention with respect to active medical benefits.

39. Given Orr’s repeated statements to the media about the City’s willingness to bargain with its unions, AFSCME has been surprised by the City’s unwillingness to negotiate, pre or postpetition. While AFSCME has repeatedly stated its desire to move forward with constructive negotiations with the City on behalf of all AFSCME Detroit Employees, AFSCME cannot negotiate with an employer that is unwilling to come to the table for arms-length talks.

**ARGUMENT**

**I. THE CITY’S PETITION VIOLATES THE UNITED STATES CONSTITUTION**

**A. CHAPTER 9 VIOLATES THE FEDERAL STRUCTURE OF GOVERNMENT**

40. Chapter 9 of the Bankruptcy Code is an unconstitutional violation of federalism because chapter 9 allows Congress to set rules controlling State fiscal self-management – an

area of exclusive state sovereignty – as part of an unholy alliance in which the State receives in exchange powers in excess of those it would otherwise possess under the law. The losers here are citizens, such as the AFSCME Employees, who, particularly as creditors of the State, benefit from the State and Congress acting within their constitutionally defined roles so that the State remains accountable during the trying process of a municipal debt adjustment.

41. The Supreme Court recognized this violation explicitly in 1936 when the Court declared the first federal municipal bankruptcy statute unconstitutional for the following two independent reasons: (1) the goal of a municipal bankruptcy is to enable state governments to unconstitutionally escape their debts, but states cannot accomplish the “end” of an unconstitutional act simply “by granting any permission necessary to enable Congress to do so”; and (2) municipal bankruptcy represents an incursion by Congress into the “sovereignty of the State” and its political subdivisions, which renders them “no longer free to manage their own affairs” independent of “interference” by Congress, yet the Constitution does not permit Congress to “pass laws inconsistent with the idea of sovereignty.” *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U.S. 513, 530-32 (1936).

42. *Ashton* applies with equal force to chapter 9 as it did to the first federal bankruptcy statute. Chapter 9, like the municipal bankruptcy statute struck down in *Ashton*, is designed to empower municipalities – whose “fiscal affairs are those of the State, not subject to control or interference by the National Government,” *id.* at 528 –to “change, modify or impair the obligation of their contracts” in ways not permissible outside of bankruptcy. *Id.* at 530-31. As *Ashton* recognized, that municipalities may not, unlike states, be immune from suit under the 11th Amendment is entirely unrelated to the question of whether their essential role in the federal system of government has been unconstitutionally diminished by an act of Congress.

*Ashton*, 298 U.S. at 531. The Supreme Court recently reaffirmed this distinction in *Printz v. United States*: “[T]he distinction in our Eleventh Amendment jurisprudence between States and municipalities . . . is peculiar to the question of whether a governmental entity is entitled to Eleventh Amendment sovereign immunity, [and does not] apply [] to the question of whether a governmental entity is protected by the Constitution's guarantees of federalism, including the Tenth Amendment.” 521 U.S.898, 531 n. 15 (1997) (citations omitted).

43. To take just one extremely salient example, the City seeks to reduce its retiree health care obligations *permanently* in bankruptcy, which the Michigan Court of Appeals has held it could not do under state or federal law. *See AFT Michigan v. State*, 297 Mich. App. 595, 825 N.W.2d 595 (2012). This point is uncontroversial: the entire purpose of bankruptcy is to adjust debts which would otherwise be binding outside of bankruptcy. Under chapter 9, for the privilege of skirting the laws governing its debts outside of bankruptcy, the State submits to the rules enacted by Congress for a chapter 9 filing and thereby cedes sovereign control over some of its own fiscal affairs to the federal judiciary during the bankruptcy process.

44. Neither of the justifications provided by the Supreme Court less than two years after *Ashton* when it upheld Congress’s next, substantially similar, municipal bankruptcy statute in *United States v. Bekins*, 304 U.S. 27 (1938) – (1) that the contracts clause of the federal constitution makes the passage of a state law adjusting municipal debts impossible and thus the need for a federal law providing for municipal bankruptcy pressing, and (2) that a State has a right to consent to federal intrusion into its own fiscal affairs – remains valid. This is because intervening Supreme Court precedent holds that states can fashion their own municipal reorganization statutes but cannot consent to any derogation of their sovereign powers.

**(i) A Federal Municipal Bankruptcy Statute Is No Longer Necessary To Accomplish An Adjustment Of Municipal Debts**

45. As a threshold matter, the Supreme Court has held since *Bekins* that states *can* pass legislation to adjust municipal debts in a financial emergency. *See Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942). In doing so, the Supreme Court scoffed at the presumption that the federal government could “completely absorb” from a State a power “so peculiarly local as the fiscal management of its own household.” *Asbury Park*, 316 U.S. at 508-09. *See also United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1 (1977) (recognizing that state legislation adjusting a state’s contractual obligations may not violate the contracts clause under certain circumstances). For this reason alone, *Bekins*, which relied heavily on the Supreme Court’s perception that some mechanism was needed to permit states to adjust their debts during the “[e]conomic disaster” of the Great Depression, 316 U.S. at 53-54, is no longer binding.

**(ii) The Supreme Court’s Development Of Constitutional Federalism Doctrine Has Effectively Overruled *Bekins***

46. Over the past two decades the Supreme Court issued a series of opinions clarifying both the importance of the federal system of government to *individual* liberty and, concomitantly, the inability of a state to consent to an affront by Congress to that federal system. The fountainhead of these cases is *New York v. United States*, 505 U.S. 144 (1992). There, Justice O’Connor, writing for the majority, explained at length that any statute exercising federal control over a power which “is an attribute of state sovereignty” – as is the case here with respect to a state’s management of the fiscal affairs of its political subdivisions, *see Ashton, supra* – is “necessarily” an exercise of “a power the Constitution has not conferred on Congress” and therefore unconstitutional. 505 U.S. at 156. “The States ‘form distinct and



independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.” *Alden v. Maine*, 527 U.S. 706, 714 (1999) (quoting *The Federalist* No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison)). Thus the Supreme Court’s duty, Justice O’Connor has explained, is to “invalidate[] measures deviating from” the federalist “form of government” set forth in the Constitution, however “formalistic” the result may appear in light of “the era’s perceived necessity.” *New York*, 505 U.S. at 187.

(a) **Chapter 9 Impinges On The AFSCME Employees’ Individual Rights To Federalism By Eviscerating The Accountability Of Michigan To Its Citizens And Creditors**

47. *New York* and its progeny represent a direct rebuff to *Bekins* and other Depression-era cases, which softened the requirements of federalism in moments of perceived peril, by setting forth since then a robust vision of federalism which “divides authority between federal and state governments for the protection of individuals.” *New York*, 505 U.S. at 181. That vision begins with the “incontestable” truth “that the Constitution established a system of ‘dual sovereignty,’” under which the sovereignty reserved to a State and its citizens is “‘inviolable.’” *Printz*, 521 U.S. at 918-20 (quoting *The Federalist* No. 39, at 245 (J. Madison)) (other citations omitted). “Residual state sovereignty was also implicit, of course, in the Constitution’s conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, Art. I, § 8, which implication was rendered express by the Tenth Amendment’s assertion that ‘[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.’” *Printz*, 521 U.S. at 920.

48. The premise of the federal constitutional structure is that “Congress would exercise its legislative authority directly over individuals rather than over States.” *New York*, 505 U.S. at 166 (citing 1 Records of the Federal Convention of 1787, p. 313 (M. Farrand ed. 1911) (explaining the “rejection of the New Jersey Plan in favor of the Virginia Plan”)). As a corollary, individual citizens possess a vested right in the guarantee of a strongly demarcated separation of power between the state and federal government to ensure that each remains responsible to the citizens for the tasks with which it was charged:

The great innovation of this design was that “our citizens would have two political capacities, one state and one federal, each protected from incursion by the other”—“a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it.” [*Printz*, 521 U.S. at 920 (quoting *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779, 838 (1995) (Kennedy, J., concurring)).]

49. This structural separation of powers protects individual liberty in myriad ways by creating a “double security as to the rights of the people.” *Printz*, 521 U.S. at 922 (quoting *The Federalist* No. 51, at 323 (J. Madison)). It ensures that neither branch will accumulate “excessive power,” thereby reducing “the risk of tyranny and abuse from either front.” *Printz*, 521 U.S. at 921 (quotation omitted). The separation of powers principle further “contemplates that a State’s government will represent and remain accountable to its own citizens.” *Printz*, 521 U.S. at 920 (citations omitted). For “[i]f, as Madison expected, the Federal and State Governments are to control each other, see *The Federalist* No. 51, and hold each other in check by competing for the affections of the people, see *The Federalist* No. 46, those citizens must have some means of knowing which of the two governments to hold accountable for the failure to perform a given function.” *United States v. Lopez*, 514 U.S. 549, 576-77 (1995) (Kennedy,

J., concurring). *See also United States v. Morrison*, 529 U.S. 598, 615-16 (2000) (citing the bulk of Justice Kennedy’s concurrence in *Lopez* and holding that Congress may not “use the Commerce Clause to completely obliterate the Constitution’s distinction between national and local authority”). Accordingly, “[t]he Framers thus ensured that powers which ‘in the ordinary course of affairs, concern the lives, liberties, and properties of the people’ were held by governments more local and more accountable than a distant federal bureaucracy.” *Nat. Fed’n of Indep. Business v. Sibelius*, 132 S. Ct. 2566, 2578 (2012) (Roberts, C.J.) (quoting *The Federalist* No. 45, at 293 (J. Madison)).

50. Chapter 9 does unconstitutional violence to the federal structure by obfuscating the system of direct accountability protected by federalism. By outsourcing to the federal judiciary the problem of a state reorganizing its obligations, chapter 9 provides states with unconstitutional – as well as unnecessary, given *Asbury Park* – cover from its citizens by confusing them as to whom to accord “blame” and “credit” for the results. *Printz*, 521 U.S. at 931; *New York*, 505 U.S. at 169. *See also Gregory v. Ashcroft*, 501 U.S. 452, 459 (“These twin powers will act as mutual restraints only if both are credible.”). “The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central power.” *Lopez*, 514 U.S. at 576-77 (Kennedy, J., concurring) (citations omitted).

51. In point of fact, on January 31, 2013, Orr’s colleague himself touted the deflection of accountability for state and city politicians as a benefit. “Making this a national idea is not a bad thing,” he wrote, because “[i]t provides political cover for the state politicians. Indeed, this gives them an even greater incentive to do this right because, if it succeeds, there will be more than enough patronage to allow either [Mayor] Bing or [Governor] Snyder to look

for higher callings—whether Cabinet, Senate or Corporate.” Kreisberg Declaration, Exhibit 2. In a subsequent reply to Orr later that day, Orr’s colleague provided a clear indication of his idea of the “right” way to do “this,” stating: “the ideal scenario would be that Snyder and Bing both agree that the best option is simply to go through an orderly chapter 9.” Kreisberg Declaration, Exhibit 1.

52. This veil over accountability is woven into the very structure of chapter 9. While the City must consent to a chapter 9 filing and retains some control over the chapter 9 process, even before the City proposes a plan the Bankruptcy Judge is able to commandeer the City’s operation in exchange for the protection of the Bankruptcy Code by using its equitable powers, as it already has in this case, to order the City to, *inter alia*, turn over documents and engage in mediation and negotiations which the State would not need to submit to outside of Bankruptcy. *See Mediation Order* [Docket No. 322] (“the Court concludes that it is necessary and appropriate to **order** the parties to engage in the facilitative mediation of any matters that the Court refers in this case,” moreover, the mediator is “authorized to enter any order necessary for the facilitation of mediation proceedings”, including regarding discovery issues).

53. Moreover, Bankruptcy Code section 926 provides that “[i]f the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a) or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.” 11 U.S.C. § 926(b). In at least one reported case, *In re Alabama State Fair Authority*, 232 B.R. 252 (N.D. Ala. 1999), the bankruptcy court appointed a trustee to pursue preference actions. Thus, the bankruptcy court has discretion, despite a municipal debtor having made the policy choice to settle a pre-petition debt, to appoint a third-party trustee to ignore the municipality’s decision

and pursue avoidance of such a settlement. With regard to preference avoidance, this is a power an individual creditor could not independently assert under state law.

54. If the City wishes to obtain the true spoils of bankruptcy – a plan of adjustment – it must submit to a much greater degree of federal interference, thus further blurring the line between Congress and the State as to who is to blame for the contents of that plan. This is because, in order for a debtor’s plan to receive approval under chapter 9, it must incorporate priorities of distribution according to the Bankruptcy Code. The tension between chapter 9 and state law rights was highlighted in *In re County of Orange*, 191 B.R. 1005 (Bankr. C.D. Cal. 1996), where the court, on preemption grounds, invalidated California’s law providing for the establishment of a trust with respect to certain securities. Relying on the doctrine of preemption alone, the County of Orange court held that “The California legislature cannot rewrite the bankruptcy priorities.” *Id.* at 1017.

55. If the people of Michigan were to enact their own laws for adjusting municipal debts, those laws might have very different priorities than chapter 9. Chapter 9, for instance, allows administrative expenses under Bankruptcy Code section 503 and gives them priority under Bankruptcy Code section 507(a)(2), and adopts the definition of secured claims from Bankruptcy Code section 506, to name a few. 11 U.S.C. § 901(a). Importantly, in contrast, the people of Michigan might very well decide to treat issues such as claim priority quite differently. For instance, they might choose to place unsecured retiree health claims before administrative expenses, thus benefitting the AFSCME retirees. This is, after all, a state whose constitution explicitly protects pension rights. But once the state accesses chapter 9, the AFSCME employees are denied the right to petition their government to enact a municipal debt

adjustment law of this nature, and the state can shirk its responsibility to the voice of its citizens by blaming injustice on the claim priorities, rules, and procedures of the Bankruptcy Code.

56. That the City retains some autonomy over its affairs under chapter 9 is irrelevant, for the mere incursion into territory reserved to the states is sufficient to violate the Constitution. “[W]here, as here, it is the whole object of the law to direct the functioning of the state [government], and hence to compromise the structural framework of dual sovereignty . . . a ‘balancing’ analysis is inappropriate. It is the very principle of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect.” *Printz*, 521 U.S. at 932.

57. Ultimately, the allocation of state resources as between competing creditors of the City should be determined “by the political process established by the citizens of the State, not by judicial decree mandated by the Federal Government.” *Alden*, 527 U.S. at 751. “When the Federal Government asserts authority over a State's most fundamental political processes, it strikes at the heart of the political accountability so essential to our liberty and republican form of government.” *Id.* While the road to adjusting the City’s debts may be longer if it must first involve “greater citizen involvement in democratic processes . . . in shaping the destiny of” the City’s reorganization process rather than that set forth in chapter 9 as a result of “the political processes that control a remote central power,” *Bond v. United States*, 131 S. Ct. 2355, 2364 (2011), “the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day.” *New York*, 505 U.S. at 187.

58. The unconstitutionality of chapter 9 is further confirmed by its unsuccessful attempt to preserve some independence for state sovereigns within the constraint of the grant of power to Congress by Article I, Section 8 Clause 4 (the “Bankruptcy Clause”) to establish “uniform” bankruptcy laws. Although the bankruptcy code for private debtors may treat debtors differently in different states due to variations in state law and still pass muster as “uniform,” within a state there must be “geographical” uniformity for debtors. *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 188 (1902). But by ceding to each state the ability to define its own qualifications for a municipality to declare bankruptcy, chapter 9 permits the promulgation of non-uniform bankruptcies within states – as in Michigan, where Act 436 has wildly divergent effects on different cities, whose authority to declare bankruptcy purports to rest on the discretion of a Governor who can attach whichever contingencies he wishes. *See* MCL 141.1558. It is no surprise that this attempt to elude the demands of federalism thereby fails for this additional reason, for municipal bankruptcy would have been an entirely foreign concept to the framers who modeled much of our federal Constitution on British law which did not then, and still does not today, even contemplate municipal bankruptcy. *See, e.g.*, Janie Anderson Castle, *The People’s Mayor for London?*, 5 J. Loc. Gov’t L. 29, 32 (2002); Annerose Tashiro, *Sovereign Insolvency*, 99 Eur. Law. 5 (2010) (“There is no such thing today anywhere in Europe as a sovereign insolvency regime.”) (advocating implementation of a bankruptcy regime mirroring that of chapter 9 in the EU).

59. It cannot be adequately emphasized that under *Asbury Park* the State has the authority to amend its own laws to allow for its municipalities to adjust their debts without resorting to a coercive federal statute which unconstitutionality obscures accountability and is not a uniform bankruptcy law. It can even, furthermore, seek federal financial assistance to

help meet those debts. *See, e.g., South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (Rehnquist, C.J.) (“[O]bjectives not thought to be within Article I’s enumerated legislative fields may nevertheless be attained through the use of the spending power and the conditional grant of federal funds.” (internal quotation omitted)). What the State cannot do – but what chapter 9 demands – is to submit to federal rules which would not merely incentivize the State’s use of lawful power, but engorge that power at the expense of its citizens’ inviolable right to control the operation of their sovereign by setting the rules by which it adjusts its own debts.

**(b) Chapter 9’s Requirement Of State Consent Cannot Cure The Violation Of Individual Rights**

60. The Supreme Court squarely held in *New York* that “[t]he constitutional authority of Congress cannot be expanded by the ‘consent’ of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.” 505 U.S. at 182. Even when such consent is accomplished by statute. *See, e.g., Buckley v. Valeo*, 424 U.S. 1 (1976) (Congress infringed the President’s appointment power via a law signed by the President); *INS v. Chadha*, 462 U.S. 919 (1983) (legislative veto violated the constitutional requirement of presentment even where President signed law with legislative veto provision).

61. The decision in *Bekins* therefore erred in concluding that the then-operative municipal bankruptcy statute was not unconstitutional simply because the statute required the municipality’s petition and plan of composition to be authorized by state law. 304 U.S. at 52. To the contrary, the conclusion in *Bekins* that the only “obstacle” to the exercise of federal bankruptcy over state political subdivisions “lies in the right of the State to *oppose* federal interference,” 304 U.S. at 52-54, is squarely foreclosed by the Court’s subsequent decision in *New York*. Thus the prior rule from *Ashton* – “Neither consent nor submission by the States can enlarge the powers of Congress,” and therefore states cannot “accomplish” an unavailable



“end by granting any permission necessary to enable Congress to do so,” 298 U.S. at 531 – is the correct one.

62. The Court concluded in *New York* that State consent cannot cure an otherwise unconstitutional infringement of state sovereignty for the same reason that municipal bankruptcy violates constitutional federalism in the first place: the design of federalism is meant “for the protection of individuals,” not States. *New York*, 505 U.S. at 181 (“The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States.”). State government officers may even have “powerful incentives” to consent to a diminishment of state sovereignty to evade one of the core benefits federalism promises to individual citizens: direct accountability of political officials for actions taken in their clearly demarcated domains of authority. *Id.* at 182-83 (“[I]t is likely to be in the political interest of each individual official to avoid being held accountable to the voters.”). Therefore state consent cannot not be allowed to dismantle the delicate balance of powers protecting the accountability of each dual sovereign to its citizens.

**B. AFSCME’S ACTIVE AND RETIRED MEMBERS HAVE INDIVIDUAL STANDING TO ASSERT THAT CHAPTER 9 VIOLATES THEIR INDIVIDUAL RIGHTS TO A FEDERAL SYSTEM OF GOVERNMENT**

63. The Supreme Court has squarely held that individuals – and not just states – have standing to challenge that Congress has “exceeded its powers under the Constitution, thus intruding upon the sovereignty and authority of the States.” *Bond v. United States*, 131 S. Ct. 2355 (2011). As also analyzed *supra*, individuals have their “own constitutional interests” to “assert injury from governmental action taken in excess of the authority that federalism defines,” and their “rights in this regard do not belong to the State.” *Id.* at 2363-64.

64. Two aspects of the Court’s conclusion in *Bond* are of special relevance to the instant case. First, the Court emphasized that federalism protects not just “the integrity of the [state and federal] governments themselves,” but also, distinctly, “the people, from whom all governmental powers are derived.” *Id.* at 2464. Individual citizens’ interests in pressing federalism complaints include the “liberties that derive from the diffusion of sovereign power,” such as (1) “greater citizen involvement in democratic processes” and citizens’ consequent ability to use their voices “in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power”; and (2) the promise that “laws enacted in excess of delegated governmental power cannot direct or control their actions” and the consequent protection of citizens from the “arbitrary power” caused by giving any one government too much sway over “the concerns of public life.” The City’s chapter 9 petition threatens AFSCME’s members with both of these harms insofar as it (1) shields the City from a democratic process of resolving its fiscal crisis by rejecting the accountability of local politicians responsive to Detroit’s citizenry in favor of an unelected federal judiciary, and (2) allows the federal government to concoct rules for the resolution of disputes in an “area of traditional state concern.” *Lopez*, 514 U.S. at 580 (Kennedy, J., concurring).

65. Second, the *Bond* Court rejected the argument, pressed by the respondent, that a state’s waiver of any interference with its sovereignty should trump objections by individual citizens on Tenth Amendment grounds. *See* Brief for the Amicus Curiae Appointed to Defend the Judgment Below at 25, *Bond v. United States*, 131 S. Ct. 2355 (2011) (No. 09-1227) (“Particularly when the private party’s interests are not aligned with those of the State, as may well be true in this very case . . . private party suits have the potential to frustrate and undermine state policies and decisions.”). To the contrary, the Court held, a claim that “a law

was enacted in contravention of constitutional principles of federalism . . . need not depend on the vicarious assertion of a State’s constitutional interests, even if a State’s constitutional interests are also implicated.” *Bond*, 131 S. Ct. at 2365. Whether the State has invited the federal incursion upon State authority is irrelevant. Only whether the individual claimant’s injury so much as “*might* not have come about if the matter were left for the [State] to decide” on its own matters to the analysis. *Id.* at 2366.

66. No doubt exists that if the State of Michigan were left to devise its own scheme for adjusting municipal debts – as is squarely within its authority under *Asbury Park* – the State *might* devise a system different from the United States Bankruptcy Code. Under the microscope of “greater citizen involvement” at the local level, the City, fulfilling the promise of federalism to its citizens, would be more directly constrained to create a process responsive to their needs – including, perhaps, the same needs which prompted the passage of the state constitutional amendment protecting the very diminishment or impairment of vested pension rights which the City now seeks to accomplish under the cover of chapter 9. Regardless, because chapter 9 allows the City a process for adjusting its debts which is not identical to the process for doing so under state law – either as it currently exists or as it would exist if the state were to pass its own municipal composition law – AFSCME’s members, as debtors of the City, have standing to object to the City’s use of chapter 9 on federalism grounds.

**C. THIS COURT LACKS JURISDICTION TO DECIDE WHETHER CHAPTER 9 VIOLATES THE UNITED STATES CONSTITUTION**

67. This Court lacks jurisdiction to decide whether chapter 9 violates the Constitution. As the Supreme Court recently explained in *Stern v. Marshall*, Article III of the Constitution assigns the job of resolving questions of constitutional law to the “judicial power of the United States.” 131 S. Ct. at 2609. Because bankruptcy judges are appointed under

Article I—unlike judges appointed under Article III, who have life tenure and protection from removal or diminishment of salary – Congress may not grant to bankruptcy judges the right to exercise that power. *Id.*

68. No doubt exists either that the resolution of federal constitutional questions comes under the “judicial power” and is not subject to any exception thereto. *Stern*, building on the Court’s decisions in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and *Granfinanciera, S.A. v. Nordberg*, 492 (U.S. 33) (1989), held that any narrow “public rights” exception permitting bankruptcy judges to issue certain final orders does not apply to any legal claim “independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor’s proof of claim in bankruptcy.” 131 S. Ct. at 2611. The federal constitutional claims of AFSCME’s members stem from the Constitution, not the Bankruptcy Code, and cannot be resolved by the very claims process whose legality is the subject of the constitutional challenge.

69. Moreover, the instant constitutional challenge to chapter 9 has nothing to do with a federal regulatory scheme. *Stern* is quite clear that the “public rights” exception is limited to claims asserting rights “integrally related to particular federal government action,” *i.e.*, claims challenging action undertaken pursuant to “a federal regulatory scheme” or whose resolution “by an expert government agency is deemed essential to a limited regulatory objective within the agency’s authority.” *Id.* at 2613. Where, as is the case with this purely constitutional argument, the determination of a legal question has nothing to do with the contours of federal regulations or expert agency fact-finding, the argument must be resolved by an Article III judge.

70. At its core, the “public rights” exception is designed to address situations where – unlike here – a party seeks to enforce rights which Congress has created by statute. *See Granfinanciera*, 492 U.S. at 51 (citations omitted). This constitutional challenge to chapter 9 invokes no such public right; “Congress has nothing to do with it.” *Stern*, 131 S. Ct. at 2613. Nor do bankruptcy judges possess any special expertise at resolving constitutional challenges to their own authority. “The experts in the federal system at resolving” constitutional questions such as this one “are the Article III courts, and it is with those courts that [this] claim must stay.” *Id.* at 2615. The words of the Supreme Court in *Stern* apply with equal force here:

What is plain here is that this case involves the most prototypical exercise of judicial power: the entry of a final, binding judgment by a court with broad substantive jurisdiction, on a [constitutional] cause of action, when the action neither derives from nor depends upon any agency regulatory regime. If such an exercise of judicial power may nonetheless be taken from the Article III Judiciary simply by deeming it part of some amorphous “public right,” then Article III would be transformed from the guardian of individual liberty and separation of powers we have long recognized into mere wishful thinking. [*Id.*]

71. Accordingly, and with respect, this Court should immediately refer this constitutional challenge to chapter 9 to the District Court for the Eastern District of Michigan.

## **II. THE CITY IS NOT ELIGIBLE TO FILE FOR CHAPTER 9 PROTECTION UNDER SECTION 109(C) OF THE BANKRUPTCY CODE**

72. The City, as a purported municipal debtor, bears the burden of establishing it is eligible for relief under chapter 9. *See, e.g., In re City of Stockton*, 475 B.R. 720, 725-26 (Bankr. E.D. Cal. 2012) (citing cases); *In re Valley Health Sys.*, 383 B.R. 156, 161 (Bankr. C.D. Cal. 2008); *In re County of Orange*, 183 B.R. 594, 599 (Bankr. C.D. Cal. 1995); *In re Sullivan County Regional Refuse Disposal Dist.*, 165 B.R. 60, 72 (Bankr. D.N.H. 1994). “[A]ccess to Chapter 9 relief has been designed to be an intentionally difficult task.” *Sullivan County*, 165 B.R. at 82; *see also In re Cottonwood Water and Sanitation Dist.*, 138 B.R. 973,

979 (Bankr. D. Colo. 1992) (explaining that, although the Bankruptcy Code, as remedial legislation, is generally broadly construed, “municipal bankruptcies involve significant problems . . . not encountered in the private sector” and raise important constitutional issues, so that “Congress consciously sought to ‘limit accessibility to the bankruptcy court’ by municipalities.” (internal citation omitted)). As a result, “[t]he bankruptcy court’s jurisdiction should not be exercised lightly in chapter 9 cases.” *Sullivan County*, 165 B.R. at 82.

73. As demonstrated below, the City necessarily fails to carry its burden with respect to the following eligibility requirements: (i) valid authorization under Michigan state law (section 109(c)(2) of the Bankruptcy Code); and (ii) good faith negotiations or impracticability of such negotiations (section 109(c)(5) of the Bankruptcy Code ). AFSCME also reserves the right to argue (following completion of discovery) that the City does not satisfy the insolvency requirement under section 109(c)(3) of the Bankruptcy Code.

74. Furthermore, the evidence reveals that the City’s bankruptcy petition was filed in bad faith and not motivated by a proper purpose under chapter 9 and should be dismissed pursuant to section 921(c) of the Bankruptcy Code. *See e.g., In re McCurtain Municipal Authority*, 2007 WL 4287604 at \*3 (Bankr. E.D. Okla. Dec. 4, 2007) (holding that “the inability to pay debts as they become due depend[s] upon the inescapable quality of the obligation and the certainty that it cannot be met. Mere possibility or even speculative probability is not enough.”) (citations omitted).

**A. The City Is Not Authorized By Michigan State Law To Be A Debtor Under Chapter 9**

75. The City contends that it is authorized to be a debtor under state law because Section 18 of PA 436, M.C.L. 141.1558, provides that “[u]pon receipt of the written approval [of the Governor], the emergency manager is authorized to proceed under chapter 9,” and

further “empowers the emergency manager to act exclusively on the local government’s behalf in any such case under chapter 9.” *See* Eligibility Brief, p. 10. However, the Governor’s blanket grant of permission to file for bankruptcy under Section 18 of PA 436 violated the Michigan Constitution because it failed to explicitly prohibit the impairment or diminishment of vested pension rights. Moreover, the appointment of the Emergency Manager under PA 436 violates the “strong home rule” provisions of the Michigan Constitution. Where, as here, a state constitution bars the purported state law authorization, a chapter 9 petition must be dismissed. *See In re City of Harrisburg, PA*, 465 B.R. 744 (Bankr. M.D. Pa. 2011) (analyzing Pennsylvania Constitution to determine whether city was authorized to file under chapter 9).

**(i) Governor Snyder’s Authorization Of The City’s Petition Under Section 18 Of PA 436 Violated Article IX, Section 24 Of The Michigan State Constitution**

76. As a Michigan Circuit Court Judge has already held, Michigan State law forbids authorization of the City’s bankruptcy petition insofar as it seeks to reduce accrued pension benefits in violation of the State Constitution. Yet the Emergency Manager has been very clear that he intends to use this chapter 9 proceeding to do just that. Indeed, the Emergency Manager had made that intent known well prior to requesting the Governor’s permission to file under chapter 9. For instance, on June 14, 2013 he both (a) issued a “Proposal for Creditors” expressly stating that “there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons,” and (b) publicly threatened, in an interview with the Detroit Free Press Editorial Board, that vested pension benefits will not be protected in a chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits will “not . . . protect” retirees in bankruptcy court.

77. Article IX, Section 24 of the Michigan Constitution provides: “The accrued financial benefits of each pension plan and retirement system of the state and its political

subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.” It means what it says: “[U]nder Art. 9, § 24, a retirement benefit *cannot be reduced.*” *Seitz v. Probate Judges Retirement System*, 189 Mich. App. 445, 474 N.W. 2d 125, 128 (1991) (emphasis added); see *also id.* at 127 (“Article IX, § 24 protects those persons covered by a state or local pension or retirement plan from having their benefits reduced.” (citing *Detroit Police Officers Ass’n v. Detroit*, 391 Mich. 44, 69, 214 N.W.2d 803 (1974))).

78. Article IX, Section 24 completely protects the “receipt of pension benefits related to work already performed by” any City employees, whether active or retired – i.e., any pension benefits which have “accrued” and thus become “vested pension benefits” – from being diminished *at all*. *APTE v. Detroit*, 154 Mich. App. 440, 398 N.W.2d 436, 439-40 (1986); *Advisory Opinion re Constitutionality of 1972 PA 258*, 389 Mich. 659, 663 (1973) (holding that “the intention of the people in adopting” Article 9, Section 24 was that “the benefits of pension plans are in a sense deferred compensation for work performed . . . which should not be diminished by the employing unit after the service has been performed.” (quoting 1 Official Record, Constitutional Convention 1961, 770-71)). Vested pensions rights covered by Article IX, Section 24 differ in this important respect from contractual benefits protected solely by Article I, Section 10 of the Michigan Constitution (the State’s “Contracts Clause”), which in a narrow set of cases may not prohibit the State from effecting “a modest, temporary impairment” of those other types of “governmental contracts . . . as a matter of last resort to address a fiscal emergency.” *AFT Michigan v. State*, 297 Mich. App. 597, 602, 825 N.W.2d 595 (2012) (noting that “[a]ll parties agree that . . . accrued financial benefits under Const. 1963, art. 9, § 24 . . . may not be impaired,” but concluding that the retiree health benefits in question were not “accrued financial benefits” within the wholesale protection of Article IX,



Section 24 and thus proceeding to consider whether they could be impaired under the Contracts Clause); *BCBSM v. Governor*, 422 Mich. 1, 22-23, 367 N.W.2d 1 (1985) (“The federal balancing approach has been adopted by our Court for purposes of adjudicating state Contract Clause claims as well as federal Contract Clause claims.”).

79. Governor Snyder violated Article IX, Section 24 – and with it the requirement, set forth at 11 U.S.C. § 109(c)(2), that he be “empowered by State law to authorize” the City to become a debtor – when he failed to condition the City’s chapter 9 petition on the complete preservation of vested pension rights despite the clearly available public information that the Emergency Manager intended to use the Governor’s authorization to diminish constitutionally sacrosanct pension benefits.<sup>8</sup> Section 18 allows the Governor to “place contingencies on a local government in order to proceed under Chapter 9,” but does not explicitly require that compliance with Article IX, Section 24 be one of those contingencies. In this case, the Governor explicitly chose “not to impose such contingencies.” *See* Docket No. 1 at p. 16.

80. Section 18 is unconstitutional as applied where, as here, the Governor has abused his discretion by purporting to authorize a bankruptcy which “would violate the constitution.” *Taxpayers of Michigan Against Casinos v. State*, 478 Mich. 99, 107-08 & n.3 (2007) (even “broad discretion” granted to Governor by statute to act unilaterally must be exercised “within the limits of the constitution”). Moreover, Governor Snyder’s authorization has itself unconstitutionally caused an “immediate, concrete injury” to Council 25’s members by creating a “contingent liability” that their inviolable rights will be disregarded, causing them to reorder their financial affairs. *See Clinton v. New York*, 524 U.S. 417 (1998) (plaintiffs had standing to challenge constitutionality of executive action which, if left unchecked, would leave

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<sup>8</sup> To the extent the unconstitutionality of the Governor’s authorization turns on the question of whether he was on notice of the Emergency Manager’s intent to unconstitutionally diminish vested pension rights, AFSCME will seek discovery regarding information possessed by the Governor, including any other applicable discovery.

undisturbed potential future harm posing, by virtue of its magnitude, immediate and direct financial consequences to plaintiffs).

81. The strings left unattached to the Governor's sign-off speak volumes because PA 436 is not ignorant of Article IX, Section 24. To the contrary, other sections of the Act explicitly reiterate that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. *See, e.g.*, MCL 141.1551(1)(d) (requiring that the Emergency Manager's financial and operating plan provide for "[t]he timely deposit of required payments to the pension fund for the local government"); MCL 141.1552(i)(m)(ii) (allowing the Emergency Manager in certain circumstances to serve as the sole trustee of a municipality's pension fund, but requiring that he "fully comply with . . . section 24 of article IX of the state constitution"); MCL 141.1553 (eliminating the "the accrual of postemployment benefits" of local government officers but prohibiting "the impairment of vested pension benefits"). Thus the Governor's contingency-free permission reads like an open invitation to the Emergency Manager to violate the State Constitution in bankruptcy, and therefore is unconstitutional.

82. In the alternative, this Court should hold that any authorization the Governor sought to provide under Section 18 carried with it the implicit contingency that all actions taken pursuant to it by the Emergency Manager, including the proposal of any plan of adjustment under 11 U.S.C. § 943, must comply with the State Constitution, including Article IX, Section 24. In his letter to the Emergency Manager giving unconditional permission to file under chapter 9, Governor Snyder observed that the Bankruptcy Code "contains the most important contingency – a requirement that the plan be legally executable" under 11 U.S.C. § 943(b)(4). Docket No. 1 at p. 16. Because a plan of adjustment which would reduce vested benefits would not be legally executable under the Michigan Constitution – and because, as Governor, Snyder

is forbidden from authorizing any violation of the state constitution – his letter to the EM should, in the alternative, be construed as requiring compliance with Article IX, Section 24.

83. AFSCME and its members must not be made to wait to raise a § 943(b)(4) argument until the moment a plan is proposed – though of course they reserve the right to do so – because of the harm being suffered by the AFSCME Detroit Employees *now* as a result of their credible fear that the Emergency Manager will force them to accept the unconstitutional impairment or diminishment of their vested pension rights - the threat of which he is attempting to use as leverage against them *now*. Thus, if this Court plans to find the City eligible to file for bankruptcy under chapter 9, it should hold on the record *now* that any plan proposed by the City will have to comply with Article IX, Section 24 because the Governor could not have given permission to file under chapter 9 without including the implicit contingency that the City’s plan of adjustment not reduce vested pension benefits. Otherwise creditors with vested pension rights will continue to suffer an unconstitutional injury throughout the course of this bankruptcy as a result of the threats of the Emergency Manager , and the Court will be virtually powerless to prevent that harm unless and until the City proposes its plan of adjustment. To prevent that harm *now*, the Court at the very least should clarify, as a preliminary condition of eligibility, that these bankruptcy proceedings cannot reduce vested pension benefits. *Cf. Seitz*, 189 Mich. App. at 456 (declining to “throw out” a pension-reform statute in its entirety where none of the plaintiff state court judges could show that they would receive reduced pension benefits under said statute, but clarifying that the state was required “to honor its obligations” not to enforce the statute wherever doing so would in fact result in a reduction to a retired judge’s vested pension rights). *See also Lansing School Educ. Ass’n v Lansing Bd. of Educ.*,

487 Mich. 349, 372 n.20; 792 N.W.2d. 686 (2010) (declaratory judgment appropriate under Michigan law to accomplish a “sharpening of the issues raised” (quotation omitted)).

84. Whatever its route – either by holding that the Governor violated Article IX, Section 24 by granting the City blanket permission to file under chapter 9 despite knowing full well that the Emergency Manager plans to use chapter 9 to cram down unconstitutional pension reductions, or that the Governor’s permission carried with it the implicit condition that Article IX, Section 24 not be violated in bankruptcy– this Court must, when applying state law, hold the Governor to the truism that he cannot take actions “that would violate the constitution” even where he is acting with “broad discretion” delegated to him by statute. *See Taxpayers of Michigan Against Casinos, supra*.

**(ii) PA 436 Violates The Strong Home Rule Provisions Of The Michigan Constitution**

85. “Michigan is strongly committed to the concept of home rule,” a structural state-local federalism under which “[t]he charter of a city stands as its ‘constitution,’” and “once adopted by a vote of the electors, a city’s charter may be amended only by a vote of the electors.” *Bivens v. Grand Rapids*, 443 Mich. 391, 400-01 (1993) (quotations omitted) (striking down local ordinance which conflicted with local charter because local government could not “effectively amend the charter without subjecting the amendment to the scrutiny and approval of the local electorate”). This “strong home rule” regime reflects a bedrock principle of state law, which has been true for each of Michigan’s three Constitutions beginning with the Constitution of 1850 and continuing through the current Constitution of 1963: all officers of cities are to “be elected by the electors *thereof*, or appointed by such authorities *thereof*,” not by the central State Government. *See Brouwer v. Bronkema*, 377 Mich. 616, 652, 141 N.W.2d 98 (1966) (quoting *People ex re. Le Roy v. Hurlbut*, 24 Mich. 44, 65 (1871) (Cooley Court)).

86. In blatant disregard of this constitutional mandate, PA 436 – pursuant to which the Emergency Manager contends he has authority to file under chapter 9 on behalf of the City – strips the local electorate of its constitutional right to select its own officials, as well as to “frame, adopt and amend its charter” under Article VII, Section 22; to approve, by a two-thirds majority, any local act of the state legislature under Article IV, Section 9; and to be subject to administrative authority only where that authority is guided by standards created by the legislature and subject to due process of law, see *BCBSM v. Governor*, 367 N.W. 2d 1, 51 (Mich. 1985). For each of these reasons, PA 436 offends the “strong home rule” of Detroit, and the Emergency Manager is not lawfully authorized to file for bankruptcy on behalf of the City or to act as its representative during chapter 9 proceedings

**(a) PA 436 Violates The Right Of The People Of Detroit To Select Their Own Local Officers And To Structure Their Own Government Via Charter**

87. In one of its first cases interpreting the meaning of Michigan’s current Constitution, the Michigan Supreme Court reaffirmed the hallmark holding of the legendary Cooley Court: city residents have the state constitutional right to select their own local representatives. *Brouwer*, 377 Mich. at 651-61. As Justice Cooley held in his seminal *Hurlbut* opinion – the wellspring of the so-called “Cooley Doctrine” of local government, see David J. Barron, *The Promise of Cooley’s City: Traces of Local Constitutionalism*, 147 Univ. Penn. L. Rev. 487 (1999) – the right “to choose in some form the persons who are to administer the local regulations” is a right of local electors so basic to the “traditions, practice and expectations” of Michigan that it undergirds the State’s Constitution even in the absence of express constitutional language to that effect. *Hurlbut*, 24 Mich. at 29-33.

88. Having lived under the Cooley doctrine for 90 years at the time of Michigan’s most recent constitutional convention, the framers of the 1963 Constitution would have

understood *Hurlbut* as an even more foundational constitutional norm than Cooley himself. Indeed, the framers sought, in adopting the strong home rule regime which as now set forth in Article VII, to continue the “trend . . . toward strengthening inherent local government powers” which Justice Cooley “led” when he set forth the “rule” of local self-government in *Hurlbut*. 1 Official Record, Constitutional Convention 1961, 1052-53. As a result, Article VII provides that “[t]he legislature *shall* provide by general laws for the incorporation of cities and villages,” Art. VII, § 21; that under those general laws, “the electors of each city and village *shall* have the power and authority to frame, adopt and amend its charter,” Art. VII, § 22; and that “[t]he provisions of this constitution and law concerning counties, townships, *cities* and villages *shall* be liberally construed *in their favor*,” Art. VII, § 34. (Emphases added.)

89. PA 436 offends Article VII in myriad ways. First, it effectively adopts a new charter for Detroit which substitutes the *unelected* Emergency Manager for the Mayor and City Council collectively – including by granting the EM the power to, *inter alia*, issue orders directing the mayor and city council; set the local government budget unilaterally; enter into, and break, contractual agreements for the City, including CBAs, loans, and property transfers; seize control of the pension fund from its trustees; and, most relevant here, act “exclusively on the local government’s behalf in . . . chapter 9.” See MCL 141.1549(2) (“Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.”); MCL 141.1550(1) (“An emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary[.]”); MCL 141.1552 (EM may amend local government budget; make

contracts; terminate CBAs; enter loan agreements; transfer property); MCL 141.1558 (EM directs bankruptcy).

90. It is a direct violation of *Hurlbut* and *Brouwer* that the EM serves in the role of mayor and city council without being selected by Detroit.

91. Moreover, despite the existence of detailed procedures in the Detroit Charter concerning the method of passing local laws and the interplay of authority between the local legislative and executive officers, the EM may even exercise, according to PA 436, all authority of the mayor and city council *simultaneously* “concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government” and “[t]ake any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government.” MCL 141.1552(1)(dd-ee).

92. To the drafters of the current Michigan Constitution, PA 436 would appear to parody Article VII. The provisions of Article VII directing the legislature to provide for the incorporation of cities to be governed by charters written by the cities’ voters is “mandatory,” and even before the 1963 Constitution – which *increased* the home rule powers of cities – it was well-established that, in executing that mandate, ““under the Constitution the legislature [does] not have the power to change the law as embodied in the charter [of a local government] without a ratifying vote of the village electors.” *Utica State Sav. Bank v. Village of Oak Park*, 279 Mich. 568, 273 N.W. 271, 274 (1937) (state statute retroactively ratifying all contracts for purchase of lands by local governments could not ratify land contract which was unlawful under local charter). This is because “the power vested in the [local] electors by the Constitution” to amend their own charter necessarily requires that “the Legislature does not

have the power to alter or amend a [local] charter without the approval of the [local] electors.” *Id.* at 577. Nor does the Legislature have the power to enter into contracts on behalf of the local government. *Id.* at 578. Yet PA 436 purports to empower Emergency Manager to assume all the powers of the local charter – including the ability to bind a city by contract for generations to come – without the core structural accountability for those powers baked into the charter in the form of local elections and separation of powers.

93. While it cannot be denied that the state possesses a robust role in demarcating the limits within which a municipality may structure the form of its government via charter, PA 436 swallows whole the rights reserved to local electors in Article VII to execute, within limits, their own vision of local government. For instance, typically “municipal officers can bind a municipality only if they are empowered to do so by the city charter.” *Manning v. City of Hazel Park*, 202 Mich. App 685, 691; 509 N.W. 2d 874 (1993). The Emergency Manager, however, possesses no such constraint under the terms of PA 436, which grants him his extreme powers “notwithstanding any charter provision to the contrary.” MCL 141.1552(1). Under PA 436, therefore, the Emergency Manager not only violates the charter by purporting to act with all of the power of the entire municipal government simultaneously as a matter of procedure, but also by doing so in direct violation of any substantive limitation that charter places on the local government. In effect, each time the Emergency Manager takes an act which contravenes the City Charter – a charter which, to be clear, has not formally been repealed – he decrees an amendment to that charter. But, as discussed *supra*, Detroit’s citizens have a constitutional right to be the ones to amend their own charters. Here too PA 436 egregiously violates Article VII.



94. Article VII does not permit such a scorched earth approach to local democracy. The Emergency Manager's purported statutory authority to act for the City is antithetical to Article VII, and therefore the Emergency Manager was never authorized by state law to file the City's chapter 9 petition. As fundamentally, the "City" has therefore not *voluntarily* filed a petition under Section 301 as incorporated by Section 901(a) of the Bankruptcy Code.

**(b) PA 436 Purports To Delegate Authority To The  
Emergency Manager In Excess Of That Possessed By  
The Legislature**

95. Section VII is not the exclusive mechanism protecting the "home rule" rights of local electors in the Michigan Constitution. Municipalities are further protected by Article IV, Section 29, which forbids the legislature from passing a local act both (a) "in any case where a general act can be made applicable, and (b) "until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected." "The requirement of a 2/3 vote of both houses and a majority vote in the area affected protects localities against arbitrary action." *Advisory Opinion on Constitutionality of 1975 PA 301*, 400 Mich. 270, 287, 254 N.W. 2d 528 (1977) (quoting 2 Official Record, Constitutional Convention 1961, p 2415).

96. PA 436 allows the Emergency Manager to adopt local ordinances and take purely local legal acts which would otherwise be assigned to the local government. *See* MCL 141.1552. Before the EM takes a local act of this nature, however, neither he nor the legislature makes any determination whether a general act could accomplish the same purpose; seeks the approval of two-thirds of the legislature; or submits the proposed act to the local electors for ratification. PA 436 therefore delegates to the EM power that the legislature simply does not possess. For even assuming *arguendo* that PA 436 is a general as opposed to local law, it contemplates the future passage of limitless local ordinances without the prophylactic

mechanisms built into Article IV, Section 29 to preserve “the settled purpose of the framers of the [Constitution] and of the people who adopted it to forever insure to the people the right to control their affairs purely local.” *Attorney General v. Lacy*, 180 Mich. 329, 337, 146 N.W. 871 (1914) (striking down local law passed by legislature).

97. The legislature cannot delegate power beyond that which it possesses. “That the Michigan Legislature may legislate absent constitutional limitations does not mean that it may wield legislative power in a manner other than that carefully prescribed by the Michigan Constitution.” *Blank v. Dep’t of Corrections*, 462 Mich. 103, 119, 611 N.W.2d 530 (2000). Yet PA 436 does just that, subjecting Detroit’s citizens to purely local acts – including the instant chapter 9 petition – taken by a central authority without the protection of Article IV, Section 29. In this case that local legislation includes not only this illegal bankruptcy, but all of the legislative acts undertaken by the Emergency Manager leading up to and in support of the chapter 9 petition, the extent and content of which will be further developed in discovery and at trial.

**(c) PA 436 Unconstitutionally Delegates Legislative Authority To The Emergency Manager Because It Lacks Adequate Standards To Guide The Emergency Manager’s Actions In Bankruptcy, Which Are Not Subject To Judicial Review**

98. Even assuming *arguendo* that the legislature had the authority to delegate its illegally asserted control over local self-governance, that delegation must still have included (1) “sufficient standards and safeguards” to “direct[] and check[] the exercise of delegated power,” as well as (2) “due process requirements” ensuring judicial review of the delegated action. *BCBSM v. Governor*, 367 NW 2d 1, 51-52 (Mich. 1985). PA 436 lacks both with respect to the Emergency Manager’s control of the City during bankruptcy.

99. First, PA 436 provides no standards whatsoever to the Emergency Manager – other than any “contingencies” which the Governor, and not the legislature, may have, but did not in this case, designate – for how to exercise the City’s affairs under chapter 9. MCL 141.1558. Thus the Emergency Manager is unfettered, for example, to enter into settlements resolving claims by creditors – settlements which, under Section 7-5-203 of the Detroit City Charter, are legislative acts of the City which must be approved by the City Council – without following any guidelines provided by the State. While the Bankruptcy Court may apply its own *federal law* constraints in the course of approving, or not, such settlements – though the authority of a bankruptcy judge to do so is questionable in light of federalism principles, *see infra* – there is simply no *state law* standard to refer to evaluate whether the Emergency Manager, in entering the settlements, is effectively legislating in bankruptcy within the intent of the legislature. “This complete lack of standards is constitutionally impermissible.” *BCBS*, 367 N.W. 2d at 55, and therefore the Emergency Manager is not authorized under state law to carry out the Legislature’s attempted delegation of authority under chapter 9.

100. Second, and relatedly, even assuming *arguendo* that PA 436 does contain standards constraining the absolute power of the Emergency Manager to act for the City under chapter 9, those standards are not subject to the requisite judicial review. As a result of the automatic stay, the Emergency Manager’s actions during chapter 9 can only be litigated to the bankruptcy court, which itself lacks authority to decide freestanding state-law claims. *See* 11 U.S.C. §§ 902(a), 362 (automatic stay); *Stern v. Marshall*, *supra* (Article I judge prohibited from deciding independent state law claims unhinged from bankruptcy). But the City can arguably enter into settlements with creditors under chapter 9 *without* receiving approval from the Bankruptcy Judge, even if a competing creditor requests judicial review. *See In re City of*

*Stockton, California*, Case No. 12-32118-C-9 (Bankr. E.D. Cal. Feb. 5, 2012) (“11 U.S.C. § 904 gives a chapter 9 debtor freedom to decide whether to ignore or to follow Rule 9019 compromise-approval procedure[.]”). The Emergency Manager thus acts in a legal vacuum, accountable neither in state court nor federal court for exercising the legislative power delegated to him by the State. The Michigan Constitution does not permit such insulation.

**B. The City Failed To Participate In Any Good Faith Negotiations With Creditors Prior To Filing For Bankruptcy As Required For Eligibility Under Chapter 9**

101. The City cannot meet its burden under section 109(c)(5) of the Bankruptcy Code of proving that it conducted good faith negotiations with its creditors or that such negotiations were impracticable.

102. Congress enacted the “negotiation” requirement of section 109(c) to prevent capricious filings of chapter 9 petitions, and Courts do not “view lightly the negotiation requirements of 11 U.S.C. § 109(c)(5).” *See In re Villages at Castle Rock Metro. Dist. No. 4*, 145 B.R. 76, 85 (Bankr. D. Colo. 1990); *In re Town of Westlake, Tex.*, 211 B.R. 860, 867-68 (Bankr. N.D. Tex. 1997) (suggesting that section 109(c)(5) requires that a municipality have an intent to negotiate with creditors it intends to impair). “The ‘creditor protection’ provided by section 109(c)(5). . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing filed with the debtor before their rights are further impaired by the provisions of section 362 of the Code.” *Sullivan County*, 165 B.R. at 78-79).

103. In *Cottonwood Water*, the Court explained the good faith negotiation requirement under section 109(c)(5) of the Bankruptcy Code as follows:

Congress consciously sought to limit accessibility to the bankruptcy court by municipalities [by requiring] . . . the municipal entity, before rushing to . . . Court, to first seek to negotiate in good faith concerning the treatment the creditors may be expected to receive under a plan to be filed under section

941 of the [Bankruptcy] Code. . . . The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor before their rights are further impaired by the provisions of section 362 of the [Bankruptcy] Code.

138 B.R. at 979.

104. Accordingly, the burden is on the City to demonstrate (i) that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan or (ii) why it was unable to engage in such negotiations. ASFSCME respectfully submits that the City cannot demonstrate any negotiations with creditors such as AFSCME, let alone “good faith” negotiations, and further given that the City conducted no pre-petition negotiations with significant creditors such as AFSCME, the City should not be heard to argue that negotiations were impracticable.

**(i) The City Failed To Negotiate With Creditors Such As AFSCME**

105. The City claims it satisfies the section 109(c)(5)(B) requirement for negotiating with its creditors prior to the bankruptcy filing by negotiating with creditors, including unions such as AFSCME, via several meetings held with its unions where the City discussed its restructuring proposals and took certain questions. *See* Eligibility Brief, pp. 53-61(citing, *inter alia*, Orr Declaration, ¶¶ 90-96). What the City fails to mention is that, as discussed extensively above and as indicated by Orr himself prior to the scheduling of these meetings, it was made clear throughout these series of 3 or 4 relatively short meetings that the meetings were “discussions” and the City was not willing to conduct **any** negotiations. The City has argued that the EM “openly invited the City’s creditors to contact the City and its advisors to begin negotiations.” Eligibility Brief, p. 55. In fact, the City rebuffed negotiations, which require concessions from both sides and collaboration between the debtor and its significant

creditors. The City (acting through Orr) simply was not interested in negotiations (and as Orr indicated regarding the Restructuring Plan, “[t]his isn’t a plebiscite, we are not, like, negotiating the terms of the plan”).

106. *In re Ellicott School Building Authority* is directly on point. There, the debtor held three public meetings with large creditors regarding its proposed restructuring, although creditors were advised that the economic provisions of the proposed plan were not negotiable. 150 B.R. 261, 266 (Bankr. D. Colo. 1992). The court held that even though the debtor conducted three public meetings explaining its proposed plan of restructuring to bondholders, it did not negotiate in good faith because it indicated that the economic terms of its proposed plan were non-negotiable. *Id.* (debtor must be open to negotiating the substantive terms of a proposed plan); *cf. Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo)*, 408 B.R. 280, 289 (9th Cir. B.A.P. 2009) (finding that the city did not satisfy section 109(c)(5)(B) because it “never negotiated with Unions or any of its creditors over the possible terms of a plan of adjustment.”); *Sullivan County*, 165 B.R. at 78-79 (“The ‘creditor protection’ provided by section 109(c)(5) . . . insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor before their rights are further impaired . . . .” (citation omitted)).

107. The City’s a “take it or leave it” Restructuring Plan proposal that was not really open to any negotiations (good faith or otherwise) should be rejected as the court did in *Ellicott School*. The City failed to engage in any negotiations with its significant creditors such as AFSCME regarding the Restructuring Plan. Flatly refusing to conduct any negotiations (despite repeated requests by AFSCME both prior to and subsequent to the City’s bankruptcy filing) falls far short of the standard required under section 109(c)(5) of the Bankruptcy Code.

108. The City has publicly proclaimed its willingness to negotiate, yet it and its representatives' (i) statements that the meetings held to discuss the Restructuring Proposal were not negotiations and (ii) continued bad faith refusal postpetition to hold negotiations (despite requests from AFSCME to jump start negotiations) makes it more than clear that the City has conducted no good faith negotiations with AFSCME and similarly situated creditors.

**(a) Even Assuming That The City Engaged In Negotiations, Such Negotiations Did Not Relate To A Plan That Is In The Best Interests Of Creditors As Required By Section 109(c)(5)(B)**

109. While AFSCME submits that the City did not engage in any good faith negotiations with creditors such as AFSCME prior to the City's chapter 9 filing, even assuming this Court were to find otherwise, the City also has not satisfied section 109(c)(5)(B) of the Bankruptcy Code because the plan or terms of a plan being negotiated must be a plan that can be effectuated in chapter 9. *See Sullivan County*, 165 B.R. at 78 (debtor failed to meet burden of showing that it negotiated in good faith because the plan that was proposed was not a plan that could be effectuated in chapter 9); *Cottonwood Water.*, 138 B.R. at 979 (finding that "in order for this Debtor to be entitled to the entry of an order for relief, it must be prepared to show that it engaged in good faith negotiations with its creditors concerning the possible terms of a plan to be effected pursuant to section 941 of the Bankruptcy Code.").

110. Here, the proposed Restructuring Plan is patently unconfirmable because the plan seeks to unconstitutionally wipe out guaranteed vested pension benefits pursuant to a plan that would presumably be crammed down on creditors, including those City retirees and employees that participate in the various pension and other retirement benefit plans. Given that creditors owed pension obligations have absolute rights to such obligations under Michigan law as set forth extensively above, and one of the main goals of this proceeding is to modify vested

pension and other retiree benefits, the City has no ability to confirm any plan of adjustment modifying such rights. *See* 11 U.S.C. §943(b)(4) (stating that the Court shall confirm a chapter 9 plan only if “the debtor is not prohibited by law from taking any action necessary to carry out the plan.”).

111. Additionally, the Restructuring Plan is not in the “best interests of creditors” and thus could not be confirmed pursuant to section 943(b)(7) of the Bankruptcy Code. The “best interests of creditors” test in the context of a chapter 9 case does not compare treatment under a plan of liquidation, but rather to other alternatives to creditors to the plan. *See, e.g., In re Sanitary & Improvement Dist., #7*, 98 B.R. 970, 974 (Bankr. D. Neb. 1989); (“Section 943(b)(7) [with respect to the best interest of creditor’s provision] ... simply requires the court to make a determination of whether or not the plan as proposed is better than the alternatives.”); *In re Mount Carbon Metropolitan Dist.*, 242 B.R. 18, 34 n.50 (Bankr. D. Colo. 1999) (“The ‘best interest’ requirement of § 943(b)(7) is generally regarded as requiring that a proposed plan provide a better alternative for creditors than what they already have.”) (citing 4 Collier on Bankruptcy, 943.03[7] (Lawrence P. King, ed., 15th ed.1999)).

112. Had there been no chapter 9 filing by the City, pension creditors could not be impaired under the Michigan Constitution, and thus any impairment of such rights under a plan would violate Michigan law and be patently non-confirmable. Accordingly, because the Restructuring Proposal proposes to unconstitutionally wipe out guaranteed vested pension benefits, the proposal cannot satisfy the requirements of good faith negotiations over a plan that could be effectuated in chapter 9.

113. Orr failed to consider before filing for bankruptcy protection or since the filing, an equitable argument for the pension fund beneficiaries that creditors extending debt after



funding concerns surfaced should be subject to equitable subordination/fraudulent conveyance under Bankruptcy Code sections 510(c) and 544(b)/548(a).

114. Further, under Bankruptcy Code section 928(b), Orr should be exploring whether certain other creditors should bear the burden of some of the City's operating expenses during bankruptcy process, before benefit cuts are implemented.

**(ii) Negotiations With Certain Categories Of Creditors Such As AFSCME Were Not Impracticable**

115. The City alleges that it alternatively qualifies for eligibility under section 109(c)(5)(C) of the Bankruptcy Code because negotiations were impracticable.

116. As with the other eligibility requirements, the burden of proving impracticability rests with the City. *See In re Pierce County Housing Authority*, 414 B.R. 702, 713 (Bankr. W.D. Wash. 2009); *Vallejo*, 408 B.R. at 289 (citing *Valley Health*, 383 B.R. at 161). Courts considering section 109(c)(5)(C) define the ordinary meaning of "impracticable" as "not practicable; incapable of being performed or accomplished by the means employed or at command; infeasible." *See, e.g., Vallejo*, 408 B.R. at 298 (citing *Valley Health*, 383 B.R. at 163). Whether negotiations were impracticable is fact specific and depends upon the circumstances of the case. *See Vallejo*, 408 B.R. at 298.

117. The City alleges that negotiations were impracticable because, in part, the City had (i) numerous series of bonds and indebtedness held by multiple holders and (ii) approximately 20,000 retirees not represented by any formal agent or committee and other potential involuntary creditors. Furthermore, the City claims that the refusal of certain creditor constituencies to engage in good faith negotiations rendered negotiations impracticable.

118. In fact, AFSCME believes that the exact opposite is true here. The City predetermined that its pre-bankruptcy negotiations (which, as discussed above, were not

negotiations) would fail. As discussed extensively above, the Governor and his staff plotted for several months prior to the hiring of Orr as EM to bring in Orr, as an experienced bankruptcy counsel, to lead the City on a clear path towards a chapter 9 filing, and any negotiations were a façade – the City went through the motions of pre-petition meetings but, as is evident from its pre-petition conduct *vis a vis* AFSCME, never had any intention of negotiating outside of bankruptcy.

119. While the City alleges that it has over 100,000 creditors, it is clear that the main creditors the City had to negotiate with were the unions, its retirees, and the bond trustees.

120. The City itself has in the past negotiated for retiree health benefits and pension benefits outside of a chapter 9 proceeding. It is a red herring to say that negotiating medical benefits or pensions is impractical *per se*.

121. While courts have made clear that impracticability can be demonstrated by the volume of creditors to negotiate with, in no case AFSCME is aware of did a court find that negotiations were impracticable where the Debtor did not even attempt to negotiate pre-petition with its largest creditors such as AFSCME (and after repeated requests to do so). In *Ellicott School*, the court determined that the debtor holding “public meetings to which all bondholders were invited” showed that negotiations were practicable.

122. AFSCME is not suggesting that pre-petition negotiations could have bound everyone or must have involved all of the City’s thousands of creditors. Rather, some level of negotiation with principal creditors could have led the City to a non-bankruptcy solution. By

way of analogy, section 109(c)(5)(B) of the Bankruptcy Code contemplates pre-bankruptcy negotiations with creditors that municipality intends to impair, not all creditors.<sup>9</sup>

123. Given the City's lack of negotiations with creditors such as AFSCME and similar union representatives that could have negotiated regarding the largest portion of the City's unsecured debt, the City's arguments that negotiations were impracticable should be rejected.

**C. The City's Petition Should Be Dismissed Under Section 921(c) As Filed In Bad Faith**

124. The City's bankruptcy petition is subject to dismissal pursuant to section 921(c) of the Bankruptcy Code because the filing was in bad faith. Section 921(c) of the Bankruptcy Code provides that "[a]fter any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title."

125. "Good faith is not defined in the Bankruptcy Code." *In re McCurtain Mun. Auth.*, No. 07-80363, 2007 WL 4287604, at \*4 (Bankr. E.D. Okla. Dec. 4, 2007). Courts have determined, however, that the primary function of the good faith requirement in chapter 9 is to "ensure the integrity of the reorganization process by limiting access to its protection to those situations for which it was intended." *Sullivan County*, 165 B.R. at 80 (citation omitted); *see also In re City of Stockton, California*, 493 B.R. 772, 794 (Bankr. E.D. Cal. 2013) ("Section 921(c) "good faith" serves a policy objective of assuring that the chapter 9 process is being used in a manner consistent with the reorganization purposes of the Bankruptcy Code"); *Villages at Castle Rock*, 145 B.R. at 81 (describing good faith as requirement that "prevents

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<sup>9</sup> Importantly, the City describes in the Orr Declaration that of the City has nearly \$12 billion in unsecured debt, but 75% of that (approximately \$9.2 billion) relates to accounting liabilities for post-employment benefit or underfunded pension liabilities.

abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way or to achieve reprehensible purposes”) (internal quotation marks and citation omitted).

126. While good faith in the chapter 9 context is not defined in the Bankruptcy Code, courts have looked to discussions of good faith in the chapter 11 context to determine whether a chapter 9 petition has been filed in good faith. *McCurtain Mun. Auth.*, 2007 WL 4287604, at \*4 (referencing chapter 11 good faith standards to determine whether chapter 9 petition was filed in good faith) (quoting *Villages at Castle Rock*, 145 B.R. at 81); *County of Orange*, 183 B.R. at 608 (observing that “courts have ... applied to chapter 9 cases the judicial reasoning that developed in chapter 11 cases” regarding good faith); *Sullivan County*, 165 B.R. at 82 (examining and applying chapter 11 good faith requirements to chapter 9 petition)).

127. In the chapter 11 context, courts have explained that the requirement of good faith

prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes. Moreover, a good faith standard protects the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons . . . available only to those debtors and creditors with ‘clean hands.’

*In re Little Creek Dev. Co.*, 779 F.2d 1068 (5th Cir. 1986).

128. Relevant considerations regarding good faith under chapter 9 include “whether the City’s financial problems are of a nature contemplated by chapter 9, whether the reasons for filing are consistent with chapter 9, the extent of the City’s pre-petition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City’s residents would be prejudiced by denying chapter 9 relief.” *Stockton*, 493 B.R. at 794.

129. Here, a review of the various relevant factors considered by courts when analyzing good faith under section 921(c) lead to the inescapable conclusion that the City's chapter 9 case was filed in bad faith and with unclean hands.

130. First, the City's filing came several minutes prior to a Michigan State Court issuing a TRO enjoining the Governor from authorizing the filing. The State lawyers at the hearing on the TRO asked for a short delay when they realized that an adverse ruling was forthcoming with respect to the City's ability to authorize any chapter 9 authorization which did not proscribe the reduction of pension benefits violated the Michigan constitution. During that recess, the City filed for chapter 9 protection. Thus, the City commenced this proceeding "in the dark of night" to avoid a ruling it viewed as not in its favor. Such a filing is the antithesis of the careful, deliberative decision to file required under chapter 9, as "[t]he legislative history indicates that the strict hurdles to filing Chapter 9 were implemented to ensure that it was considered by a municipality only as a last resort." *Pierce County*, 414 B.R. at 714 (citation omitted) (noting debtor decided to file a chapter 9 petition only after several years of failed negotiations and attempts at mediation); *cf. Valleo*, 408 B.R. at 295 ("The evidence needs to show that the 'purpose of the filing of the chapter 9 petition not simply be to buy time or evade creditors.'"). The City simply filed to evade what it viewed as an imminent negative state court ruling. The City simply does not have "clean hands".

131. Additionally, as discussed extensively above, the City did not reasonably consider any alternatives to chapter 9, was preparing for a chapter 9 filing months before any creditor meetings to discuss restructuring options even started, and refused to negotiate with major creditors such as AFSCME as required. Simply put, the predetermined filing was done in bad faith and should be dismissed.

**D. AFSCME Reserves The Right To Argue, Following Discovery, That The City Is Solvent**

132. The Bankruptcy Code does not offer relief to a city simply because it is suffering economic difficulties. *See, e.g., In re City of Bridgeport*, 129 B.R. 332, 339 (Bankr. D. Conn. 1991) (although City projected \$16 million budget deficit, it was not insolvent, and “financial difficulties short of insolvency are not a basis for chapter 9 relief”); *In re Hamilton Creek Metro. Dist.*, 143 F.3d 1381, 1386 (10th Cir. 1998) (debtor not eligible for relief simply because it was severely economically distressed).

133. In order to carry its burden on insolvency, the City must prove either that it is “(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or (ii) unable to pay its debts as they become due.” 11 U.S.C. § 101(32)(C). The test under the first prong requires current non-payment of obligations, but the test under the second prong is prospective, looking to the debtor’s future inability to pay. *Bridgeport*, 129 B.R. at 336-37. Solvency is measured as of the petition date. *See, e.g., In re Town of Westlake, Texas*, 211 B.R. 860, 866 (Bankr. N.D. Tex. 1997) (citing cases).

134. The purposeful refusal to make a few payments comprising a relatively small part of the City’s budget does not satisfy the definition of “insolvent” under 11 U.S.C. § 101(32)(C)(i). *See, e.g., Uecker & Assocs. v. Tenet Healthsystem Hosps., Inc. (In re West Contra Costa Healthcare Dist.)*, No. 06-41774 T, 2010 Bankr. LEXIS 994, at \*8 (Bankr. N.D. Cal. Mar. 26, 2010) (failure to pay \$1.3 million out of \$10-\$11 million total operating expenses did not mean the debtor was “generally not paying its debts”)

135. While the City alleges that it was forced to suspend certain payments to “conserve its dwindling cash”, such allegations are highly factual and need to be further probed through proper discovery.

136. Furthermore, the City has not demonstrated it was unable to pay its debts as they came due as of the petition date under 11 U.S.C. § 101(32)(C)(ii) for several reasons.

137. First, the City “deliberately budget[ed and] spen[t] itself into insolvency (so as to qualify under § 101(32)(C)(ii)), when other realistic avenues and scenarios [were] possible.” *Town of Westlake*, 211 B.R. at 867. Second, “[t]he mere fact that a municipality has adopted a budget that reflects a cash flow shortfall is not independently sufficient to meet the requirement of the ‘unable to pay’ test.” COLLIER ON BANKRUPTCY ¶ 900.02[2][c][i] (16th ed. 2011). Such a budget “must be evaluated in light of past and current practices, the practices of similar municipalities, and the extant facts and circumstances.” *Id.*

138. Here, the City’s past and current practices, as well as current facts and circumstances, not only show that the City has many available (but unexplored) options to enable it to pay its debts as they become due, but also that the City simply may have less than a reliable handle on its finances. Thus, the information provided in the City’s current budget may (upon completing of proper discovery) be “insufficient credible proof” of insolvency. *Town of Westlake*, 211 B.R. at 867; *see also Bridgeport*, 129 B.R. at 338 (requiring concrete proof “that [the city] will be unable to pay its debts as they become due in its current fiscal year or, based on an adopted budget, in its next fiscal year” and noting that “[o]bviously, it is necessary for cities to make informed financial projections”).

139. The City’s current financial difficulties currently are actually less severe than in some prior years, and AFSCME preliminarily believes (subject to discovery) that there may be numerous other available means to solve the City’s current financial difficulties and generate sufficient funds to pay its debts coming due in the coming fiscal year. These include enhancing revenues by aggressively collecting obligations owed, aggressively pursuing repayment of

millions of dollars in loans owed to the general fund (including through the hiring of more employees in the City's collections area), and taking further steps to reduce costs. AFSCME recognizes that all parties (including current and former employees) will be required to sacrifice, but reasonable concessions from all significant creditors would easily bring the City closer to stability.

140. Given the highly fact intensive inquiry related to insolvency and the lack of any discovery available on these issues to AFSCME, AFSCME reserves the right to make additional arguments about the City's insolvency (or lack thereof) pending the completion of discovery.



## CONCLUSION

For the reasons set forth herein, AFSCME respectfully requests that this Court issue an order dismissing the City's chapter 9 petition and granting such other and further relief as is just and proper under the circumstances.

Dated: August 19, 2013

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

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

**DECLARATION OF STEVEN KREISBERG**

I, Steven Kreisberg, declare under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I serve as Director of Collective Bargaining and Health Care Policy of the American Federation of State, County & Municipal Employees, AFL-CIO ("**AFSCME**"), and I submit this declaration in support of *The Michigan Council 25 Of The American Federation Of State, County & Municipal Employees, AFL-CIO And Sub-Chapter 98, City Of Detroit Retirees' Objection To The City Of Detroit's Eligibility To Obtain Relief Under Chapter 9 of The Bankruptcy Code*. Unless otherwise stated below, I have personal knowledge of the matters set forth herein and, if called, could competently testify to the information provided below.

2. Attached hereto as Exhibit 1 is a copy of an email dated January 31, 2013 4:10:58 PM between Kevyn Orr ("**Orr**") and his colleague.

3. Attached hereto as Exhibit 2 is a copy of an email dated January 31, 2013 10:52 between Orr and his colleague.

4. Attached hereto as Exhibit 3 is a copy of an email dated January 31, 2013 3:45:47 PM between Orr and his colleague.

5. Attached hereto as Exhibit 4 is a copy of an email dated January 31, 2013 5:23:09 PM between Orr and his colleagues.

6. Attached hereto as Exhibit 5 is a copy of my June 17, 2013 letter to Miller Buckfire & Co., LLC.

7. Attached hereto as Exhibit 6 is a copy of a June 14, 2013 letter from counsel to the City of Detroit to AFSCME.

8. Attached hereto as Exhibit 7 is a copy of a June 27, 2013 letter from counsel to the City of Detroit to AFSCME.

9. Attached hereto as Exhibit 8 is a copy of my July 2, 2013 letter to counsel to the City of Detroit.

10. Attached hereto as Exhibit 9 is a copy of a July 3, 2013 letter from counsel to the City of Detroit to AFSCME.

11. Attached hereto as Exhibit 10 is a copy of an email dated June 28, 2013 from counsel to the City of Detroit to AFSCME.

12. Attached hereto as Exhibit 11 is a copy of my August 6, 2013 letter to counsel to the City of Detroit.

13. Attached hereto as Exhibit 12 is a copy of an August 8, 2013 letter from counsel to the City of Detroit to AFSCME.

14. Attached hereto as Exhibit A is a copy of a Temporary Restraining Order dated July 18, 2013.

15. Attached hereto as Exhibit B is a copy of an Order of Declaratory Judgment dated July 19, 2013.

16. Attached hereto as Exhibit C is a copy of the City of Detroit's "Proposal for Creditors" presented by the City of Detroit on June 14, 2013.

17. During the June 20, 2013 meeting with unions (including AFSCME) regarding the City's pensions, the City of Detroit represented that the meeting was "not a negotiation."

18. At the inception of the July 10, 2013 meeting between the City of Detroit and various union (including AFSCME), the City of Detroit announced that the meeting would be a discussion but not a negotiation.

19. On August 2, 2013, the City of Detroit convened a meeting of local union representatives and discussed active health insurance.

20. During the August 2, 2013 meeting, the City of Detroit specifically advised those in attendance (including AFSCME representatives) that the meeting was not a negotiation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of August, 2013

  
Steven Kreisberg

# Exhibit 1

From: CN=Daniel T Moss/O=JonesDay  
Sent: 1/31/2013 4:10:58 PM  
To: Kevyn Orr/JonesDay  
Subject: Re: Fw: D

That's true too - but it may be one of the less bad alternatives among the many other bad alternatives. Is her idea that the Bloomberg Foundation would fund part of this exercise? If so, that too only echoes the liberal talking points (as outlined in those news articles) of a fascist takeover of a local government by the right (not that Bloomberg is a right-winger, but, nonetheless, he is big business). I can't see that being a politically popular solution to an already plagued arena of options.

It seems that the ideal scenario would be that Snyder and Bing both agree that the best option is simply to go through an orderly Chapter 9. This avoids an unnecessary political fight over the scope / authority of any appointed Emergency Manager appointed and, moreover, moves the ball forward on setting Detroit on the right track. Appointing an Emergency Manager, whose ability to actually do anything is questionable given the looming political and legal fights, would only serve to kick the can down the wrong path and unreasonably delay any meaningful resolution of Detroit's problems.

Dan T. Moss  
Associate  
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.3794 • Fax:  
202.626.1700 • dtmoss@jonesday.com

Please consider the environment before printing this e-mail.

CONFIDENTIAL

# Exhibit 2



From: Daniel T Moss/JonesDay  
To: Kevyn Orr/JonesDay  
Date: 01/31/2013 10:52 AM

CONFIDENTIAL

Subject: Re: Fw: D

Making this a national issue is not a bad idea. It provides political cover for the state politicians. Indeed, this gives them an even greater incentive to do this right because, if it succeeds, there will be more than enough patronage to allow either Bing or Snyder to look for higher callings--whether Cabinet, Senate, or Corporate. Further, this would give you cover and options on the back end to make up for lost time there.

Dan T. Moss

Associate

51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.3794 • Fax: 202.626.1700 • dtmoss@jonesday.com

Please consider the environment before printing this e-mail.

# Exhibit 3

From: CN=Kevyn Orr/O=JonesDay  
Sent: 1/31/2013 3:45:47 PM  
To: CN=Corinne Ball/O=JonesDay@JonesDay  
CC: "Stephen Brogan" <sjbrogan@jonesday.com>  
Subject: Re: D

CB,

Thank you for thinking about alternative ways to skin this cat. But I don't think we should look at this right now for at least two reasons. First, the state already has EMs appointed or five cities and four school districts. I wouldn't want it to seem like I have a special deal. Second, in thinking about the EM position I went back and looked at the SIGTARP legislation and the federal law authorizing the creation of the D.C. Control Board in 95. Both gave those managers tremendous powers, but neither was subject to questions about the authority of the Congress to enact them and the President's authority to sign them into law. By contrast Michigan's new EM law is a clear end-around the prior initiative that was rejected by the voters in November. The new EM law gives local governments four choices to fix their financial emergency:

Consent Agreement, in which local leaders remain in charge but must meet certain conditions in an agreement negotiated with the state (Detroit is already under a CA and it sounds like it's not working);  
A state appointed EM that has broad authority over local finances;  
Chapter 9 bankruptcy with the Governor's approval; and  
Mediation, in which the local government and interested parties meet with a neutral party to resolve financial issues, such as employee contracts (this is essentially required to file a Chapter 9 petition).

So although the new law provides the thin veneer of a revision it is essentially a redo of the prior rejected law and appears to merely adopt the conditions necessary for a chapter 9 filing. The news reports state that opponents of the prior law are already lining up to challenge this law.

Nonetheless, I'm going to speak with Baird in a few minutes to see what his thinking is. I'll let you know how it turns out. Thanks.

Kevyn

Kevyn D. Orr  
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.5560 • Fax:  
202.626.1700 •  
Cell: Redacted korr@jonesday.com

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# Exhibit 4

From: CN=Kevyn Orr/O=JonesDay  
Sent: 1/31/2013 5:23:09 PM  
To: CN=Stephen J. Brogan/O=JonesDay;CN=Corinne Ball/O=JonesDay@JonesDay  
Subject: Re: D

I had a good conversation with Rich Baird this morning. I explained that although I was interested in the job, there are a number of reasons (not wanting to leave the firm and familial constraints) that made it impractical for me to do so. He suggested that I give it some additional consideration and if, upon reflection, I could say that there was a glimmer of hope that I would take the job, then I should at least take the next step of meeting the Governor, Lt. Governor and the rest of the team. We agreed to get back in touch next week. He also mentioned that irrespective of whether I take the job, as far as he's concerned, he liked our presentation and is pulling for us to represent the city. I then reiterated that even if I did not take the EM position, I and the firm are committed to working in lockstep with the city and I would be more than willing to undertake any role in this respect.

Kevyn D. Orr  
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.5560 • Fax:  
202.626.1700 •  
Cell: Redacted korr@jonesday.com

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# Exhibit 5



Lee Saunders  
President  
Laura Rayne  
Secretary-Treasurer

**Vice Presidents**

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Danny Donohue  
Albany, NY  
David R. Filman  
Harrisburg, PA  
Michael Fox  
Harrisburg, PA  
Kathleen Garrison  
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Regan George Jr.  
New York, NY  
Mande Harrell  
Wilkes-Barre, PA  
Johanna Puno Hester  
San Diego, CA  
Denny J. Homan  
Des Moines, IA  
Salvatore Luciano  
New Britain, CT  
John A. Lyell  
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Roberta Lynch  
Chicago, IL  
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Baltimore, MD  
Ralph Miller  
Los Angeles, CA  
Gary Mitchell  
Madison, WI  
Douglas Moore Jr.  
San Diego, CA  
Frank Moroney  
Boston, MA  
Henry Nicholas  
Philadelphia, PA  
Randy Parratra  
Honolulu, HI  
Greg Powell  
Atascadero, CA  
Lillian Roberts  
New York, NY  
Eddie Rodriguez  
New York, NY  
Lawrence A. Roehrig  
Lansing, MI  
Joseph R. Ruggia  
Columbus, OH  
Ellet Salda  
South St. Paul, MN  
Mary E. Sullivan  
Albany, NY  
Braulio Torres  
San Juan, PR  
David Warrick  
Indianapolis, IN  
Janesca D. Wynn  
Tallahassee, FL

June 17, 2013

Mr. Kyle Herman  
Miller Buckfire & Co., LLC  
601 Lexington Avenue, 22<sup>nd</sup> Floor  
New York, NY 10022  
[kyle.herman@millerbuckfire.com](mailto:kyle.herman@millerbuckfire.com)

Dear Mr. Herman:

In accordance with the instructions of the Detroit Office of the Emergency Financial Manager (EFM), I request the following information:

1. A copy of the preliminary actuarial analysis, to include a full description of all assumptions relied upon, used to support the revised cost estimates and funding condition of the PFRS and GRS pension systems. Data should show projected normal cost for each plan and the proposed UAAL amortization payment as a percent of payroll.
2. The basis for the cost estimates of retiree health care (OPEB) including a description of all assumptions relied upon (including eligibility for benefits under the plan and benefits under the plan), the annual net OPEB obligation, and projected pay-as-you-go funding requirements for the next ten years.
3. A description of the proposed retiree health care plan that will rely upon Medicare Advantage and the Exchange Marketplace under the Affordable Care Act and the basis for the estimated annual City cost of between \$27.5 million and \$40 million. To the extent eligibility for benefits is revised from the assumption in item 2 above, please describe the new eligibility criteria.
4. A description of all assumptions, data, and documents relied upon to support the following revenue projections:
  - a. Municipal income tax
  - b. Wagering taxes
  - c. Property taxes
  - d. State revenue sharing
  - e. Utility users' and other taxes
  - f. "Other revenue" (page 52 of the Proposal to Creditors)

**American Federation of State, County and Municipal Employees, AFL-CIO**

TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB [www.afscme.org](http://www.afscme.org) 1625 L Street, NW, Washington, DC 20036-5687

1064-13  
12/12

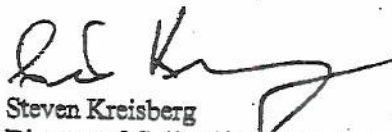


Mr. Kyle Herman  
June 17, 2013  
Page 2

5. A description of all projected services and investments included in the "Reorganization (Capital investments and Professional fees)" budget line item in the ten year Restructuring Scenario (page 97 of the Proposal to Creditors). Detail related to the development of major initiatives (for example, investments on technology) should be provided as well. Documents and other supporting data that support the cost projections should be provided as well. If the identity of vendors has been established, please provide that information.

I am assisting AFSCME locals and AFSCME Council 25 with issues related to the Proposal. We have been asked to meet with the EFM's representatives on Thursday. Accordingly, information related to items 1 through 3 should be provided prior to our meeting and the remaining information as soon as possible. I appreciate your cooperation. Feel free to call me at (202)429-1237 or email [skreisberg@afscme.org](mailto:skreisberg@afscme.org) if you have any questions or are in need of clarification.

Sincerely,



Steven Kreisberg  
Director of Collective Bargaining and  
Health Care Policy

SK:tem

# Exhibit 6

# JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601.1692  
TELEPHONE: +1.312.782.3939 • FACSIMILE: +1.312.782.8585

June 14, 2013

## VIA E-MAIL

Ed McNeil  
Assistant to the President  
AFSCME, MI Council 25  
600 W. Lafayette, Ste. 500  
Detroit, MI 48226  
emcneil@miafscme.org

Re: Retiree Benefit Restructuring Meeting

Dear Mr. McNeil:

As a follow-up to my letter dated May 20, 2013, a meeting has been scheduled for Thursday, June 20, 2013, at 10:00 a.m. at the Coleman A. Young Municipal Center, 2 Woodward Ave., 13th Floor Auditorium, Detroit, Michigan 48226 to review the restructuring plan for retiree benefits developed by Emergency Manager Kevyn Orr. On behalf of the Emergency Manager, I am inviting the American Federation of State, County and Municipal Employees, Michigan Council 25 to attend this meeting to learn about the City's restructuring plan. Due to space limitations, we are requesting that only two representatives from each union or retiree association attend the meeting. This meeting is not open to the general public or to the media, and no video devices, phone cameras, or other recording devices will be permitted in the auditorium. Please arrive at least 30 minutes before the start of the meeting to allow enough time to register. Proof of identification and your affiliation is required and will be checked prior to entering the meeting.

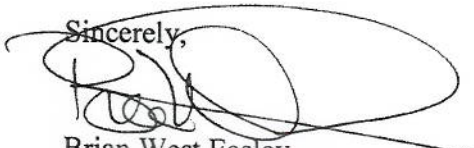
Please confirm in writing (including names, contact information, and affiliation) the two representatives of your union or association that will be attending the meeting no later than Tuesday, June 18, 2013. To the extent one or both of your representatives will need to be released from work to attend the meeting, please note this in your response and we will coordinate with the City's labor and employee relations department to ensure such employees are excused from work to attend the meeting.

We appreciate the willingness of the American Federation of State, County and Municipal Employees, Michigan Council 25 to participate in these discussions and look forward to your input with respect to these important issues.

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JONES DAY

June 14, 2013  
Page 2

Sincerely,  
  
Brian West Easley

cc: Mr. Kevyn Orr  
Mr. Lamont Satchel  
Mr. David Birnbaum

# Exhibit 7

## JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601-1692  
TELEPHONE: 312-782-3939 • FACSIMILE: 312-782-8585

June 27, 2013

### VIA E-MAIL

James Williams  
President  
AFSCME, Local 207 – Non-Supervisory Unit  
600 W. Lafayette, Ste. L-106  
Detroit, MI 48226  
afscme207@sbcglobal.net

Re: City of Detroit Restructuring

Dear Mr. Williams:

Thank you for participating in the June 20, 2013 informational meetings pertaining to the City of Detroit's (the "City's") proposals to restructure the City's retiree medical and pension obligations. We appreciated your questions and input and look forward to discussing these issues with the American Federation of State, County and Municipal Employees, Local 207 – Non-Supervisory Unit in the coming weeks.

The City recognizes that representatives of active and retired employees will need access to additional information to analyze the restructuring proposals outlined in the June 20 meetings. Information relevant to these proposals will be made available in the on-line data room established for creditors and other stakeholders. If you do not yet have access to the data room, please contact Dan Merrett (dmerrett@jonesday.com/ (404) 581-8476), who will provide you with further instructions.

To the extent you will need additional information beyond that provided in the data room to analyze and provide input with respect to the City's retiree benefits restructuring proposals, please forward requests for such information directly to my attention. We will make every effort to make responsive and relevant information available in a timely manner.

The City is very much looking forward to the unions' feedback with respect to the City's retiree benefits restructuring proposal. As we repeatedly stated during the meeting, to the extent that your organization has additional ideas about restructuring retiree benefits in a manner consistent with the City's financial limitations, the City will consider any such ideas. Please let me know if you would like to set up a time to further discuss these issues.

Sincerely,

  
Brian West Easley

cc: Kevyn Orr, Esq.  
Mr. Lamont Satchel

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# Exhibit 8



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Laura Reyes  
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Madison, WI

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San Diego, CA

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Boston, MA

Henry Nicholas  
Philadelphia, PA

Randy Perrera  
Honolulu, HI

Greg Powell  
Austin, TX

Lillian Roberts  
New York, NY

Eddie Rodriguez  
New York, NY

Lawrence A. Roehrig  
Lansing, MI

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Braulio Torres  
San Juan, PR

David Warrick  
Indianapolis, IN

Jeanette D. Wynn  
Tallahassee, FL

July 2, 2013

Mr. Brian West Easterly  
Jones Day  
77 West Wacker  
Chicago, IL 60601

Via Fax: (312) 782-8585

Dear Mr. Easterly:

You have contacted a number of Local unions affiliated with AFSCME for the purpose of offering information and inviting "feedback" on the Emergency Financial Manager's (EFM) proposal to "restructure" retiree benefits. The undersigned, in conjunction with AFSCME Council 25 President Albert Garrett and Council 25's Assistant to the President Ed McNeil will be representing our affiliated Locals in these matters. We are not representing current retirees.

I have followed the procedures and have been provided access to the on-line data room established by the EFM. I have also been in touch with Kyle Herman from Miller Buckfire as instructed by the EFM in his "Proposal to Creditors" on June 14. As I stated in an e-mail message to Mr. Herman, the electronic data room does not have all of the information I have requested of the EFM in a letter dated June 17, 2013 (copy enclosed). To reiterate, I have requested the following:

1. A copy of the preliminary actuarial analysis, to include a full description of all assumptions relied upon, used to support the revised cost estimates and funding condition of the PFRS and GRS pension systems. Data should show projected normal cost for each plan and the proposed UAAL amortization payment as a percent of payroll. Subsequent to June 17, I have been given access to Milliman analysis of the pension system which is partially responsive to my request.
2. The basis for the cost estimates of retiree health care (OPEB) including a description of all assumptions relied upon (including eligibility for benefits under the plan and benefits under the plan), the annual net OPEB obligation, and projected pay-as-you-go funding requirements for the next ten years.
3. A description of the proposed retiree health care plan that will rely upon Medicare Advantage and the Exchange Marketplace under the Affordable Care Act and the basis for the estimated annual City cost of between \$27.5 million and \$40 million. To the extent eligibility for benefits is revised from the assumption in item 2 above, please describe the new eligibility criteria.

**American Federation of State, County and Municipal Employees, AFL-CIO**

TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687



Brian West Easterly  
July 2, 2013  
Page 2 of 2


4. A description of all assumptions, data, and documents relied upon to support the following revenue projections:
  - a. Municipal income tax
  - b. Wagering taxes
  - c. Property taxes
  - d. State revenue sharing
  - e. Utility users' and other taxes
  - f. "Other revenue" (page 52 of the Proposal to Creditors)
  
5. A description of all projected services and investments included in the "Reorganization (Capital investments and Professional fees)" budget line item in the ten year Restructuring Scenario (page 97 of the Proposal to Creditors). Detail related to the development of major initiatives (for example, investments on technology) should be provided as well. Documents and other supporting data that support the cost projections should be provided as well. If the identity of vendors has been established, please provide that information.

To clarify, we are seeking the data relied upon by the EFM as he developed his retiree benefits restructuring proposal. Detailed information related to reorganization and restructuring initiatives consists of a one page financial summary. I am seeking the data relied upon to develop that summary, especially and including, the back-up data associated with estimated expenditures addressing "blight."

In response to your offer to provide "feedback" on the proposed restructuring of retirement benefits, we hereby request to meet with authorized representatives of the EFM on July 10, 2013 at 10:00 a.m. To date, your representatives have provided presentations, and scheduled an additional presentation on pension benefits for the afternoon of July 10, but the EFM has not provided AFSCME with a meaningful opportunity to engage in a good faith negotiation of these issues. That process should start as soon as possible. We suggest we meet at our offices in Detroit, 600 West Lafayette. It would be extremely helpful if you could provide the requested information in advance of the meeting.

Please contact me at (202)429-1237 or [skreisberg@afscme.org](mailto:skreisberg@afscme.org) to discuss these matters, if necessary, and to confirm our proposed meeting.

Sincerely,

  
Steven Kreisberg  
Director of Collective Bargaining and  
Health Care Policy

SK/dd

cc: Albert Garrett, AFSCME Council 25 President  
Kevyn Orr, Emergency Financial Manager

# Exhibit 9

# JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601-1692  
TELEPHONE: 312-782-3939 • FACSIMILE: 312-782-8585

July 3, 2013

VIA E-MAIL

Mr. Steven Kreisberg  
Director of Collective Bargaining and Health Care Policy  
American Federation of State, County and Municipal Employees, AFL-CIO  
1625 L Street, NW  
Washington, DC 20036-5687  
skreisberg@afscme.org

Re: City of Detroit Restructuring

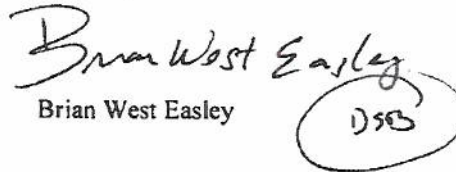
Dear Mr. Kreisberg:

We are in receipt of your letter dated July 2, 2013 in which you, among other things, request a meeting with representatives of Emergency Manager Kevyn Orr on July 10, 2013 at 10:00 a.m. In your letter, you acknowledge that a meeting has been scheduled for July 10, 2013 at 1:00 p.m. to discuss issues related to pension restructuring. However, you suggest that the scheduled meeting will be a "presentation," and state that AFSCME would prefer a meaningful opportunity for discussion.

The meeting currently scheduled for July 10, 2013 will not be a presentation but rather will be a discussion between the Emergency Manager's advisors and a relatively small group of key stakeholders who may include, the GRS and its advisor only team, high level representatives of up to four (4) non-uniform unions, and representatives from the Detroit Retired City Employees Association. The City believes that a discussion between and among these key stakeholders will be most beneficial and efficient for all parties. As such, while we are not available to meet with AFSCME at 10:00 a.m. on July 10, 2013, we encourage AFSCME to attend and participate in the scheduled meeting. Similarly, we are hopeful that AFSCME will attend the meeting regarding retiree health restructuring currently scheduled for 10:00 a.m. on July 11, 2013.

Please confirm whether AFSCME plans to attend the July 10, 2013 meeting at 1:00 p.m. and the July 11, 2013 meeting at 10:00 a.m. and provide the names of your proposed attendees.

Sincerely,

  
Brian West Easley

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JONES DAY

July 3, 2013  
Page 2

cc: Evan Miller, Esq.  
Kevyn Orr, Esq.  
Mr. Lamont Satchel

# Exhibit 10

---

**From:** Edward McNeil [<mailto:emcneil@miafscme.org>]  
**Sent:** Friday, June 28, 2013 9:58 PM  
**To:** Steve Kreisberg  
**Subject:** Fwd: City of Detroit -- Pension Restructuring Discussions (GRS)

Sent from my iPhone

Begin forwarded message:

**From:** David Birnbaum <[dbirnbaum@jonesday.com](mailto:dbirnbaum@jonesday.com)>  
**Date:** June 28, 2013, 4:39:23 PM EDT  
**To:** [agarrett@miafscme.org](mailto:agarrett@miafscme.org), [emcneil@miafscme.org](mailto:emcneil@miafscme.org)  
**Cc:** Evan Miller <[emiller@jonesday.com](mailto:emiller@jonesday.com)>, Brian Easley <[beasley@jonesday.com](mailto:beasley@jonesday.com)>, Heather Lennox <[hlennox@jonesday.com](mailto:hlennox@jonesday.com)>, "David G. Heiman" <[dgheiman@jonesday.com](mailto:dgheiman@jonesday.com)>  
**Subject:** City of Detroit -- Pension Restructuring Discussions (GRS)

Mr. Garrett and Mr. McNeil:

Following the presentations made on June 20th, outside counsel for GRS reached out to the City of Detroit for more information on, and to discuss, a pension restructuring proposal. GRS and the City of Detroit have tentatively scheduled a meeting on pension restructuring for Wednesday, July 10th, at 1 pm (location to be determined). The City will be prepared to provide more information on its developing pension restructuring proposal. Because the City expects that the proposal will impact the pension benefits of active participants of GRS, who include your members, the City would like to invite you to this meeting on July 10th, at 1 pm to participate in the discussion. We expect the meeting will last approximately 2 hours. GRS will be sending an advisor-only team (attorneys and financial advisors), and the City believes this is a good way to proceed. Please let us know at your earliest convenience if you will attend and the names of the attendees. We will contact you as soon as practicable to provide details about the meeting location.

Regards,

David



**David S. Birnbaum**

---

77 West Wacker Drive, Suite 3500 • Chicago, IL 60601  
DIRECT 312.269.4005 • FAX 312.782.8585 • EMAIL [dbirnbaum@jonesday.com](mailto:dbirnbaum@jonesday.com)

=====

# Exhibit 11



August 6, 2013

- Lee Saunders  
President
- Laura Reyes  
Secretary-Treasurer
- Vice Presidents
  - Kan Allen  
Portland, OR
  - Henry L. Bayer  
Chicago, IL
  - Kan Deitz, RN  
San Dimas, CA
  - Greg Deveraux  
Olympia, WA
  - Danny Donohue  
Albany, NY
  - David R. Fillman  
Harrisburg, PA
  - Michael Fox  
Harrisburg, PA
  - Kathleen Garrison  
Latham, NY
  - Raglan George Jr.  
New York, NY
  - Mattie Harrell  
Williamstown, NJ
  - Johanna Puno Hester  
San Diego, CA
  - Danny J. Homan  
Des Moines, IA
  - Salvatore Luciano  
New Britain, CT
  - John A. Lyall  
Worthington, OH
  - Kathryn Lybarger  
Oakland, CA
  - Roberta Lynch  
Chicago, IL
  - Christopher Mabe  
Westerville, OH
  - Glenard S. Middleton Sr.  
Baltimore, MD
  - Ralph Miller  
Los Angeles, CA
  - Gary Mitchell  
Madison, WI
  - Douglas Moore Jr.  
San Diego, CA
  - Frank Mironney  
Boston, MA
  - Henry Nicholas  
Philadelphia, PA
  - Randy Parreira  
Honolulu, HI
  - Greg Powell  
Austin, TX
  - Lillian Roberts  
New York, NY
  - Eddie Rodriguez  
New York, NY
  - Lawrence A. Roehrig  
Lansing, MI
  - Joseph P. Rugola  
Columbus, OH
  - Eliot Selde  
South St. Paul, MN
  - Mary E. Sullivan  
Albany, NY
  - Braulio Torres  
San Juan, PR
  - David Warrick  
Indianapolis, IN
  - Jeanette D. Wynn  
Tallahassee, FL

Mr. Evan Miller  
Jones Day  
51 Louisiana Av, NW  
Washington, DC 20001

Via Email: [emiller@jonesday.com](mailto:emiller@jonesday.com)

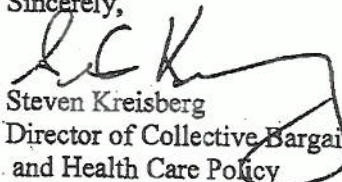
Dear Mr. Miller:

On August 2, 2013 you convened a meeting among local city union representatives to convey, in your capacity as a representative of the City of Detroit, an "Active Employee Health Insurance Proposal." During that meeting, you specifically advised those of us in attendance that the meeting was not a "negotiation" but you requested "feedback" on the proposal. At the meeting, it was brought to your attention that the City of Detroit Coalition Unions (CDCU), led by AFSCME Council 25 Assistant to the President Ed McNeil, had engaged in health benefit negotiations in 2011-12 and had achieved an agreement with the city for health care concessions valued at \$60 million annually (at that time). That agreement was never implemented.

In accordance with Michigan Public Employment Relations Act (MERA), MCL 423.201 et seq., AFSCME Council 25, on behalf of the CDCU, hereby demands bargaining in good faith on the City's August 2 health insurance proposal. We see no exemption under Chapter 9 of the bankruptcy code or the Emergency Financial Manager law (Public Act 436) from the City's duty to bargain in good faith with the exclusive representatives of city employees over terms and conditions of employment.

Ms. Samantha Woo from Jones Day has contacted Mr. McNeil to schedule a meeting with him, yourself and Brian West Easterly to discuss active employee health benefits. Attached for your reference is a summary of the CDCU proposal, including cost savings estimates, from the previous negotiations. We suggest we convene a meeting between you and Ed McNeil who will be accompanied by Richard Mack, on August 13, 2013 at 2:00 p.m. to discuss this matter. Msrs. McNeil and Mack were the CDCU's lead negotiators in 2011-12. Please respond to the undersigned at (202) 429-1237 or [skreisberg@afscme.org](mailto:skreisberg@afscme.org) or to Ed McNeil at (313)964-1711 or [emcneil@miafscme.org](mailto:emcneil@miafscme.org).

Sincerely,

  
Steven Kreisberg  
Director of Collective Bargaining  
and Health Care Policy

SK/gm

**American Federation of State, County and Municipal Employees, AFL-CIO**

TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB [www.afscme.org](http://www.afscme.org) 1625 L Street, NW, Washington, DC 20036-5687

1064-12  
1212



DRAFT -- SUBJECT TO CHANGE

**EXHIBIT A  
MEDICAL CONCESSIONS**

		<u>Union</u>	<u>Management<sup>1</sup></u>
<u>PPO plan:</u>			
Employee premium contribution	20% for all plans	\$ 8,100,000	\$ 8,100,000
Plan deductible	\$250/\$500	\$ 10,310,000	\$ 10,310,000
Insurance maximum	\$1,000/\$2,000	\$ 9,006,000	\$ -
Insurance maximum	\$1,500/\$3,000	\$ -	\$ 9,480,000
Office visit & urgent care co-pay	\$15	\$ 656,667	\$ -
Office visit & urgent care co-pay	\$25	\$ -	\$ 1,970,000
Emergency room co-pay	\$100	\$ -	\$ 610,000
Hospital co-pay	\$100	\$ -	\$ 520,000
Rx drugs - CVS Caremark plan		\$ 28,175,445	\$ -
Rx drugs - 3 tier co-pay structure	\$5/\$15/\$30	\$ -	\$ -
Rx drugs - 3 tier co-pay structure	\$10/\$20/\$30	\$ -	\$ 10,500,000
Rx drugs - Pharmacy Initiatives		\$ -	\$ 11,000,000
<u>HMO plan:</u>			
Health Alliance Plan changes <sup>2</sup>	various	\$ -	\$ 3,715,000
<u>Other changes:</u>			
Eliminate BCN		\$ 2,950,000	\$ 3,100,000
Eliminate Total Health		\$ -	\$ 900,000
Eliminate US Health		\$ 1,190,000	\$ 1,190,000
Dental - convert all plans to Dencap		\$ -	\$ 1,215,000
Dental/Vision employee contribution	20% for all plans	\$ -	\$ 2,977,000
Adjustment for Weiler class retirees	45% of retirees	\$ -	\$ (16,527,924)
<b>Total savings</b>		<b>\$ 60,388,112</b>	<b>\$ 49,059,076</b>
<u>Incremental changes to reach \$60m target:</u>			
Plan deductible (PPO)	\$750/\$1500	\$ -	\$ 3,744,633
Insurance maximum (PPO)	\$2,500/\$5,000	\$ -	\$ 3,744,633
Health Alliance Plan changes <sup>3</sup>	various	\$ -	\$ 2,436,750
Other			\$ 1,014,907
<b>Total savings including incremental savings</b>		<b>\$ 60,388,112</b>	<b>\$ 60,000,000</b>

**Notes:**

1. Management estimate assumes PPO plan changes are underwritten by BCBS
2. Savings from HAP changes assumes \$250 ded, 20% co-ins, \$1,500 co-ins max, \$1,750 OOP max, \$25 OV, \$75 ER, \$25 UC, Rx \$10/\$20/\$30
3. Incremental savings from HAP changes assumes \$750 ded, 20% co-ins, \$2,500 co-ins max, \$3,250 OOP max, \$25 OV, \$75 ER, \$25 UC, Rx \$10/\$20/\$30

# Exhibit 12

# JONES DAY

77 WEST WACKER • CHICAGO, ILLINOIS 60601.1692  
TELEPHONE: +1.312.782.3939 • FACSIMILE: +1.312.782.8585

August 8, 2013

## VIA EMAIL

Mr. Steven Kreisberg  
Director of Collective Bargaining and Health Care Policy  
AFSCME, AFL-CIO  
1625 L Street, NW  
Washington, D.C. 20036  
SKreisberg@afscme.org

Re: City of Detroit and AFSCME Council 25

Dear Mr. Kreisberg:

I am in receipt of your letter dated August 6, 2013 in which AFSCME Council 25, on behalf of the City of Detroit Coalition Unions, “demand[ed] bargaining in good faith on the City’s August 2 health insurance proposal.” While the City of Detroit (the “City”) previously was subject to a statutory duty to “bargain collectively with the representatives of its employees” pursuant to section 15(1) of the Michigan Public Employment Relations Act (“PERA”), the duty to bargain was suspended when the City was placed in receivership under Public Act 436 (“PA 436”). MICH. COMP. LAWS § 423.215(1); § 141.1567(3). Specifically, PA 436 provides that “[a] local government placed in receivership . . . is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.” MICH. COMP. LAWS § 141.1567(3). As such, the City currently is not subject to a statutory duty to bargain under PERA.

Although the City will exercise its current right not to engage in collective bargaining with AFSCME Council 25, the City is more than willing to meet with representatives of your union to discuss any feedback they may have regarding its health care restructuring plans. We are available to meet with Mr. Ed McNeil and Mr. Richard Mack on Wednesday, August 14, 2013 at 2:00 p.m. to discuss the City’s active employee health insurance proposal. Please let me know at your earliest convenience if this date and time are acceptable.

We look forward to working closely with your union as we attempt to restructure the City’s finances and operations.

ALKHOBAR • AMSTERDAM • ATLANTA • BEIJING • BOSTON • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS  
DUBAI • DÜSSELDORF • FRANKFURT • HONG KONG • HOUSTON • IRVINE • JEDDAH • LONDON • LOS ANGELES • MADRID  
MEXICO CITY • MIAMI • MILAN • MOSCOW • MUNICH • NEW YORK • PARIS • PITTSBURGH • RIYADH • SAN DIEGO  
SAN FRANCISCO • SÃO PAULO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

JONES DAY

Mr. Steven Kreisberg  
August 8, 2013  
Page 2

Sincerely,

*Evan Miller* /s/

Evan Miller

cc: Brian West Easley, Esq.  
Ed McNeil

# Exhibit A

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM  
OF THE CITY OF DETROIT, and THE  
POLICE AND FIRE RETIREMENT  
SYSTEM OF THE CITY OF DETROIT,

*Gracie Webster  
and Veronica Thomas*

Plaintiffs,

Case No. ~~13-768-CZ~~

*13-000734-CZ  
C30*

vs.

*State of Michigan*

Hon. *Rosemarie*

*Aquilina*

~~KEVYN D. ORR, in his official capacity as the  
EMERGENCY MANAGER OF THE CITY OF  
DETROIT, and RICHARD SNYDER, in his  
official capacity as the GOVERNOR OF THE  
STATE OF MICHIGAN,~~

*and Andy Dillon,*

Defendants.

*Treasurer in his official Capacity*

Ronald A. King (P45088)  
Aaron O. Matthews (P64744)  
Michael J. Pattwell (P72419)  
CLARK HILL/PLC  
212 East Grand River Avenue  
Lansing, Michigan 48906  
(517) 318-3100  
Attorneys for Plaintiffs

*John R Canzano P30417  
McKnight, McCloy, Canzano Smith  
& Radtke PC  
400 Galleria Office Center*

TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of  
Lansing, County of Ingham, State of Michigan  
on 18 July 13

PRESENT: HON. *Rosemarie Aquilina*  
CIRCUIT COURT JUDGE

*and having appeared  
during the hearing  
for a TRO in 13-000734*

This matter having come before the Court on Plaintiffs' Complaint with verification and  
*Declaratory Judgment and Preliminary Injunction*  
*Ex Parte* Motion for a Temporary Restraining Order; the Court being fully advised in the  
premises; Plaintiffs having shown a likelihood of success on the merits of the claims in

Plaintiffs' Complaint; Plaintiff having adequately shown that a failure to immediately issue a Temporary Restraining Order will cause irreparable injury to Plaintiffs by permitting the Governor and the Emergency Manager ("Defendants") to authorize and file a Chapter 9 bankruptcy petition wherein Plaintiffs' accrued financial benefits will be impaired prior this Court's scheduled preliminary injunction hearing on Monday, July 22, 2013; and the Court being otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

*which has already occurred*

IT IS FURTHER ORDERED that Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an unconditional Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy petition) that may: (i) cause the accrued financial benefits of the Retirement Systems or their participants from in any way being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution;

IT IS FURTHER ORDERED that the Court shall hold a hearing on July 22, 2013 at 9:00 AM whereby Defendants shall show cause why a Declaratory Judgment and/or Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this temporary restraining order shall remain in full force and effect until further order of the Court, 2013 at 5:00 p.m.

IT IS SO ORDERED.

*Rosemarie E. Aquilina*  
CIRCUIT COURT JUDGE  
P37670

DATE: 18 July 13  
TIME: 4:25 p.m.

<sup>30th</sup> STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM  
OF THE CITY OF DETROIT, and THE  
POLICE AND FIRE RETIREMENT  
SYSTEM OF THE CITY OF DETROIT,

Plaintiffs,

vs.

KEVYN D. ORR, in his official capacity as the  
EMERGENCY MANAGER OF THE CITY OF  
DETROIT, and RICHARD SNYDER, in his  
official capacity as the GOVERNOR OF THE  
STATE OF MICHIGAN,

Defendants.

Case No. 13-~~768-CZ~~

Hbn. Rosemarie E. Aquilina

729-CZ

Flowers  
caption

Ronald A. King (P45088)  
Aaron O. Matthews (P64744)  
Michael J. Pattwell (P72419)  
CLARK HILL PLC  
212 East Grand River Avenue  
Lansing, Michigan 48906  
(517) 315-3100  
Attorneys for Plaintiffs

Flowers attorneys

TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of  
Lansing, County of Ingham, State of Michigan  
on 18 July 13

PRESENT: HON. Rosemarie E. Aquilina  
CIRCUIT COURT JUDGE

*Amended Verified*

This matter having come before the Court on Plaintiffs' Complaint with verification and  
~~Ex Parte~~ Preliminary Injunction Motion for a Temporary Restraining Order; the Court being fully advised in the  
premises; Plaintiffs having shown a likelihood of success on the merits of the claims in



Plaintiffs' Complaint; Plaintiff having adequately shown that a failure to immediately issue a

~~Temporary Restraining Order~~ <sup>Final Preliminary Injunction</sup> will cause irreparable injury to Plaintiffs by permitting the ~~Governor and the Emergency Manager~~ <sup>and the State Treasurer</sup> ("Defendants") to authorize and file a Chapter 9

bankruptcy petition) ~~wherein Plaintiffs' accrued financial benefits will be impaired prior this~~ <sup>or otherwise proceed with</sup> ~~Court's scheduled preliminary injunction hearing on Monday, July 22, 2013;~~ <sup>on behalf of the City of Detroit, or to aid in such a filing proceeding</sup> and the Court being

otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

IT IS FURTHER ORDERED that Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an ~~unconditional~~ <sup>preliminary</sup> Chapter 9

bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy <sup>or any action</sup> petition) ~~that may: (i) cause the accrued financial benefits of the Retirement Systems or their~~ <sup>or in aid and assistance as to the same,</sup> participants from in any way being diminished or impaired as mandated by Article IX, section

~~24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution;~~

IT IS FURTHER ORDERED that the Court shall hold a hearing on \_\_\_\_\_, 2013 at \_\_\_\_\_ whereby Defendants shall show cause why a Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this ~~temporary restraining order~~ <sup>preliminary injunction</sup> shall remain in full ~~force and effect until \_\_\_\_\_, 2013 at 5:00 p.m.~~ <sup>Further order of the court</sup>

IT IS SO ORDERED.

DATE: 18 July 13  
TIME: 4:25 p.m.

*Rosemarie Edguitina*  
CIRCUIT COURT JUDGE  
P.37670

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM  
OF THE CITY OF DETROIT, and THE  
POLICE AND FIRE RETIREMENT  
SYSTEM OF THE CITY OF DETROIT,

Plaintiffs,

vs.

Case No. 13-768-CZ

Hon. *Rosemarie E. Aquilina*

KEVYN D. ORR, in his official capacity as the  
EMERGENCY MANAGER OF THE CITY OF  
DETROIT, and RICHARD SNYDER, in his  
official capacity as the GOVERNOR OF THE  
STATE OF MICHIGAN,

Defendants.

---

Ronald A. King (P45088)  
Aaron O. Matthews (P64744)  
Michael J. Pattwell (P72419)  
CLARK HILL PLC  
212 East Grand River Avenue  
Lansing, Michigan 48906  
(517) 318-3100  
Attorneys for Plaintiffs

---

TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of  
Lansing, County of Ingham, State of Michigan  
on 18 July 13

PRESENT: HON. *Rosemarie E. Aquilina*

CIRCUIT COURT JUDGE *J*

This matter having come before the Court on Plaintiffs' Complaint with verification and  
*Ex-Parte* Motion for a Temporary Restraining Order; the Court being fully advised in the  
premises; Plaintiffs having shown a likelihood of success on the merits of the claims in

9214431.1 14893/144127

13-53846-swr Doc 56 Filed 07/19/13 Entered 07/19/13 18:09:37 Page 68 of 82

~~13-53846-swr Doc 23814~~ Filed 08/19/13 Entered 08/19/13 19:44:28 Page 609 of 71

Plaintiffs' Complaint; Plaintiff having adequately shown that a failure to immediately issue a Temporary Restraining Order will cause irreparable injury to Plaintiffs by permitting the Governor and the Emergency Manager ("Defendants") to authorize and file a Chapter 9 bankruptcy petition wherein Plaintiffs' accrued financial benefits will be impaired prior this Court's scheduled preliminary injunction hearing on Monday, July 22, 2013; and the Court being otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

IT IS FURTHER ORDERED that Defendants are immediately and temporarily enjoined and restrained from taking any action <sup>Further</sup> ~~(including the authorization of an unconditional Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy petition)~~ that may: (i) cause the accrued financial benefits of the Retirement Systems or their participants from in any way being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution;

IT IS FURTHER ORDERED that the Court shall hold a hearing on 22 July, 2013 at 9:00 AM whereby Defendants shall show cause why a Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this temporary restraining order shall remain in full force and effect until 1 AUG, 2013 at 5:00 p.m.

IT IS SO ORDERED.

*Rosemarie E. Aquilina*  
CIRCUIT COURT JUDGE *P37670*

DATE: 18 July 13

TIME: 4:25

# Exhibit B

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

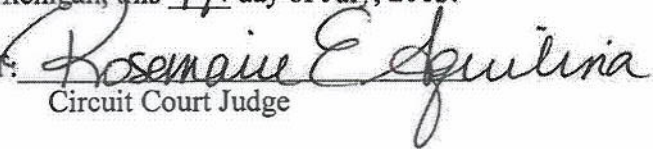
Defendants.

---

ORDER OF DECLARATORY JUDGMENT

At a session of said Court held in Ingham County Circuit Court,  
State of Michigan, this 19<sup>th</sup> day of July, 2013.

PRESENT:

  
Circuit Court Judge

Plaintiffs request declaratory relief pursuant to MCR 2.605 concerning (1) the constitutionality under Article IX Section 24 of the Michigan Constitution of the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541, *et seq.* ("PA 436"), insofar as PA 436 permits the Governor to authorize an emergency manager to proceed under chapter 9 of the bankruptcy code, chapter 9 of title 11 of the United States Code, 29 USC 901 to 946 ("Chapter 9") in a manner which threatens to diminish or impair accrued pension benefits; and (2) the

authority of the Governor and/or State Treasurer to authorize an emergency manager to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits.

Plaintiffs have requested, and Defendants have agreed in their Response, that the hearing in this matter may be advanced pursuant to MCR 2.605(D) and the court finds that expedited treatment is appropriate and that final declaratory relief is proper at this time.

The Court having reviewed the parties filings and submissions, and having heard oral argument by counsel for the parties, and being otherwise fully advised in the premises, and for the reasons stated on the record,

IT IS HEREBY ORDERED:

PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect;

The Governor is prohibited by Article IX Section 24 of the Michigan Constitution from authorizing an emergency manager under PA 436 to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits, and any such action by the Governor is without authority and in violation of Article IX Section 24 of the Michigan Constitution.

On July 16, 2013, City of Detroit Emergency Manager Kevyn Orr submitted a recommendation to Defendant Governor Snyder and Defendant Treasurer Dillon pursuant to Section 18(1) of PA 436 to proceed under Chapter 9, which together with the facts presented in Plaintiffs' filings, reflect that Emergency Manager Orr intended to diminish or impair accrued pension benefits if he were authorized to proceed under Chapter 9. On July 18, 2013, Defendant

Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair accrued pension benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX Section 24 of the Michigan Constitution.

In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18, and (2) not authorize any further Chapter 9 filing which threatens to diminish or impair accrued pension benefits.

*A copy of this Order shall be transmitted to President Obama.*

*It is so Ordered.*

*Rosemarie E. Aquilina*  
Circuit Court Judge P37670

# Exhibit C



CITY OF DETROIT  
**PROPOSAL FOR CREDITORS**

JUNE 14, 2013





# CITY OF DETROIT **PROPOSAL FOR CREDITORS**

JUNE 14, 2013

This proposal is based on numerous projections and assumptions concerning future uncertain events including estimates of tax revenues and forecasts of future business and economic conditions in the city, all of which are beyond the control of the city. Actual results may differ from the assumptions and projections presented herein, and such differences could be material.

Additional data are being gathered or developed, and various critical financial and operational analyses remain in process. Thus, this proposal remains subject to material change.



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# DETROIT FACES STRONG ECONOMIC HEADWINDS

## DETERIORATING MACROECONOMIC CONDITIONS.

During the past several decades, the City of Detroit (the “City”) has experienced changes that have adversely affected the economic circumstances of the City and its residents.

**Declining Population.** The City’s population has declined 63% since its postwar peak, including a 26% decline since 2000:

- June 1950: 1,849,600
- June 1990: 1,028,000
- June 2000: 951,270
- June 2010: 713,777
- December 2012: 684,799

**High Unemployment.** Despite some recent improvement, the City’s unemployment rate has nearly tripled since 2000:

- June 2000: 6.3%
- June 2010: 23.4%
- June 2012: 18.3%

### Number of Detroit Residents Employed.

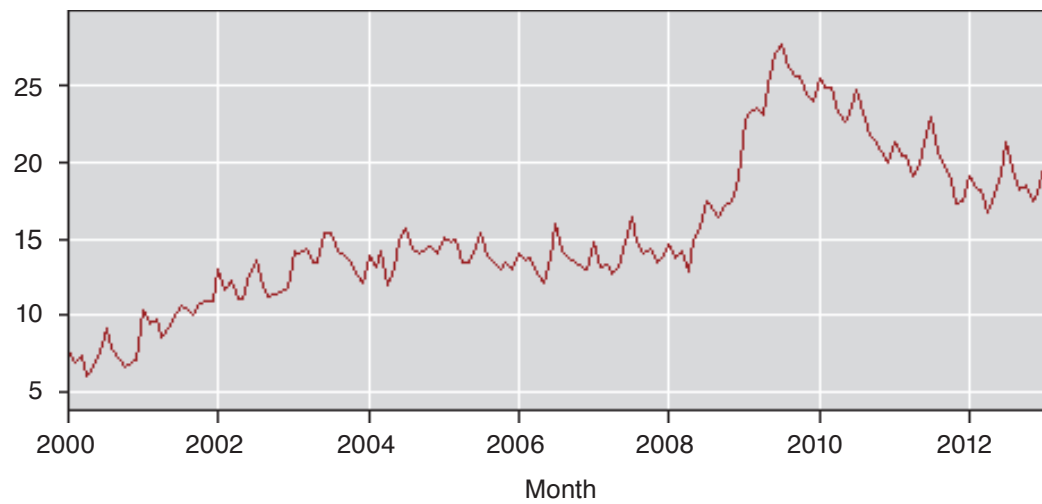
	2000	2010	2012
Labor force	381,498	361,538	343,856
Employment	353,813	278,063	279,960
Unemployment	27,685	83,475	63,896
Unemployment rate	7.3%	23.1%	18.6%

- The number of employed Detroit residents has dropped more than 53% since 1970.

**EMPLOYMENT IN DETROIT**



**UNEMPLOYMENT RATE IN DETROIT**





## Eroding Tax Base and Reductions in State Revenue Sharing.

- Property Taxes.
  - Property tax revenues have decreased by approximately 19.7% over the past five years as a result of declining assessed values (\$1.6 billion from 2008 to 2012) and lower collection rates (from 76.6% in 2008 to 68.3% in 2011).
  - Projected FY 2013 property tax revenues are \$135 million, a reduction of \$13 million (or approximately 9%) from FY 2012 levels.
- Income Taxes.
  - Income tax revenues have decreased by \$91 million since 2002 (approximately 30%) and by \$44 million (approximately 15%) since 2008. The primary cause of these decreases has been high unemployment driving lower taxable income of City residents and non-residents working in the City.
  - Income tax revenues may be showing signs of stabilization. This results from a modest decrease in unemployment, the indefinite deferral of a previously planned decrease of the City's 2.4% resident income tax rate and an increase in the corporate income tax rate from 1% to 2% in January 2012.
  - The income tax rate for residents and non-residents was set to decrease due to criteria set by the City Income Tax Act, but legislation has been put in place to hold the tax rates at the current level (2.4% for residents and 1.2% for non-residents) in order to avoid a loss of income tax revenues.
- Utility Users' Excise Tax.
  - Revenues from the City's utility users' tax have declined from approximately \$55.3 million in FY 2003 to approximately \$39.8 million in FY 2012 (approximately 28%).
- Wagering Taxes.
  - Annual receipts of wagering taxes have remained steady at about \$170–\$180 million, but gaming tax receipts are projected to decrease through FY 2015 due to expected loss of gaming revenue to casinos opening in nearby Toledo, Ohio.

- State Revenue Sharing.
  - State revenue sharing has decreased by \$161 million since FY 2002 (approximately 48%) and by \$76 million (approximately 30.6%) since 2008 due to the City's declining population and significant reductions in statutory revenue sharing by the State.
  - Revenue sharing is calculated based on population; revenue sharing amounts will decrease further if the City's population continues to decline.
- **The City is currently levying all taxes at or near statutory maximum rates.**

## RESIDENTS AND BUSINESSES ARE LEAVING DETROIT TO ESCAPE HIGH TAXES AND INSURANCE COSTS.

### Comparative Tax Burden.

- **Per Capita Tax Burden.** Per capita tax burden on City residents is the highest in Michigan. This tax burden is particularly severe because it is imposed on a population that has relatively low levels of per capita income.
- **Resident Income Tax.** Income tax burden on residents is greater than that of residents in the surrounding area. The City's income tax — 2.4% for residents, 1.2% for nonresidents and 2.0% for businesses — is the highest in Michigan.
- **Property Taxes.** Detroit residents pay the highest total property tax rates (inclusive of property taxes paid to all overlapping jurisdictions; *e.g.*, the City, the State, Wayne County) of those paid by residents of Michigan cities having a population over 50,000. The total property tax rate (including property taxes assessed by the City, the State and various special authorities) imposed on Detroit homeowners is approximately 67.07 mills; for businesses the total property tax rate is approximately 85.35 mills.
  - At more than 19.95 mills, the City's property tax rate for general operations is close to the statutory maximum of 20.00 mills.
- **Utility Users Tax.** Detroit is the only city in Michigan that levies an excise tax on utility users (at a rate of 5%).

**Comparative Tax Burden.**

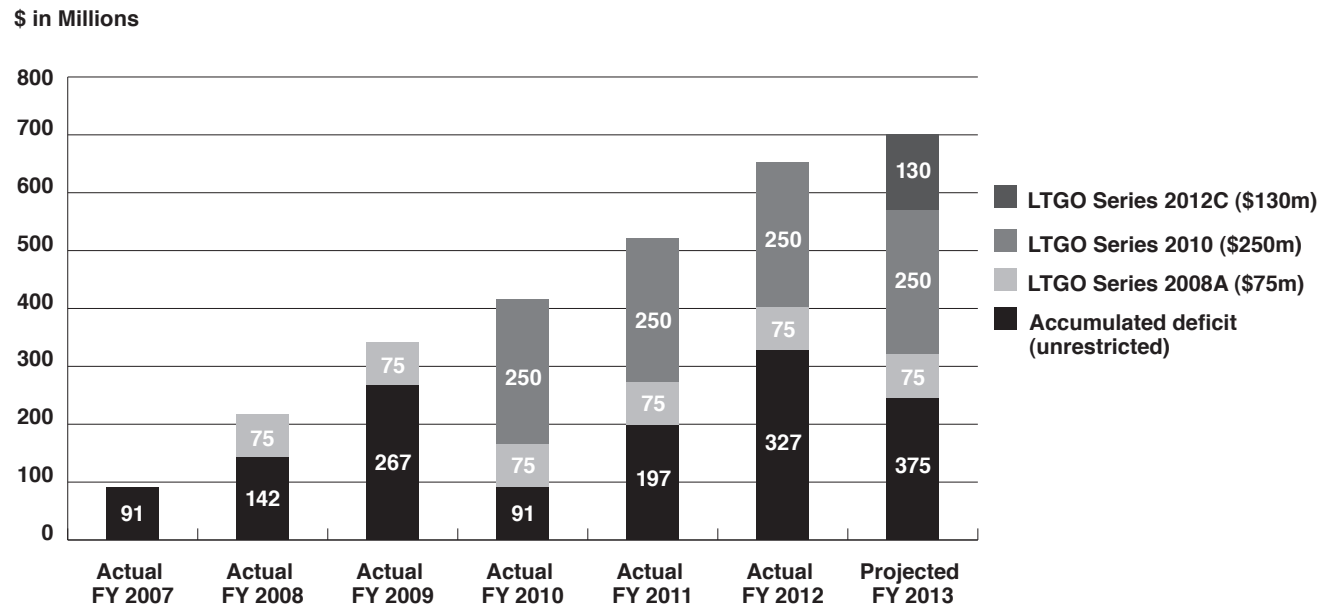
City	Population	Per Capita Income	TAX BURDEN		
			Per Capita Tax Burden	Resident Income Tax Rates	Resident Property Tax Rates
<b>Detroit</b>	<b>684,799</b>	<b>\$15,261</b>	<b>\$1,207</b>	<b>2.4%</b>	<b>67.07 mills</b>
<b>Local Comparison</b>					
Dearborn	98,153	\$22,816	\$668	N/A	60.23 mills
Livonia	96,942	\$31,959	\$590	N/A	36.81 mills
Southfield	71,739	\$29,228	\$930	N/A	60.70 mills

**Comparative Insurance Costs.**

City	Average Cost of Homeowner's Insurance	Average Cost of Automobile Insurance
<b>Detroit</b>	<b>\$1,543</b>	<b>\$3,993</b>
<b>Local Comparison</b>		
Dearborn	N/A	\$2,908
Livonia	N/A	\$2,052
Southfield	N/A	\$3,108

## CONTINUING BUDGET DEFICITS.

Excluding the effect of recent debt issuances (e.g., \$75 million in FY 2008, \$250 million in FY 2010 and \$129.5 million in FY 2013) that funded the City's operating deficits, the City's accumulated general fund deficit has grown continuously over an extended period.



At the end of FY 2012, the City's accumulated general fund deficit was \$326.6 million.

The City's operating deficit for FY 2013 (which excludes the impact of the \$129.5 million debt issuance in August of 2012) is estimated to be approximately \$47 million.

If not for the City's recent debt issuances, the accumulated deficit for FY 2013 would have been approximately \$700 million.

## THE CITY IS INSOLVENT.

**Liquidity Crisis.** Absent ongoing cash intervention (primarily in the form of payment deferrals and cost cutting), the City would have run out of cash before the end of FY 2013.

- The City had negative cash flows of \$115.5 million in FY 2012, excluding the impact of proceeds from short-term borrowings. In March 2012, to avoid running out of cash, the City borrowed \$80 million on a secured basis (of which the City spent \$50 million in FY 2012).
- The City is projecting to have positive cash flows of \$4.0 million in FY 2013 after deferring approximately \$120 million of current and prior year pension contributions and other payments.
- Absent intervention and/or restructuring, the City is projecting to have negative cash flows of \$198.5 million in FY 2014.
- As of the end of May 2013, the City had \$68 million of cash before property tax distributions, but had outstanding deferrals and amounts due to other funds and entities of approximately \$216 million. These are effectively borrowings and must be repaid.

**The City is Not Paying Its Debts as They Come Due.**

- The City is not making its pension contributions as they come due. The City has deferred payment of its year-end Police and Fire Retirement System contributions (and finances such deferrals at a rate of 8%). As of May 2013, the City had deferred approximately \$54 million in pension contributions related to current and prior periods and will defer approximately \$50 million on June 30, 2013 for current year PFRS pension contributions. Therefore, by fiscal year end the City will have deferred over \$100 million of pension contributions.
- The City will not make the scheduled \$39.7 million payments due on its pension-related certificates of participation on June 14, 2013.

**Plummeting Credit Ratings.**

The City’s credit ratings have continuously declined during the past decade and are well below investment grade. No major U.S. city has lower credit ratings.

**Ratings on the City’s Uninsured General Obligation Bonds**

	<b>Moody’s</b>	<b>Standard &amp; Poor’s</b>	<b>Fitch</b>
<b>June 30, 2003</b>	Baa1	A-	A
<b>June 30, 2004</b>	Baa1	A-	A
<b>June 30, 2005</b>	Baa1	BBB+	BBB+
<b>June 30, 2006</b>	Baa2	BBB	BBB
<b>June 30, 2007</b>	Baa2	BBB	BBB
<b>June 30, 2008</b>	Baa2	BBB	BBB
<b>June 30, 2009</b>	Ba2	BB	BB
<b>June 30, 2010</b>	Ba3	BB	BB
<b>June 30, 2011</b>	Ba3	BB	BB-
<b>June 30, 2012</b>	B3	B	CCC

## CURRENT LEVELS OF MUNICIPAL SERVICES TO RESIDENTS AND BUSINESSES ARE SEVERELY INADEQUATE.

### The City Must Reduce High Crime Rates.

- In 2012, the City had the highest rate of violent crime of any U.S. city having a population over 200,000 (based on the FBI's Uniform Crime Reports database). The City's violent crime rate is five times the national average.
- All crime, not just violent crime, is prevalent in the City, with more than 136,000 crimes being reported in 2011.
  - See charts on following pages.
- EMS and DFD response times are extremely slow when compared to other cities (15 minutes and 7 minutes, respectively).
- Residents and business owners have been forced to take their safety into their own hands; some relatively well-off sections of the City have created private security forces.

### Comparable Data Regarding Public Safety.

#### Crime Data – National & Local Comparables

##### OFFENSES KNOWN TO LAW ENFORCEMENT

by State by City, 2011

City	Population	Violent crime	Murder and nonnegligent manslaughter	Forcible rape	Robbery	Aggravated assault	Property crime	Burglary	Larceny-theft	Motor vehicle theft	Arson
Detroit	713,239	15,245	344	427	4,962	9,512	43,818	15,994	16,456	11,368	957

##### Local Comparison

Dearborn	98,079	359	3	22	104	230	3,757	612	2,705	440	12
Livonia	96,869	168	1	19	40	108	2,108	308	1,589	211	11
Southfield	71,685	377	4	33	116	224	2,681	710	1,592	379	5

##### National Comparison

Cleveland	397,106	5,426	74	354	3,156	1,842	25,323	10,706	10,524	4,093	319
Pittsburgh	308,609	2,476	44	67	1,126	1,239	10,063	2,686	6,897	480	195
St. Louis	320,454	5,950	113	188	2,127	3,522	25,669	7,015	15,285	3,369	191
Milwaukee	597,426	5,969	85	194	2,963	2,727	30,097	6,669	18,890	4,538	262

## Incidents and Case Clearance Rates – National and Local Comparables

City	Violent Crime	Murder	Force Rape	Robbery	Aggravated Assault	Simple Assault	Property Crime	Burglary	Larceny Theft	MV Theft	Arson	Total
<b>Detroit</b>												
Cases Assigned	15,254	344	426	4,976	9,508	17,240	43,759	16,032	16,500	11,227	958	136,224
Cleared	2,841	39	54	401	2,347	2,427	1,844	730	578	536	57	11,854
<b>Clearance Rate</b>	<b>18.6%</b>	<b>11.3%</b>	<b>12.7%</b>	<b>8.1%</b>	<b>24.7%</b>	<b>14.1%</b>	<b>4.2%</b>	<b>4.6%</b>	<b>3.5%</b>	<b>4.8%</b>	<b>5.9%</b>	<b>8.7%</b>
<b>Pittsburgh</b>												
Cases Assigned	2,476	44	67	1,126	1,239	5,619	10,063	2,686	6,897	480	195	30,892
Cleared	1,247	22	61	435	729	3,963	1,997	498	1,312	187	55	10,506
<b>Clearance Rate</b>	<b>50.4%</b>	<b>50.0%</b>	<b>91.0%</b>	<b>38.6%</b>	<b>58.8%</b>	<b>70.5%</b>	<b>19.8%</b>	<b>18.5%</b>	<b>19.0%</b>	<b>39.0%</b>	<b>28.2%</b>	<b>34.0%</b>
<b>Milwaukee</b>												
Cases Assigned	6,637	86	205	3,091	3,255	7,253	30,669	7,079	19,030	4,560	272	82,137
Cleared	2,465	58	159	764	1,484	4,701	4,718	808	3,769	141	34	19,101
<b>Clearance Rate</b>	<b>37.1%</b>	<b>67.4%</b>	<b>77.6%</b>	<b>24.7%</b>	<b>45.6%</b>	<b>64.8%</b>	<b>15.4%</b>	<b>11.4%</b>	<b>19.8%</b>	<b>3.1%</b>	<b>13%</b>	<b>23.3%</b>
<b>St. Louis</b>												
Cases Assigned	5,950	113	188	2,127	3,522	4,866	25,669	7,015	15,285	3,369	191	68,295
Cleared	2,835	75	135	619	2,006	3,745	3,296	1,109	1,987	200	19	16,026
<b>Clearance Rate</b>	<b>47.6%</b>	<b>66.4%</b>	<b>71.8%</b>	<b>29.1%</b>	<b>57.0%</b>	<b>77.0%</b>	<b>12.8%</b>	<b>15.8%</b>	<b>13.0%</b>	<b>5.9%</b>	<b>9.9%</b>	<b>23.5%</b>
<b>Cleveland</b>												
Cases Assigned	5,431	74	356	3,157	1,844	16,257	25,418	10,724	10,598	4,096	319	78,274
Cleared	1,072	26	89	447	510	3,346	1,685	793	718	174	46	8,906
<b>Clearance Rate</b>	<b>19.7%</b>	<b>35.1%</b>	<b>25.0%</b>	<b>14.2%</b>	<b>27.7%</b>	<b>20.6%</b>	<b>6.6%</b>	<b>7.4%</b>	<b>6.8%</b>	<b>4.2%</b>	<b>14.4%</b>	<b>11.4%</b>



City	Violent Crime	Murder	Force Rape	Robbery	Aggravated Assault	Simple Assault	Property Crime	Burglary	Larceny Theft	MV Theft	Arson	Total
<b>Detroit</b>												
Cases Assigned	15,254	344	426	4,976	9,508	17,240	43,759	16,032	16,500	11,227	958	136,224
Cleared	2,841	39	54	401	2,347	2,427	1,844	730	578	536	57	11,854
<b>Clearance Rate</b>	<b>18.6%</b>	<b>11.3%</b>	<b>12.7%</b>	<b>8.1%</b>	<b>24.7%</b>	<b>14.1%</b>	<b>4.2%</b>	<b>4.6%</b>	<b>3.5%</b>	<b>4.8%</b>	<b>5.9%</b>	<b>8.7%</b>
<b>Southfield</b>												
Cases Assigned	380	4	36	116	224	1178	2688	710	1602	376	5	7319
Cleared	149	3	8	27	111	276	398	58	312	28	3	1373
<b>Clearance Rate</b>	<b>39.2%</b>	<b>75.0%</b>	<b>22.2%</b>	<b>23.3%</b>	<b>49.6%</b>	<b>23.4%</b>	<b>14.8%</b>	<b>8.2%</b>	<b>19.5%</b>	<b>7.4%</b>	<b>60.0%</b>	<b>18.8%</b>
<b>Livonia</b>												
Cases Assigned	168	1	19	40	108	552	2,114	309	1,595	210	11	5,127
Cleared	69	1	1	15	52	201	563	33	505	25	0	1,465
<b>Clearance Rate</b>	<b>41.1%</b>	<b>100.0%</b>	<b>5.3%</b>	<b>37.5%</b>	<b>48.1%</b>	<b>36.4%</b>	<b>26.6%</b>	<b>10.7%</b>	<b>31.7%</b>	<b>11.9%</b>	<b>0.0%</b>	<b>28.6%</b>
<b>Dearborn</b>												
Cases Assigned	361	3	24	104	230	1,346	3,756	609	2,709	438	12	9,592
Cleared	180	3	6	37	134	419	1,229	70	1,124	35	3	3,240
<b>Clearance Rate</b>	<b>49.9%</b>	<b>100.0%</b>	<b>25.0%</b>	<b>35.6%</b>	<b>58.3%</b>	<b>31.1%</b>	<b>32.7%</b>	<b>11.5%</b>	<b>41.5%</b>	<b>8.0%</b>	<b>25.0%</b>	<b>33.8%</b>

## THE CITY MUST PROVIDE FUNCTIONING STREET LIGHTS.

As of April 2013, approximately 40% of the City's street lights were not functioning. The lights that are functioning are scattered across the City's historical population footprint (and thus are not focused to meet the current population's actual needs).

City	Total Functioning Street Lights	Functioning Lights per square mile
<b>Detroit</b>	<b>52,800</b>	<b>370</b>

### Local Comparison

Dearborn	6,500	265
Livonia	5,000	204
Southfield	2,356	90

### National Comparison

Cleveland	67,000	812
Pittsburgh	39,779	682
St. Louis	52,000	785
Milwaukee	77,000	795

As of April 2013, the City estimated there was a backlog of approximately 3,300 complaints regarding the City's street lights.

## THE CITY MUST OVERHAUL ITS OPERATIONS.

### Police Department.

- Over the last five years, the DPD has had five different police chiefs, all having varying approaches to DPD’s operations.
- DPD’s efficiency (response times), effectiveness (case closure rate, crime reduction) and employee morale are extremely low.
- Data driven policing has not been fully adopted within DPD. Compstat (i.e., data driven policing) meetings (which would enhance accountability) are not fully implemented.
- DPD receives over 700,000 calls for service annually. DPD response times are extremely high.

### Response Time Data – Detroit Police Department

#### CITY OF DETROIT

##### Priority One Response Time (In Minutes)

Precinct	2012	2013	% Change
1	23	37	60.81%
2	22	40	78.42%
4	30	42	41.03%
5	39	78	99.46%
6	32	55	75.19%
7	22	41	89.05%
8	40	115	185.31%
9	38	68	78.95%
10	24	31	31.37%
11	24	41	71.78%
12	21	34	62.58%
13	25	42	73.31%
<b>AGENCY</b>	<b>2012</b>	<b>2013</b>	
DPD	30	58	94.73%

##### Priority Other Response Time (In Minutes)

Precinct	2012	2013	% Change
1	34	38	11.57%
2	48	58	22.56%
4	42	47	12.19%
5	56	97	75.20%
6	44	50	15.36%
7	38	60	57.05%
8	56	64	15.93%
9	54	49	-8.45%
10	30	43	44.28%
11	45	70	54.82%
12	37	54	47.35%
13	35	61	74.89%
<b>AGENCY</b>	<b>2012</b>	<b>2013</b>	
DPD	43	56	30.59%

- The national average response time is 11 minutes. Police response times for Dearborn and Livonia are approximately nine minutes and 24 minutes, respectively.
- The DPD's extremely low 8.7% case clearance rate is driven by the DPD's lack of a case management system, lack of accountability for detectives, unfavorable work rules imposed by collective bargaining agreements and a high attrition rate in the investigative operations unit.
- The DPD's manpower has been reduced by approximately 40% over the last 10 years causing constant strain on the organization; the DPD needs to evaluate appropriate uniform staffing levels.
  - Over 450 uniformed DPD employees are eligible for retirement in 2013. An additional 150 officers are eligible for retirement in each of the following five years.
- The DPD has restructured its operations multiple times over the past ten years due to dwindling budgets, severely hampering its operations.
- Employee accountability is limited. Individual employee performance metrics do not exist for either positive or negative police activity. Morale is extremely low. Disciplinary processes are slow and cumbersome, preventing leadership from effectively managing the Department.
- Community policing efforts are underfunded, uncoordinated and have been deemphasized by the DPD. "Citizens Radio Patrol" participants have lost confidence in the DPD's commitment to this important effort.

**Assessor's Office and Property Tax Division.**

- The City lacks a state-required Level IV Assessor and currently has a former employee contractor in the position, whose contract expires in June 2013. Due to inadequate compensation, among other things, there are no available candidates to fill this position.
- The Assessor's Office has approximately 15,000 parcels per employee. The State recommends 4,000 parcels per employee.
- The City has not updated residential property values on a regular basis. Therefore, residential property values are likely overstated. Due to a significant number of complaints, the Michigan Tax Board is investigating Detroit's allegedly inflated property values.

### **Detroit Department of Transportation.**

- Grant dollars are not maximized. These are typically a significant revenue source for bus transit systems.
- DDOT fares are lower than comparable bus transit systems.
- Maintenance operations are highly inefficient.
- High absenteeism among bus drivers causes inefficiencies and higher costs.

### **THE PHYSICAL DETERIORATION OF THE CITY MUST BE ADDRESSED.**

- There are approximately (i) 78,000 abandoned and blighted structures in the City, nearly half of which are considered “dangerous” and (ii) 66,000 blighted and vacant lots within the City limits.
- The number of City parks is dwindling, and many are in poor or fair condition as a result of neglect due to lack of funding.
  - The closure of 210 parks in the 2008-09 fiscal year reduced the City’s park portfolio by 66% — from 317 parks to 107 parks.
  - The City announced in February 2013 that 50 of its remaining 107 parks would be closed, another 38 parks would shift to limited maintenance, and Belle Isle (already suffering from a lack of funding) would receive decreased services.
    - Thanks to \$14 million in civic donations, the 50 parks slated to be closed will temporarily remain open through the summer of 2013.
- Approximately 70 superfund sites have been established in Detroit.
- The City’s electricity grid has not been adequately maintained and is deteriorating.
- The City’s fire stations are old and are not adequately maintained.
  - The average age of the City’s 35 fire stations is 80 years.
  - Maintenance costs often exceed \$1 million annually. Major items requiring constant repairs: apparatus doors, plumbing, electrical, boiler and roof problems.
- The vehicles and equipment employed by the City’s police, fire, EMS and transportation personnel are aging, poorly maintained and lack adequate information technology.

## THE CITY HAS INCURRED AND CONTINUES TO INCUR ENORMOUS COSTS ASSOCIATED WITH UNOCCUPIED PROPERTY.

### Land and Structures.

- The City's population decline and declining property values have resulted in large amounts of abandoned, forfeited or foreclosed land and structures within the City.
  - 85% of the City's land area has experienced population decline over the last decade.
- There are approximately 66,000 vacant and blighted lots within the City limits.
- There are approximately 78,000 vacant structures in the City.
  - Approximately 38,000 structures are considered dangerous buildings. The number of dangerous structures is constantly increasing due to vacancy (particularly foreclosures) and house fires.
    - 16,700 have been inspected and classified as dangerous.
    - 14,263 have open complaints of being dangerous.
    - 6,657 to go before City Council for order of demolition.
    - 1,159 are considered emergency demolitions.
- Blight contributes to fire, crime and depressed property values.
  - The City has seen between 11,000 – 12,000 fires each year for the past decade. Approximately 60% of these occur in blighted or unoccupied buildings.
  - The Fire Department spends a disproportionate (and arguably unnecessary) amount of time and money fighting fires in vacant structures. These incidents could be remedied by blight removal.

- Average cost to demolish a residential structure is approximately \$8,500, with an equalized total cost of \$5.74 per square foot.

<b>Expense</b>	<b>Amount</b>
Demolition Contract	\$5,000
Survey and Abatement	\$1,500
Gas Disconnect Fee	\$750
Administration Costs	\$720
Water Disconnect Fee	\$550
<i>Lis Pendens</i> (interest in structure)	\$15
<b>Total Cost of Demolition</b>	<b>\$8,535*</b>

\* Cost will vary depending on size of unit and construction materials used.

## ADDITIONAL CHALLENGES FACING BLIGHT REMOVAL EFFORTS.

Addressing blight will require the coordination of several state, county and local agencies (*e.g.*, the State Fast Track Land Bank Authority; Wayne County Treasurer and Land Bank; various City departments; the Detroit Land Bank Authority; the Detroit Housing Commission; and NGOs (*e.g.*, the Detroit Economic Growth Corporation and the Blight Authority)).

Blight removal is governed by multiple codes and regulations and a number of overlapping jurisdictions.

- **Code Enforcement and Adjudication** (*e.g.*, State of Michigan Housing Law; Zoning Ordinance, Chapter 61; Property Maintenance Ordinance, Chapter 9; Blight Violations Ordinance, Chapters 8.5 and 22; Sale of 1 and 2-family Ordinance).
- **Condemnation and Demolition** (*e.g.*, State of Michigan Housing Law; City Ordinance 290-H — wrecking structures; Industry Standard Building Officials Code Administration).
- **Foreclosure and Land Disposition** (*e.g.*, State of Michigan PA 123; various City codes addressing non-federal property).
- The current regulatory framework increases demolition costs and slows the process.

Ordinance and regulatory reform are needed to expedite demolition.

## DETROIT HAS ENDURED INADEQUATE INVESTMENT IN INFRASTRUCTURE AND EQUIPMENT FOR YEARS.

### Fire Department.

- **Fire Apparatus.** The Detroit Fire Department (“DFD”) fleet includes (i) 26 engines; (ii) 15 ladder trucks; (iii) six squads (specialized rescue vehicles with no watering or laddering capacity); (iv) one hazardous material apparatus; (v) one TAC unit (a mini-pumper for use in low-clearance structures such as parking garages) and (vi) 36 ambulances and other light vehicles.
- DFD’s fleet has “many mechanical issues,” contains no reserve vehicles and lacks equipment ordinarily regarded as standard.
  - The Apparatus Division’s mechanic to vehicle ratio of 1:39 (once staffed with 63 people; currently 26) results in an inability to complete preventative maintenance on schedule.
  - Detroit firefighters frequently operate shorthanded due to a lack of serviceable equipment; one DFD captain recently called his equipment “junk,” and expressed frustration at the lack of working trucks, pumps and other essential equipment across many City neighborhoods.
  - In February 2013, Detroit Fire Commissioner Donald Austin ordered firefighters not to use hydraulic ladders on DFD ladder trucks except in cases involving an “immediate threat to life” because the ladders had not received safety inspections “for years.” On May 15, 2013, AAA Michigan donated \$23,500 towards inspections of fire ladders on trucks and ground ladders because the City could not afford required inspections.
- **Fire Stations.** DFD operates 35 fire station buildings (average age = 80 years).
  - DFD has difficulty accommodating the size of modern firefighting equipment in older stations.
- **EMS Fleet.**
  - During the first quarter of 2013, frequently only 10 to 14 of the City’s 36 ambulances were in service.
  - Some of the City’s EMS vehicles have been driven 250,000 to 300,000 miles, and break down frequently.
  - In March 2013, a group of corporations pledged to donate \$8 million to the City, a portion of which will be used to upgrade the city’s fleet of EMS vehicles. The donation is expected to add 23 new leased EMS vehicles to the City’s fleet as replacements for older vehicles.



## Police Department.

- **Age of Police Cars.**

- The DPD operates with an “extremely old fleet” of 1,291 vehicles. Most DPD police cruisers lack necessary information technology.
- A majority of vehicles in the fleet have reached replacement age (a typical replacement cycle is three years). Operating with an aged fleet drives up maintenance costs.
- The combination of an aging fleet of police cruisers and layoffs of city-employed auto mechanics has resulted in delayed maintenance and a reduction in the number of police cruisers on patrol.
- As part of the approximately \$8 million pledged by a group of corporations in March 2013, DPD expects to receive 100 new leased cruisers in 2013.

- **Facilities.**

- The DPD has not invested in or maintained its facility infrastructure for many years. DPD has closed or consolidated multiple precincts.
- The DPD’s facility infrastructure has reached a critical level of disrepair and no longer meets its needs, contributing to low employee and citizen morale.

## Information Systems

- **Challenges generally:**

- Old and outdated technology assets and applications must be updated.
- Information technology infrastructure is not integrated between departments and functions (*e.g.*, there is no integration between core City finance system and Department level systems) or even within Departments (*e.g.*, police precincts and districts cannot share information across their systems).
- The City **urgently** needs to upgrade or replace the following IT systems, among others: payroll; financial; budget development; property information and assessment; income tax; and DPD operating system.
- The City lacks a formal documented IT governance structure (development of structure in process).

- **DPD, DFD and EMS**

- DPD, DFD and EMS information technology systems are obsolete; vendors do not provide full support; core functions are sporadic.
- DPD, DFD and EMS have non-integrated solutions that result in redundant data entry, no meaningful reporting and limited query capabilities.
  - DPD's IT systems, in particular, are outdated with multiple disparate systems with limited information sharing capability and requiring highly manual processes. The result is highly inefficient DPD operations.
  - DPD has no IT systems for jail management, electronic ticketing and activity logs. DPD vehicles lack necessary IT infrastructure.

- **Payroll System.**

- The City currently uses multiple, non-integrated payroll systems. A majority of employees are on an archaic payroll system that has limited reporting capability and no way to clearly track, monitor or report expenditures by category.
- The cost of payroll administration for the City is significantly higher than for comparable entities. Current cost to process payroll is \$62 per check (\$19.2 million per year), which is more than 4 times more costly than the overall average of \$15 per paycheck, and almost 3.5 times more costly than other public sector organizations, which average \$18 per paycheck.
  - The primary driver of excess cost is labor, which is more than 70% of the total cost for the City.
  - 149 full-time employees are involved in the payroll process, 51 of which are uniformed officers (*i.e.*, high-cost personnel performing clerical duties).
- Current process is highly manual (some done by hand) and prone to human error, including erroneous payments to individuals.

- **Income Tax Division**

- Income tax collection and data management are highly manual.
- The City's Income Tax System is outdated (purchased in the mid-1990s), has little to no automation capability and is "catastrophic" per an IRS audit completed in July 2012.

- Updating the current Income Tax System could (i) increase revenues for the City through improved revenue tax processing, tax compliance and collection and (ii) improve reporting, efficiency and accuracy.
  - A new tax system that allows for automated processing and e-filing capability will free up City resources to focus on compliance.
  
- **Property Tax Division.**
  - The City's billing, processing and collection of property taxes is inefficient.
  - Recommendations made by consultant in 2011 have not been followed, even though implementation promises to increase efficiency of collection process.
  
- **Budgeting, Accounting & Financial Reporting Systems.**
  - Oracle-based Financial Reporting system (DRMS) was implemented in 1999. It is not being utilized to its full capabilities and is no longer supported by its manufacturer.
  - Budget Development system (BRASS) is over ten years old and requires a manual interface with DRMS.
  - Approximately 70% of journal entries are booked manually.
  - The City lacks a true fail-over and backup system.
  - The integration of Accounting, Budget Development and Financial Reporting systems into a single process is necessary to provide for improved reporting, efficiency, accuracy and accountability.
  
- **Grant Management System.**
  - Grant tracking systems are fragmented. Thus, the City is unable to comprehensively track citywide grant funds and status.
  - Grant reporting is not standardized, such that the City is unable to prevent disallowed costs.

- **Permitting.**

- The Buildings, Safety Engineering and Environmental Department’s system for licensing and permitting is more than ten years old and needs to be upgraded.
- The Fire Marshall Division’s system for inspections and permitting is more than 20 years old and needs to be replaced.
- Current information technology system deficiencies lead to bottlenecks in permit invoicing and collection of fees.

- **Department of Transportation.**

- To improve service and safety, both on buses and at DDOT facilities, DDOT requires technology updates (*e.g.*, automatic vehicle location systems; bus cameras).

### **Electrical Transmission Grid and Fixtures.**

- The City’s Public Lighting Department (“*PLD*”) is responsible for operating and maintaining 88,000 streetlights and owns and operates a distribution-only electricity grid providing power for lighting and serving 114 customers.
- The City-owned Mistersky power plant has been idle for 2-3 years, but has not been decommissioned. In addition, the City has 31 sub-stations that would need to be decommissioned. The City is in the process of obtaining estimates for decommissioning costs.
- Approximately 40% of Detroit’s 88,000 streetlights are not functioning due, in large part, to disrepair and neglect; outages exist on both DTE Energy Company (“*DTE*”) and PLD-powered lights.
  - Outages affecting DTE-powered lights are primarily bulb-related. Outages on PLD-powered lights are partly bulb-related. Others are caused by problems related to PLD’s obsolete grid and wiring.

## THE CITY'S DEBT AND LEGACY LIABILITIES HAVE GROWN CONSIDERABLY OVER TIME.

### Balance Sheet Liabilities.

The City estimates that, as of the close of its 2013 fiscal year (*i.e.*, June 30, 2013), the City will have liabilities reflected on its balance sheet of approximately \$9.05 billion, including approximately:

- \$5.85 billion in special revenue obligations (*e.g.*, Enterprise Fund debt);
- \$1.43 billion in pension-related Certificate of Participation (“COPs”) liabilities;
- \$343.6 million in marked-to-market swap liabilities related to COPs (as of May 31, 2013 valuation);
- \$1.13 billion in unlimited and limited tax general obligation bond liabilities and notes and loans payable; and
- \$300 million in other liabilities.

### Off-Balance Sheet Liabilities.

- **OPEB Liabilities.** Unfunded OPEB liabilities increased from \$4.8 billion to \$5.7 billion from June 30, 2007 through June 30, 2011 (the most recent actuarial data available).
- **Pension Liabilities.**
  - As described in further detail below, the City’s reported pension UAAL (based on 2011 actuarial valuations) of \$643,754,109 is substantially understated.
    - Estimated UAAL for FY 2012 was \$829.8 million (for the General Retirement System (“GRS”) and \$147.2 million (for the Police and Fire Retirement System (“PFRS”)), based on 2011 actuarial assumptions.
  - Further analysis by the City using more realistic assumptions (including by reducing the discount rate by one percentage point) suggests that pension UAAL will be approximately \$3.5 billion as of June 30, 2013.
  - UAAL under the GRS and the PFRS increased by over \$1 billion between June 30, 2007 and June 30, 2011, even (i) using the actuarial assumptions used to calculate 2011 UAAL and (ii) after consideration of the contribution of the COPs proceeds in 2005 and 2006.

- For the five years ending with FY 2012, pension payments exceeded contributions and investment income by approximately \$1.7 billion for the GRS and \$1.6 billion for the PFRS, resulting in liquidation of pension trust principal.

<b>System</b>	<b>Benefit Payments</b>	<b>Contribution / Investment Income</b>	<b>Net Trust Loss</b>
GRS	\$1,601,193,045	(\$60,113,101)	\$1,661,306,146
PFRS	\$1,445,581,026	(\$127,803,339)	\$1,573,384,365

- **Increasing Legacy Liabilities.** During FY 2012, more than 38% of the City’s actual revenue was consumed servicing legacy liabilities. Going forward, legacy liabilities are expected to consume increasing portions of City revenues.
  - Projected unfunded OPEB liabilities for FY 2013 are currently being evaluated. As of the most recent valuation (June 30, 2011), OPEB unfunded liabilities totaled \$5.7 billion and are expected to grow absent restructuring.
  - Required pension contributions are projected to increase in light of (i) an increasingly mature population already in pension pay status, (ii) deferral of recognition of prior losses, (iii) the anticipated revision of actuarial assumptions used in the past and (iv) past deferrals of contributions.
  - In addition, the Governmental Accounting Standards Board has issued a statement (No. 67), effective during the City’s 2014 fiscal year, requiring municipalities to recognize their unfunded pension benefit obligation as a liability and to more comprehensively measure the annual costs of pension benefits.
  - Even if the City were not to change prior actuarial assumptions, pension UAAL is projected to grow to nearly \$2 billion by 2017. The adoption of realistic actuarial assumptions would result in a significantly higher number for UAAL.
- Debt service for the City’s general fund, including payments related to unlimited tax general obligations and COPs, is projected to exceed \$240 million in FY 2013.

## Obligations Secured by Special Revenues

- The City estimates that, as of the end of FY 2013 (*i.e.*, June 30, 2013), it will have:
  - \$5.34 billion in outstanding principal amount of revenue bonds; and
  - \$494 million in related state revolving loans.
- The revenue bonds and the revolving loans are related to the following funds:
  - Sewage Disposal Fund
    - \$2.82 billion in outstanding principal amount of notes maturing July 1, 2013 through July 1, 2039, as of June 30, 2013.
    - \$472.8 million in outstanding principal amount of state revolving loans, as of June 30, 2013.
    - Substantially all revenues of the sewage disposal system, net of operating expenses, pledged to secure payment of principal and interest. Net system revenues of \$227,447,337 versus debt service requirements of \$199,990,125 in FY 2012.
    - A schedule of the sewage disposal system bonds and related state revolving loans as of June 30, 2012 is attached hereto as Appendix A.
  - Water Fund
    - \$2.52 billion in outstanding principal amount of various series of notes maturing July 1, 2013 through July 1, 2041, as of June 30, 2013.
    - \$21.4 million in outstanding principal amount of state revolving loans, as of June 30, 2013.
    - Substantially all of the revenues of the City's water system, net of operating expenses, pledged to secure payment of principal and interest. Net system revenues of \$178,842,057 versus debt service requirements of \$153,441,666 in FY 2012.
    - A schedule of the water system bonds and related state revolving loans as of June 30, 2012 is attached hereto as Appendix B.

- Automobile Parking Fund
  - \$9.3 million in outstanding principal amount of Detroit Building Authority Revenue Refunding Bonds: Parking System, Series 1998-A maturing July 1, 2013 through July 1, 2019, as of June 30, 2013.
  - Substantially all revenues of the parking system, net of operating expenses, pledged to secure payments of principal and interest.
  - Net system revenues of \$2,708,223 versus debt service requirements of \$2,923,454 in FY 2012.
- A chart setting forth the annual debt service on the foregoing special revenue obligations is attached hereto as Appendix F.

### General Fund Obligations

- The City estimates that, as of the close of FY 2013 (*i.e.*, June 30, 2013), it will have \$1.01 billion in outstanding principal amount of limited and unlimited tax general obligation bonds, consisting of:
  - \$469.1 million in outstanding principal amount of unlimited tax general obligation (“*UTGO*”) bonds maturing from April 1, 2013 through November 1, 2035.
    - \$100 million of the foregoing bonds are secured by a second lien on distributable state aid.
  - \$540.3 million in outstanding principal amount of limited tax general obligation (“*LTGO*”) bonds maturing April 1, 2013 through November 1, 2035.
    - Issuance of LTGO bonds do not require voter approval. They are payable from general non-restricted funds.
    - \$249.8 million of the LTGO bonds are secured by a first lien on distributable state aid. \$129.5 million of the LTGO bonds are secured by a third lien on distributable state aid.



- The City estimates that, as of June 30, 2013, the City will have \$121.5 million in other outstanding installment notes and loans payable related to various public improvement projects.
  - \$87.8 million in notes payable, which notes were issued in connection with the “Section 108” HUD Loan Guarantee Program and are secured by future “Block Grant” revenues.
  - \$33.7 million in loans payable (\$33.6 million of which is a non-interest bearing unsecured loan payable to the Downtown Development Authority as general operating funds become available).
- On August 23, 2012, the City issued \$129.5 million of LTGO bonds at a \$9.1 million premium (generating \$137 million in proceeds after issuance costs) in part to defease short term bonds issued March 2012. The remaining proceeds of this issuance were set aside with a trustee bank in an escrow account to provide funds for reforms and liquidity in FY 2013. The current amount of the escrow is approximately \$80 million.
- A schedule of the secured general obligation bonds and secured notes and loans payable as of June 30, 2012 is attached hereto as Appendix D. A schedule of the unsecured general obligation bonds and unsecured loans payable as of June 30, 2012 is attached hereto as Appendix E. A chart setting forth the annual debt service on the foregoing general fund obligations (and other liabilities) is attached hereto as Appendix G.

**Certificates of Participation (Pension).**

- In 2005, service corporations established by the GRS and PFRS created a trust that issued the COPs. The proceeds of the COPs were contributed to the City’s pension trusts.
- Principal and interest on the COPs is payable solely from payments made by the City to the service corporations pursuant to service contracts.
- The City estimates that, as of the close of FY 2013 (*i.e.*, June 30, 2013), the following amounts were outstanding under the COPs:
  - \$480.3 million in outstanding principal amount of \$640,000,000 Certificates of Participation Series 2005 A maturing June 15, 2013 through 2025; and
  - \$948.54 million in outstanding principal amount of \$948,540,000 Certificates of Participation Series 2006 A and B maturing June 15, 2019 through 2035.

- The City has allocated portions of the COP liabilities among the transportation, sewage disposal, water and library funds based on each fund's share of the aggregate UAAL determined at the time of issuance of the COPs.
- The City has identified certain issues related to the validity and/or enforceability of the COPs that may warrant further investigation.
- A schedule of the COPs and related swap liabilities as of June 30, 2012 is attached hereto as Appendix C.

### **Swap Liabilities Related to Certificates of Participation.**

- In connection with the COPs, the City entered into eight pay-fixed, receive-variable interest rate swap contracts, effective as of June 12, 2006, with a total notional amount of \$800 million.
  - Recent valuations establish the negative fair value of the swaps at approximately \$343.6 million (as of May 31, 2013).
  - January 2009 — The City received notice from the swap contract counterparties that downgrading of the COPs and certain swap insurers would constitute an “Additional Termination Event” under the swap contracts if not cured.
  - June 2009 — The City and the swap contract counterparties agreed on an amendment to the swap agreements, eliminating the Additional Termination Event and the potential for an immediate demand for a termination payment. Pursuant to the amendment:
    - The swap counterparties waived their right to termination payments; and
    - The City agreed to:
      - direct certain wagering tax revenues to a trust as collateral for the quarterly payments owing to the swap counterparties;
      - increase the interest rate of the swap agreements by 10 basis points effective July 1, 2010; and
      - include new termination events, including if COP ratings were withdrawn, suspended or downgraded.
  - March 2012 — COPs were further downgraded which triggered another Termination Event; City and the swap counterparties are in negotiations regarding the Termination Event.
  - March 2013 — Appointment of Emergency Manager constitutes an event of default triggering another Termination Event.

- Although this proposal reflects treating the swap obligations as special revenue debt secured by the wagering tax revenues, that treatment is still being reviewed by the Emergency Manager.
- A chart setting forth the annual debt service on the COPs and related swap liabilities is attached hereto as Appendix H.

## UNSUSTAINABLE RETIREE BENEFITS.

### **OPEB Liabilities Are Large and Unfunded.**

- The OPEB plans consist of the Health and Life Insurance Benefit Plan and the Supplemental Death Benefit Plan.
- As of June 30, 2011 (the most recently published actuarial valuation), there were 19,389 retirees eligible to receive benefits under the City's OPEB plans. The number of retirees receiving benefits from the City is expected to increase over time.
- 99.6% of the City's OPEB liabilities are unfunded.
- **Health and Life Insurance Plan**
  - Defined benefit plan providing hospitalization, dental care, vision care and life insurance to current employees and substantially all retirees.
  - City generally pays for 80% to 100% of health care coverage for eligible retirees.
  - \$5,718,286,228 in actuarial liabilities as of June 30, 2011. An updated actuarial valuation based on more recent census data is currently being developed by third party professionals.
  - The Health and Life Insurance Plan is 0% funded; financed entirely on a "pay-as-you-go" basis.
  - \$177,460,627 cost to the City on account of retiree benefits during FY 2012 provided under the Health and Life Insurance Plan.
  - City's contribution is in addition to \$23,516,879 in FY 2012 contributions by retirees.

- The City's OPEB costs are expected to increase as a result of the City's growing number, and young age, of retirees (pension and health care plans have no age restrictions and early vesting ages) as well as increases in health care costs, particularly hospitalization costs.
- Health and Life Insurance Plan is secondary to Medicare for eligible employees over the age of 65; however, many retired police/fire employees are *not* eligible to receive free Medicare Part A benefits due to State-regulated social security "opt-out" provisions.
- **Supplemental Death Benefit Plan**
  - Pre-funded single-employer defined benefit plan providing death benefits based upon years of creditable service.
    - \$34,564,960 in actuarially accrued liabilities as of June 30, 2011.
    - 74.3% funded; UAAL of \$8.9 million.

**OPEB Obligations Arise Under a Multiplicity of Plans**

- The City's OPEB obligations arise under 22 different plans (15 different plans alone for medical/Rx) having varying structures and terms. This creates a high level of complexity and cost in benefit administration.

**Weiler Class OPEB Benefits.**

- In July 2006, the City made a number of unilateral changes to the healthcare benefits for unionized police and firefighter retirees. Retiree Alan Weiler filed a class action lawsuit on behalf of approximately 7,000 retirees alleging violations of collective bargaining agreements.
- The City and the *Weiler* class settled before trial, and the court entered a Consent Judgment approving the parties' settlement agreement. The settlement agreement requires the City to provide *Weiler* class members with generous health benefits for as long as class members receive a City pension.
- The *Weiler* plaintiffs are expected to assert that the settlement restricts the ability of the City to alter the benefit provisions included in the settlement.

- The *Weiler* class retirees/beneficiaries currently cost the City approximately \$75 million per year, representing over 40% of retiree benefits costs under the Health and Life Insurance Plan.

**Pension Liabilities Are Not Fully Funded – Shortfall Has Been Understated.**

**Aggressive Actuarial Assumptions Generate a Perception that Pensions are Modestly Underfunded.**

- GRS: Reported UAAL of \$639,871,444 out of \$3,720,167,178 in accrued liabilities as of June 30, 2011 (82.8% funded).
- PFRS: Reported UAAL of \$3,882,665 out of \$3,808,642,553 in accrued liabilities as of June 30, 2011, as a result of awards received under Public Act 312 of 1969 (99.9% funded).
- These funding levels were based on the following assumptions:

	GRS	PFRS
Amortization Period	30 years (refinanced anew each year)	30 years
Asset valuation method	7-year smoothed market	7-year smoothed market
Investment rate of return (net of expenses)	7.9%	8.0%
Projected salary increases	4.0%-8.9%	5.0%-9.2%
Inflation rate	4.0%	0% for four years; 4.0% thereafter
Cost-of-living pension adjustments	2.25%	2.25%

**More Realistic Assumptions Reveal That Funding Levels Have Been Overstated.**

- The combined reported UAAL of approximately \$644 million for the GRS/PFRS (estimated at \$977 million as of June 30, 2012) is **substantially** understated.
- Current actuarial valuations project aggressive and unrealistic annual rates of return on investments net of expenses (GRS — 7.9%; PFRS — 8.0%).

- Pension plan funding levels calculated based upon assumed annual rates of return of 7%, or even 7.5%, would further reduce funding levels.
- Smoothing of funding levels over seven years masks funding shortfall — pension plan funding levels calculated based on the current market value of the plans’ assets show substantially reduced funding levels (GRS – 65% funded; PFRS – 78% funded).
- A 30-year amortization period for unfunded liabilities — which in GRS is applied anew each year to the full amount of unfunded liability, akin to annually refinancing a 30-year mortgage — allows unfunded liabilities to continue to grow rapidly (due to compounding).
- Although many governmental plans have significant amortization periods for unfunded benefits (*e.g.*, MERS applies a 27-year amortization period with a goal of moving down to 20 years by the December 31, 2017 valuation), 30 years is longer than most and is far too long for these mature plans. Especially in the case of GRS, such a long period has the effect of deferring efforts to meaningfully reduce underfunding into the future.
- The City has consistently deferred payment of its year-end PFRS contributions (and finances such deferrals at a rate of 8%). As of June 30, 2012, the City owed the PFRS its full contribution for FY 2012 in the amount of approximately \$50 million. As of May 2013, the City had deferred approximately \$58 million in pension contributions owing for FY 2013. Contributions made in the form of notes have been treated as timely funding contributions made to the pension trust during the applicable financial year.
- The City was granted a funding credit by PFRS in the amount of \$25 million for each of the fiscal years 2008 through 2010 resulting in under-contributions by the City toward its pension liabilities for each of those years.

**Past Pension Practices.** Certain past trustee practices contributed to the pension plans’ significant underfunding (*e.g.*, annuity savings accounts; “13th checks”; ad hoc “sweeteners”; and various changes to eligibility (*e.g.*, lowered years of service, combined years of employment)).

- For example, in both pension plans (and especially GRS), hundreds of millions of dollars contributed by the City and invested to support the defined benefit arrangement have instead been used to fund investment returns selected (but not actually earned) on employee contributions made under a separate defined contribution arrangement known as the Annuity Savings Accounts.

**Anticipated Increase in Pension Contributions.** Using current actuarial assumptions, the City’s required pension contributions are projected to grow from 25% (for GRS) and 30% (for PFRS) of eligible payroll expenses in FY 2012 to 30% (for GRS) and 60% (for PFRS) of such expenses by FY 2017. Changes in actuarial assumptions would result in further increases to the City’s required pension contributions.

## OTHER LIABILITIES

The City estimates that, as of the end of FY 2013, the City will have \$300 million in other liabilities outstanding.

As of June 30, 2012, the City owed at least \$264.6 million in other liabilities, consisting primarily of:

- \$101.2 million in accrued compensated absences, including unpaid, accumulated vacation and sick leave balances;
- \$86.5 million in accrued workers’ compensation for which the City is self-insured;
- \$63.9 million in claims and judgments, including lawsuits and claims other than workers’ compensation claims; and
- \$13.0 million in capital leases and accrued pollution remedies.

	FUND						Total
	General Governmental	Sewage Disposal	Transportation	Water	Parking	Other Proprietary	
Accrued compensated absences	82,099,713	5,502,481	3,895,416	9,421,311	276,814	53,442	\$101,249,177
Accrued workers’ compensation	66,231,000	3,554,000	5,569,812	10,339,000	667,000	92,000	\$86,452,812
Capital leases payable			12,678,358				\$12,678,358
Claims and judgments	62,003,257	1,519,500		286,500	110,497	2,000	\$63,921,754
Accrued pollution remediation		340,613					\$340,613
<b>Total</b>	<b>\$210,333,970</b>	<b>\$10,916,594</b>	<b>\$22,143,586</b>	<b>\$20,046,811</b>	<b>\$1,054,311</b>	<b>\$147,442</b>	<b>\$264,642,714</b>

**Steady State Projection of Legacy Expenditures (assuming no restructuring)**

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIMINARY FORECAST				
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Legacy expenditures</b>										
Debt service (LTGO)	\$(66.6)	\$(106.2)	\$(63.5)	\$(64.5)	\$(62.6)	\$(70.8)	\$(70.9)	\$(61.8)	\$(61.8)	\$(38.5)
Debt service (UTGO)	(67.2)	(71.5)	(72.4)	(72.8)	(73.0)	(70.6)	(64.9)	(62.5)	(57.6)	(57.6)
POC - principal and interest (GF)	(24.6)	(20.9)	(23.6)	(33.5)	(33.0)	(46.8)	(51.4)	(53.3)	(55.0)	(56.9)
POC - principal and interest (EF, excl. DDOT)	(1.8)	(1.4)	(1.5)	(1.8)	(2.0)	(5.3)	(5.9)	(6.1)	(6.4)	(6.6)
POC - principal and interest (DDOT)	(3.5)	(2.8)	(3.0)	(3.6)	(4.0)	(3.3)	(3.7)	(3.8)	(3.9)	(4.1)
POC - swaps (GF)	(38.6)	(43.9)	(44.7)	(44.7)	(44.8)	(42.9)	(42.8)	(42.8)	(42.7)	(42.7)
POC - swaps (EF, excl. DDOT)	(2.3)	(2.0)	(2.0)	(2.0)	(2.0)	(4.8)	(4.8)	(4.8)	(4.9)	(4.9)
POC - swaps (DDOT)	(4.5)	(4.0)	(4.0)	(4.0)	(4.0)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)
Pension contributions - Public Safety	(58.9)	(31.4)	(32.8)	(81.6)	(49.8)	(46.1)	(139.0)	(163.0)	(180.0)	(198.0)
Pension contributions - Non-Public Safety	(10.6)	(27.0)	(11.1)	(28.3)	(25.4)	(19.9)	(36.9)	(42.5)	(47.7)	(53.1)
Pension contributions - DDOT	(6.8)	(7.3)	(6.9)	(9.5)	(10.9)	(12.3)	(23.6)	(27.7)	(31.2)	(34.8)
Health benefits - retiree - Public Safety	(73.7)	(80.2)	(70.4)	(79.6)	(90.6)	(91.5)	(88.6)	(95.2)	(101.7)	(108.0)
Health benefits - retiree - Non-Public Safety	(47.4)	(51.6)	(50.6)	(49.0)	(49.2)	(49.7)	(38.8)	(41.5)	(44.6)	(47.7)
Health benefits - retiree - DDOT	(8.2)	(11.8)	(11.2)	(11.1)	(10.3)	(10.4)	(13.3)	(14.3)	(15.3)	(16.3)
<b>Total legacy expenditures</b>	<b>\$(414.6)</b>	<b>\$(462.0)</b>	<b>\$(397.9)</b>	<b>\$(486.1)</b>	<b>\$(461.6)</b>	<b>\$(477.3)</b>	<b>\$(587.6)</b>	<b>\$(622.4)</b>	<b>\$(655.9)</b>	<b>\$(672.3)</b>
<b>Total revenues (excl. financing proceeds)</b>	<b>\$1,397.7</b>	<b>\$1,363.3</b>	<b>\$1,291.0</b>	<b>\$1,316.8</b>	<b>\$1,196.9</b>	<b>\$1,121.9</b>	<b>\$1,082.8</b>	<b>\$1,046.2</b>	<b>\$1,041.5</b>	<b>\$1,041.4</b>
<b>Total legacy expenditures as a % of total revenues</b>	<b>29.7%</b>	<b>33.9%</b>	<b>30.8%</b>	<b>36.9%</b>	<b>38.6%</b>	<b>42.5%</b>	<b>54.3%</b>	<b>59.5%</b>	<b>63.0%</b>	<b>64.6%</b>





## Restrictive Employment Terms.

The City's CBAs impose work rules and other restrictions that have impaired the efficient functioning of City government. The CETs provide some relief from work rules and other restrictions (in part through incorporation of a broad management rights clause).

- **“Bumping” Rights.** Employees have been permitted to transfer across departments based solely on seniority (without regard to merit, relevant qualifications or experience for the new position). The City has amended the criteria for transfers and assignments and based them upon experience, attendance, work performance, sick time use and demonstrated ability rather than seniority.
  - The CETs also negated seniority protections in various CBAs by changing shifts, hours of operation and overtime procedures; and revising or eliminating job classifications.
- **Limitations on Management Rights.** The City's ability to manage policies, goals and the scope of operations for many City departments (most notably with respect to the right to implement and modify disciplinary policies) have been impaired by limitations on management rights and responsibilities. The CETs have replaced these limitations with a broad management rights clause, granting the City broad discretion with respect to the design and implementation of work rules.
- **Arbitration Rights.** The CETs curtail the ability of arbitrators to uphold future grievances based on expired bargaining agreement provisions or past practice.
- **Lack of Reimbursement Rights.** The unions historically did not (i) reimburse the City for full-time and part-time paid union officials or (ii) pay any fees for the City's collection and remittance of union dues and service fees. Under the CETs, the City is reimbursed for paid officials and collects a 2% administrative fee in connection with efforts related to union dues/service fees.
- In addition to concessions imposed by the CETs, additional concessions have been granted through statutory interest arbitration. These concessions have not been uniformly applied to all bargaining units, and some City employees have not been affected by these measures.
- In some cases, changes to the City Charter and the City Code, or other legislative initiatives, may be necessary to support needed operational enhancements and reduce unnecessary bureaucracy.

## DETROIT WATER AND SEWERAGE DEPARTMENT MUST BE RESTRUCTURED.

The Detroit Water and Sewerage Department (“DWSD”) is one of the largest municipal water and sewerage departments in the nation, providing water and wastewater services to the City and many suburban communities in an eight-county area, covering 1,079 square miles.

### DWSD Capital Expenditures.

- Municipal securities broker/dealers and the City’s advisors’ analyses suggest that DWSD’s cost of capital is inflated due to the DWSD’s association with the City (and its financial circumstances). This increased cost of capital, coupled with the inability to raise rates and other factors, has resulted in significant under-spending on capital expenditures.
- DWSD’s January 2013 Capital Improvement Program totals approximately \$1.2 billion over the next four years with approximately \$322.4 million budgeted for water and sewer projects for FY 2013-14 and \$361.8 million budgeted for FY 2014-15.

### The EPA Litigation (E.D. Mich., Judge Cox).

- In 1977, the United States Environmental Protection Agency sued the City and the DWSD, alleging violations of the Clean Water Act (“CWA”). The case remained pending in the United States District Court for the Eastern District of Michigan — and the DWSD operated under federal oversight — for more than 35 years owing to “a recurring cycle” of compliance failures with regard to the CWA and National Pollutant Discharge Elimination System (“NPDES”) permits required by the Michigan Department of Environmental Quality (“MDEQ”).

### Administrative Consent Order.

- In July 2011, the DWSD agreed to undertake remedial measures pursuant to an Administrative Consent Order (“ACO”) with the MDEQ. The ACO instituted a compliance program with regard to areas of persistent dysfunction (*e.g.*, maintenance; inadequate capital expenditures and related planning; inadequate staffing; restrictive procurement policies).
- Following the dismissal of the EPA Litigation, the ACO is the only order through which the MDEQ maintains oversight of the DWSD.

### **Root Cause Committee Plan of Action.**

- Determining that the ACO, by itself, could not guarantee the DWSD's long-term compliance with CWA and NPDES standards, the district court ordered a "Root Cause Committee" comprised of City/DWSD officials to submit a plan addressing the "root causes" of the DWSD's noncompliance.
- The Root Cause Committee drafted – and the district court adopted – a "Plan of Action," which proposed to restructure the DWSD in order to address systemic dysfunction and achieve long-term compliance with federal and state standards (including, but not limited to, the imposition of changes on DWSD employees otherwise forbidden by applicable CBAs).
- A report submitted by the Root Cause Committee in March 2013 recommended an autonomous DWSD. Implementation of the Root Cause Committee's recommendation would require creation of two unique authorities (with one authority owning the assets and the other authority leasing the assets and making recurring payments to the City in lieu of taxes in the estimated annual amount of \$50,000,000 in consideration for the transfer of DWSD assets).

### **Order Dismissing Case.**

- By an order dated March 27, 2013, the district court closed the case, stating that it was satisfied that the court's orders and the ACO "have been substantially implemented." Closing the case was appropriate, the court said, "because the existing [ACO] is a sufficient mechanism to address any future issues regarding compliance with the DWSD's NPDES permit and the [CWA]."
- The district court did not order the implementation of the DWSD transaction proposed by the Root Cause Committee, citing its lack of authority to do so.
- The City appealed the district court's order dismissing the EPA Litigation on May 22, 2013.

## OTHER LITIGATION AFFECTING THE CITY'S FINANCIAL CONDITION

The City generally has been successful in defending against legal challenges to its attempts to restructure its financial affairs, but numerous cases have been filed and remain pending and additional cases may well be filed. Some of these cases could affect the ability of the City to successfully restructure its affairs.

### **Litigation Challenging Consent Agreement.**

#### **Decision Voiding CBA-Related Sections of Consent Agreement Reversed on Procedural Grounds.**

- In September 2012, the Ingham County Circuit Court struck down Sections 4.1 and 4.3 of the Consent Agreement, which provisions (i) granted the Mayor “authority to negotiate, renegotiate, execute, amend, modify, reject or terminate collective bargaining agreements” (§ 4.1) and (ii) gave the Financial Advisory Board approval rights over CBAs and allowed the Program Management Director to impose CBAs not approved by the City Council (§ 4.3). The Court overturned these provisions on the grounds that they improperly granted powers to Mayor Bing and other officials that are reserved exclusively to emergency managers.
- In October 2012, the Court of Appeals for the State of Michigan reversed the Ingham County court. The Court of Appeals’ ruling was based on procedural grounds (*i.e.*, that the Circuit Court had lacked jurisdiction where the plaintiff had failed to establish standing).

## Litigation Regarding Imposition of CETs.

Over 15 legal challenges and grievances related to the imposition of the CETs have been filed in several state courts and before the Michigan Employment Relations Commission (“MERC”). These cases challenge the enforceability of the Financial Stability Agreement and, thus, the legality of the CETs. These challenges generally have not prevented the City’s imposition of the CETs.

- **Imposition of CETs on Police Department.** In August of 2012, the Wayne County Circuit Court denied the Detroit Police Officers Association’s request for a permanent injunction against imposition of the CETs.
- **Imposition of CETs on DWSD Employees.** In the long-standing EPA Litigation, the United States District Court for the Eastern District of Michigan (i) required that DWSD employees enter into new CBAs with the DWSD (as opposed to with the City) and (ii) clarified that, although its orders did not restrict the DWSD from implementing CETs with respect to DWSD employees prior to negotiation of new CBAs, neither did such orders enjoin employees from challenging the CETs to the extent imposition thereof was inconsistent with applicable law. AFSCME Local 207 – the largest union in the DWSD – has challenged the imposition of the CETs upon DWSD employees before the MERC.
- **Restoration of Certain Pay Cuts.** In *In re City of Detroit and Detroit Police Officers Association*, Case No. D12 D-0354, the Detroit Police Officers Association, among other things, sought the restoration of a 10% across-the-board pay cut imposed upon all City police officers pursuant to the CETs. The City argued that such wage cuts were needed in light of the City’s ongoing financial emergency. The MERC panel ordered a 5% restoration of the officers’ wages, effective January 1, 2014 (and encouraged the emergency manager, the Mayor and the State Treasurer to consider instituting the 5% salary restoration effective July 1, 2013).

# KEY OBJECTIVES FOR A FINANCIAL RESTRUCTURING AND REHABILITATION OF DETROIT

To the fullest extent possible under all of the circumstances:

- Provide incentives (and eliminate disincentives) for businesses and residents to locate and/or remain in the City.
  - The City cannot stabilize or pay creditors meaningful recoveries if it continues to shrink.
  - Achieving this goal requires improvements in City services, particularly in the area of public safety and tax reform to reduce the cost of living in the City to more closely approximate costs of living in nearby areas.
- Maximize recoveries for creditors.
  - Since the City will not generate sufficient cash to pay all liabilities, alternatives have to be considered.
- Provide affordable pension and health insurance benefits, and restructure governance of pension arrangements.
- Eliminate blight to assist in stabilizing and revitalizing neighborhoods and communities within the City.
- Reform the City government operations to improve efficiency and reduce costs.
  - In many areas, longer term benefits will require immediate increases in capital investment.
- Maximize collection of taxes and fees that are levied or imposed.
- Generate value from City assets where it is appropriate to do so.





# CURRENT FINANCIAL STATUS

## HISTORICAL REVENUE AND EXPENDITURE TRENDS, INCLUDING PRELIMINARY FY 2013.

### General Fund summary

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIM.
	2008	2009	2010	2011	2012	2013
Total revenues	\$1,397.7	\$1,363.3	\$1,291.0	\$1,316.8	\$1,196.9	\$1,121.9
Operating expenditures	(1,111.1)	(1,025.3)	(964.7)	(887.5)	(857.1)	(692.0)
Legacy expenditures	(414.6)	(462.0)	(397.9)	(486.1)	(461.6)	(477.3)
Deficit (excl. financing proceeds)	(127.9)	(124.1)	(71.7)	(56.9)	(121.8)	(47.4)
Financing proceeds	75.0	-	250.0	-	-	137.0
Total surplus (deficit)	\$(52.9)	\$(124.1)	\$178.3	\$(56.9)	\$(121.8)	\$89.6
<b>Accumulated unrestricted General Fund deficit</b>	<b>\$ (219.2)</b>	<b>\$ (331.9)</b>	<b>\$ (155.7)</b>	<b>\$ (196.6)</b>	<b>\$ (326.6)</b>	<b>\$ (237.0)</b>

The City has made significant progress decreasing operating costs; however, revenues have declined more quickly and legacy costs have increased.

Excluding proceeds from debt issuances, the City's expenditures have exceeded revenues from FY 2008 to FY 2012 by an average of \$100 million annually.



### Wagering taxes

- Wagering tax revenues from Detroit’s three casinos have remained steady. Wagering tax receipts are projected to decrease through FY 2015 and beyond due to expected loss of gaming revenue to casinos opening in nearby Toledo, Ohio.
- Beginning January 2006, the City began receiving an additional 1% of adjusted gross receipts as percentage payment revenues. In addition, the City receives \$4 million from each casino when the casino reaches \$400 million in adjusted gross receipts during the calendar year.

### Property taxes

- Property tax revenues have been decreasing primarily due to declining taxable property valuations (~12% since FY 2008) and increasing charge-backs due to delinquency rates (charge-backs have been increasing at a quicker pace than delinquent bills transferred to Wayne County).
- Delinquent property tax bills are transferred to Wayne County and the City receives payment for the full amount submitted, less charge-backs for prior period uncollectible bills, which ultimately the City has to repay.
- Revenues were higher in FY 2011 due to (non-cash) adjustments to property tax distributions and charge-back liabilities that were overstated in prior years.

### Operating expenditures

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIM.
	2008	2009	2010	2011	2012	2013
Salaries/overtime/fringe	\$(509.9)	\$(506.6)	\$(466.4)	\$(454.8)	\$(431.5)	\$(357.3)
Health benefits - active	(49.9)	(54.4)	(70.8)	(64.6)	(54.3)	(43.1)
Professional and contractual services	(66.9)	(73.5)	(54.2)	(48.5)	(43.1)	(42.7)
Materials & supplies	(85.8)	(70.9)	(60.1)	(67.1)	(62.2)	(63.6)
Utilities	(35.6)	(38.6)	(27.8)	(30.1)	(27.1)	(25.5)
Other	(362.9)	(281.2)	(285.4)	(222.4)	(238.9)	(159.8)
<b>Operating expenditures</b>	<b>\$(1,111.1)</b>	<b>\$(1,025.3)</b>	<b>\$(964.7)</b>	<b>\$(887.5)</b>	<b>\$(857.1)</b>	<b>\$(692.0)</b>

### Salary/overtime/fringe

- The City has significantly reduced its payroll related costs since the peak in FY 2009 based on a variety of cost reduction efforts, including headcount reductions, furlough days, wage reductions, etc.

### Other expenses declining

- Other expenditures, including expenses covered by grant revenue, claims for self-insurance, professional/contractual services and purchased electricity and gas/fuel costs have declined by more than \$266 million (44%) over the past six years.

### Legacy expenditures

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIM.
	2008	2009	2010	2011	2012	2013
Debt service (LTGO & UTGO)	\$(133.8)	\$(177.6)	\$(135.9)	\$(137.3)	\$(135.6)	\$(141.4)
POC - principal and interest	(29.8)	(25.1)	(28.1)	(38.9)	(39.0)	(55.4)
POC swaps	(45.3)	(49.9)	(50.7)	(50.7)	(50.7)	(50.6)
Pension contributions	(76.3)	(65.7)	(50.8)	(119.5)	(86.1)	(78.3)
Health benefits - retiree	(129.3)	(143.7)	(132.3)	(139.7)	(150.1)	(151.6)
<b>Legacy expenditures</b>	<b>\$(414.6)</b>	<b>\$(462.0)</b>	<b>\$(397.9)</b>	<b>\$(486.1)</b>	<b>\$(461.6)</b>	<b>\$(477.3)</b>

### Debt service and COP payments

- COP-related payments include swap interest payments and principal and interest.
- COP-related payments have been increasing due to increasing scheduled maturities and increasing swap interest rates through FY 2010.
- Debt service was higher in FY 2009 due to a balloon payment due in 2009 on debt related to the Greater Detroit Resource Recovery Authority.
- COP-related payments are forecast to increase due to a back-loaded amortization schedule.

## Pension contributions

- The City has consistently deferred year-end PFRS contributions by using a payment plan financing arrangement paying 8% interest (~\$50 million for FY 2012).
- The City was granted a \$25 million credit in each of the years 2008, 2009, and 2010. If not for these credits, the contribution would have been \$25 million higher in each of those years, thereby saving the City a cumulative \$75 million. Therefore, the contributions for 2008, 2009, and 2010 are effectively understated.

## Health Benefits - Retiree

- The total cost of healthcare benefits City-wide in FY 2012 was approximately \$275 million, of which approximately \$177 million related to retirees.
- The General Fund's portion of healthcare costs in FY 2012 was approximately \$204 million, of which approximately \$150 million related to retirees.

## FY 2013 Cash Flow

### FY 2013 Forecast.

- At the end of FY 2012, the City held cash of \$29.8 million, subject to accumulated property tax distributions in the amount of \$27.9 million, or cash net of distributions of \$1.9 million.
- Based upon actual results through May 31, 2013 and forecasted results through the end of FY 2013, the City is projecting positive net cash flow of \$4.0 million for FY 2013.
  - However, as of June 30, 2013, the City will have accumulated deferrals of approximately \$120 million, primarily related to pension contributions. If not for the deferrals of payments, the City would have already run out of cash.
- In August 2012 (FY 2013), the City issued \$129.5 million in self-insurance and capital improvement bonds (proceeds of \$137 million) with the assistance of the Michigan Finance Authority; however, \$80 million was used to repay a short-term borrowing in FY 2012 and the balance was placed in escrow subject to State Treasury approval of withdrawal.
- In December 2012, the State authorized the City to draw an additional \$10 million from the escrowed proceeds.
- The forecast assumes an additional \$20 million will be drawn in June 2013.

### **Interfund Loans and Other Outstanding Amounts Due.**

- As of May 31, 2013, the City's general fund had outstanding deferrals and amounts due to other funds and entities of approximately \$202.6 million. These are effectively borrowings and must be repaid.
  - Cash owed to other funds: As of May 31, 2013, the General Fund owed approximately \$41.2 million to other funds (e.g., Risk Management Fund).
  - Cash commingled with General Fund: As of May 31, 2013, the General Fund held \$52.6 million of other funds' cash in its operating account (e.g., Major and Local Street Funds).
  - Property tax distributions: As of May 31, 2013, the General Fund owed \$55.1 million to other taxing authorities (e.g., Detroit Public Schools and Wayne County).
  - Deferred pension contributions: As of May 31, 2013, the General Fund owed \$53.7 million in delinquent pension contributions to the GRS and PFRS systems.
  - On June 30, 2013, the City will owe an additional \$50 million (estimated) related to the FY 2013 required PFRS contribution, which will increase the amount of deferred pension contributions to over \$100 million.

### **Cash conservation measures include:**

- Issuance of short-term (RANs & TANs) and long-term debt.
- General fund borrowing from other funds, deferrals of payments to other funds and cash pooling (as described above).
- Deferral of trade payments and management of accounts payable with reference to available cash. Current accounts payable are approximately aged 60 to 75 days. Issues related to unvouchered accounts payable could increase the aging profile of the City's A/P.

## FY 2013 Forecasted Cash Flow to Year End

\$ in millions

	Actual FY 2012	Actual Jul-12	Actual Aug-12	Actual Sep-12	Actual Oct-12	Actual Nov-12	Actual Dec-12	Actual Jan-13	Actual Feb-13	Actual Mar-13	Actual Apr-13	Actual May-13	Forecast Jun-13	11A + 1F FY 2013
<b>Operating Receipts</b>														
Property taxes	\$567.0	\$34.0	\$198.0	\$14.8	\$6.9	\$4.2	\$24.4	\$139.1	\$42.3	\$5.4	\$1.3	\$3.1	\$58.0	\$531.6
Income & utility taxes	276.2	23.1	25.1	21.5	25.8	23.6	21.9	25.4	23.9	20.4	30.2	30.8	18.4	290.1
Gaming taxes	177.5	12.4	15.2	17.2	12.4	20.8	11.0	11.5	19.6	14.4	12.8	16.5	9.2	173.0
Municipal service fee to casinos	19.8	-	7.6	-	-	4.0	4.0	1.8	-	-	-	-	-	17.4
State revenue sharing	194.3	28.5	-	28.7	-	30.9	-	30.4	-	30.6	-	29.7	-	178.9
Other receipts	480.8	26.1	37.8	26.0	22.5	26.6	31.7	16.7	58.0	25.6	29.3	41.4	19.4	361.2
Refinancing proceeds	50.0	-	-	-	-	-	10.0	-	-	-	-	-	20.0	30.0
<b>Total operating receipts</b>	<b>1,765.5</b>	<b>124.2</b>	<b>283.8</b>	<b>108.2</b>	<b>67.5</b>	<b>110.1</b>	<b>103.1</b>	<b>225.0</b>	<b>143.9</b>	<b>96.5</b>	<b>73.6</b>	<b>121.4</b>	<b>125.0</b>	<b>1,582.2</b>
<b>Operating Disbursements</b>														
Payroll, taxes, & deductions	(454.2)	(37.5)	(35.0)	(32.5)	(28.0)	(41.1)	(30.1)	(23.6)	(30.1)	(25.9)	(26.3)	(36.2)	(27.2)	(373.6)
Benefits	(203.4)	(18.3)	(21.0)	(20.4)	(16.7)	(16.2)	(19.5)	(9.7)	(15.8)	(17.7)	(4.7)	(14.9)	(16.0)	(191.0)
Pension contributions	(103.9)	-	(11.7)	(7.2)	-	(1.2)	(8.8)	(1.9)	-	-	-	-	-	(30.8)
Subsidy payments	(50.0)	(0.6)	(4.9)	(6.2)	(1.1)	-	(0.1)	(0.2)	(5.7)	(5.0)	(3.9)	(1.6)	(10.9)	(40.1)
Distributions - tax authorities	(374.4)	(0.9)	(110.1)	(34.3)	(2.1)	(4.2)	(1.5)	(8.1)	(79.4)	(14.7)	(0.6)	-	(27.2)	(283.2)
Distributions - UTGO		-	(1.5)	(11.0)	(1.3)	-	-	-	(1.3)	(52.1)	(1.3)	-	-	(68.6)
Distributions - DDA increment	(8.6)	-	-	-	-	-	-	(5.9)	-	-	-	-	(5.5)	(11.4)
Income tax refunds	(16.9)	(1.9)	(3.3)	(0.6)	-	(1.8)	(1.0)	(0.5)	(0.4)	(0.4)	(1.9)	(1.6)	(3.8)	(17.2)
A/P and other disbursements	(477.5)	(43.8)	(48.1)	(34.5)	(31.4)	(37.1)	(25.2)	(24.3)	(34.7)	(29.3)	(27.7)	(36.9)	(32.2)	(405.3)
Professional fees		-	-	-	-	-	-	-	-	-	-	-	-	-
Sub-total operating disbursements	(1,688.9)	(103.1)	(235.7)	(146.8)	(80.6)	(101.7)	(86.1)	(74.1)	(167.4)	(145.0)	(66.5)	(91.3)	(122.8)	(1,421.1)
POC and debt related payments	(142.1)	(4.2)	(5.4)	(4.9)	(9.0)	(7.9)	(14.9)	(3.1)	(8.5)	(4.8)	(32.2)	(25.6)	(36.6)	(157.1)
<b>Total disbursements</b>	<b>(1,831.0)</b>	<b>(107.3)</b>	<b>(241.1)</b>	<b>(151.7)</b>	<b>(89.6)</b>	<b>(109.6)</b>	<b>(101.0)</b>	<b>(77.2)</b>	<b>(175.9)</b>	<b>(149.8)</b>	<b>(98.8)</b>	<b>(116.9)</b>	<b>(159.4)</b>	<b>(1,578.2)</b>
<b>Net cash flow</b>	<b>(65.5)</b>	<b>16.9</b>	<b>42.6</b>	<b>(43.5)</b>	<b>(22.0)</b>	<b>0.5</b>	<b>2.1</b>	<b>147.8</b>	<b>(32.1)</b>	<b>(53.3)</b>	<b>(25.2)</b>	<b>4.6</b>	<b>(34.4)</b>	<b>4.0</b>
Cumulative net cash flow		16.9	59.5	16.0	(6.0)	(5.5)	(3.4)	144.4	112.3	59.0	33.9	38.4	4.0	
Beginning cash balance	95.3	29.8	46.7	89.3	45.8	23.8	24.3	26.4	174.2	142.1	88.8	63.7	68.2	29.8
Net cash flow	(65.5)	16.9	42.6	(43.5)	(22.0)	0.5	2.1	147.8	(32.1)	(53.3)	(25.2)	4.6	(34.4)	4.0
<b>Cash before required distributions</b>	<b>\$29.8</b>	<b>\$46.7</b>	<b>\$89.3</b>	<b>\$45.8</b>	<b>\$23.8</b>	<b>\$24.3</b>	<b>\$26.4</b>	<b>\$174.2</b>	<b>\$142.1</b>	<b>\$88.8</b>	<b>\$63.7</b>	<b>\$68.2</b>	<b>\$33.8</b>	<b>\$33.8</b>
Accumulated property tax distributions	(27.9)	(48.1)	(77.8)	(31.8)	(32.9)	(31.5)	(48.0)	(149.8)	(89.5)	(26.9)	(26.0)	(28.5)	(19.7)	(19.7)
<b>Cash net of distributions</b>	<b>\$1.9</b>	<b>\$(1.4)</b>	<b>\$11.5</b>	<b>\$14.0</b>	<b>\$(9.1)</b>	<b>\$(7.1)</b>	<b>\$(21.5)</b>	<b>\$24.4</b>	<b>\$52.6</b>	<b>\$61.9</b>	<b>\$37.6</b>	<b>\$39.7</b>	<b>\$14.1</b>	<b>\$14.1</b>
<b>Memo:</b>														
Accumulated deferrals	(64.4)	(66.2)	(56.3)	(50.9)	(52.7)	(53.2)	(46.3)	(44.2)	(53.9)	(57.7)	(61.5)	(65.8)	(118.7)	(118.7)
Refunding bond proceeds in escrow	28.6	28.6	81.7	81.7	81.7	81.7	71.7	71.7	71.7	71.7	71.7	51.7	51.7	51.7
Reimbursements owed to other funds	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd

### FY 2014 Forecasted Cash Flow to Year End

<i>\$ in millions</i>	Forecast Jul 13	Forecast Aug-13	Forecast Sep-13	Forecast Oct-13	Forecast Nov-13	Forecast Dec-13	Forecast Jan-14	Forecast Feb-14	Forecast Mar-14	Forecast Apr-14	Forecast May-14	Forecast Jun-14	Forecast FY 2014
<b>Operating Receipts</b>													
Property taxes	\$37.8	\$166.6	\$13.0	\$6.6	\$3.1	\$21.5	\$139.1	\$20.8	\$4.8	\$1.3	\$2.5	\$51.1	\$468.4
Income & utility taxes	28.7	22.7	22.3	28.3	22.7	22.3	28.3	23.5	22.7	28.3	22.3	22.7	294.7
Gaming taxes	14.6	14.1	8.9	23.1	10.4	9.4	22.1	9.9	15.1	17.4	13.2	11.8	170.0
Municipal service fee to casinos	-	7.6	-	-	4.0	4.0	1.8	-	-	-	-	-	17.4
State revenue sharing	30.7	-	30.7	-	30.7	-	30.7	-	30.7	-	30.7	-	184.3
Other receipts	27.2	25.8	25.9	32.9	26.3	25.9	32.9	27.1	26.3	32.9	25.9	26.3	335.9
Refinancing proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total operating receipts</b>	<b>139.1</b>	<b>236.9</b>	<b>100.9</b>	<b>91.0</b>	<b>97.2</b>	<b>83.2</b>	<b>255.0</b>	<b>81.3</b>	<b>99.6</b>	<b>80.0</b>	<b>94.6</b>	<b>111.9</b>	<b>1,470.7</b>
<b>Operating Disbursements</b>													
Payroll, taxes, & deductions	(31.0)	(26.6)	(26.6)	(35.5)	(26.6)	(26.6)	(31.0)	(26.6)	(26.6)	(35.5)	(26.6)	(26.6)	(345.6)
Benefits	(15.5)	(15.5)	(15.5)	(15.5)	(15.5)	(15.5)	(15.5)	(14.0)	(14.0)	(14.0)	(14.0)	(14.0)	(178.6)
Pension contributions	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(14.7)	(175.9)
Subsidy payments	(7.6)	(5.0)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(6.3)	(75.6)
Distributions - tax authorities	(14.8)	(72.4)	(40.0)	(5.7)	(1.0)	(1.3)	(57.3)	(20.9)	(14.0)	(1.7)	-	(24.0)	(253.1)
Distributions - UTGO	-	(12.0)	-	-	-	-	-	-	(44.9)	-	-	-	(56.9)
Distributions - DDA increment	-	-	-	-	-	(8.0)	-	-	-	-	-	(1.0)	(9.0)
Income tax refunds	(2.5)	(2.7)	(.06)	(0.3)	(1.5)	(1.0)	(0.6)	(0.3)	(0.4)	(2.3)	(1.2)	(3.7)	(17.0)
A/P and other disbursements	(36.3)	(37.9)	(29.3)	(37.1)	(30.1)	(25.6)	(40.8)	(23.0)	(33.5)	(39.7)	(30.0)	(30.0)	(393.2)
Sub-total operating disbursements	(122.3)	(186.7)	(132.8)	(115.1)	(95.6)	(98.9)	(166.0)	(105.8)	(154.4)	(114.3)	(92.8)	(120.3)	(1,504.9)
POC and debt related payments	(7.4)	(4.2)	(5.8)	(8.5)	(7.3)	(15.4)	(7.3)	(4.2)	(5.7)	(51.9)	(7.3)	(39.1)	(164.2)
<b>Total disbursements</b>	<b>(129.6)</b>	<b>(191.0)</b>	<b>(138.6)</b>	<b>(123.5)</b>	<b>(102.9)</b>	<b>(114.3)</b>	<b>(173.4)</b>	<b>(110.0)</b>	<b>(160.2)</b>	<b>(166.1)</b>	<b>(100.1)</b>	<b>(159.3)</b>	<b>(1,669.1)</b>
<b>Net cash flow</b>	<b>9.5</b>	<b>45.9</b>	<b>(37.7)</b>	<b>(32.6)</b>	<b>(5.7)</b>	<b>(31.1)</b>	<b>(81.6)</b>	<b>(28.7)</b>	<b>(60.6)</b>	<b>(86.1)</b>	<b>(5.5)</b>	<b>(47.4)</b>	<b>(198.5)</b>
Cumulative net cash flow	9.5	55.4	17.7	(14.9)	(20.6)	(51.7)	29.9	1.1	(59.4)	(145.6)	(151.0)	(198.5)	
Beginning cash balance	33.8	43.3	89.2	51.5	18.9	13.2	(17.9)	63.7	34.9	25.6	(111.8)	(117.2)	33.8
Net cash flow	9.5	45.9	(37.7)	(32.6)	(5.7)	(31.1)	81.6	(28.7)	(60.6)	(86.1)	(5.5)	(47.4)	(198.5)
<b>Cash before required distributions</b>	<b>\$43.3</b>	<b>\$89.2</b>	<b>\$51.5</b>	<b>\$18.9</b>	<b>\$13.2</b>	<b>\$(17.9)</b>	<b>\$63.7</b>	<b>\$34.9</b>	<b>\$(25.6)</b>	<b>\$(111.8)</b>	<b>\$(117.2)</b>	<b>\$(164.7)</b>	<b>\$(164.7)</b>
Accumulated property tax distributions	(29.8)	(55.4)	(24.0)	(22.7)	(23.7)	(38.6)	(86.5)	(82.2)	(27.1)	(26.5)	(28.5)	(19.7)	(19.7)
<b>Cash net of distributions</b>	<b>\$13.5</b>	<b>\$33.8</b>	<b>\$27.4</b>	<b>\$(3.8)</b>	<b>\$(10.5)</b>	<b>\$(56.5)</b>	<b>\$(22.8)</b>	<b>\$(47.2)</b>	<b>\$(52.7)</b>	<b>\$(138.2)</b>	<b>\$(145.7)</b>	<b>\$(184.4)</b>	<b>\$(184.4)</b>
<b>Memo:</b>													
Accumulated deferrals	(119.3)	(112.4)	(112.8)	(113.5)	(113.9)	(114.4)	(115.0)	(115.5)	(116.0)	(116.6)	(117.1)	(117.6)	(117.6)
Refunding bond proceeds in escrow	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7	51.7
Reimbursements owed to other funds	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd	tbd



## IN THE ABSENCE OF A COMPREHENSIVE FINANCIAL RESTRUCTURING, BUDGET DEFICITS WILL CONTINUE FOR THE FORESEEABLE FUTURE.

### **The City Has Limited Options for Further Revenue Generation and, in the Absence of a Comprehensive Financial Restructuring, Cost-Saving Measures.**

- Legacy obligations continue to increase;
- Limited or no access to capital markets;
- Diminishing, if any, returns from further tax increases; and
- Minimal potential for further payroll related reductions.

### **Absent Structural Changes, the City's Accumulated Deficit is Expected to Grow to Unprecedented Levels.**

- At the City's current run rate, its accumulated deficit could grow to 3-4 times its current level of \$326.6 million to over \$1.35 billion by FY 2017.

## A Look at the Future in the Absence of Restructuring Initiatives

\***Note:** The following projections were prepared based solely on the City's current levels of operating expenses and capital expenditures and do *not* account for (i) increases in expenditures necessary to restore City services to adequate levels, (ii) additional investment by the City in services, assets or infrastructure or (iii) any changes to legacy liabilities.

(\$ in millions)	FISCAL YEAR ENDED ACTUAL					PRELIMINARY FORECAST					5-YEAR TOTAL
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	
<b>Revenues</b>											
Municipal income tax	\$276.5	\$240.8	\$216.5	\$228.3	\$233.0	\$238.7	\$243.4	\$247.3	\$249.0	\$250.7	\$1,229.1
State revenue sharing	249.6	266.6	263.6	239.3	173.3	182.8	184.3	186.1	187.9	189.5	930.4
Wagering taxes	180.4	173.0	183.3	176.9	181.4	173.0	170.0	168.3	170.0	171.7	853.0
Sales and charges for services	191.3	166.7	154.1	155.0	145.4	120.4	124.8	119.4	118.2	117.0	599.7
Property taxes	155.2	163.7	143.0	182.7	147.8	134.9	118.4	110.2	105.7	100.8	570.0
Utility users' and other taxes	73.0	71.5	64.8	64.8	57.1	54.8	47.2	40.9	40.9	41.3	225.0
Other revenue	156.9	142.7	134.2	152.4	125.5	93.4	75.6	55.8	55.8	55.9	336.4
General Fund reimbursements	34.7	55.7	47.6	32.3	47.6	31.2	30.3	30.3	30.3	30.3	152.2
Transfers in (UTGO millage & non-General Fund POCs)	80.1	82.5	83.8	85.1	85.8	92.8	89.0	87.9	83.8	84.4	438.0
<b>Total revenues</b>	<b>1,397.7</b>	<b>1,363.3</b>	<b>1,291.0</b>	<b>1,316.8</b>	<b>1,196.9</b>	<b>1,121.9</b>	<b>1,082.8</b>	<b>1,046.2</b>	<b>1,041.5</b>	<b>1,041.4</b>	<b>5,333.8</b>
<b>Expenditures</b>											
Salaries/overtime/fringe	(509.9)	(506.6)	(466.4)	(454.8)	(431.5)	(357.3)	(341.5)	(341.9)	(346.4)	(352.5)	(1,739.7)
Health benefits - active	(49.9)	(54.4)	(70.8)	(64.6)	(54.3)	(43.1)	(51.2)	(54.0)	(57.4)	(61.0)	(266.7)
Other operating expenses	(551.2)	(464.3)	(427.5)	(368.2)	(371.3)	(291.6)	(292.9)	(288.2)	(295.9)	(301.5)	(1,470.2)
Operating expenditures	(1,111.1)	(1,025.3)	(964.7)	(887.5)	(857.1)	(692.0)	(685.7)	(684.1)	(699.7)	(715.0)	(3,476.6)
<b>Net operating surplus</b>	<b>286.7</b>	<b>338.0</b>	<b>326.3</b>	<b>429.2</b>	<b>339.8</b>	<b>429.9</b>	<b>397.2</b>	<b>362.0</b>	<b>341.8</b>	<b>326.3</b>	<b>1,857.2</b>
Debt service (LTGO & UTGO)	(133.8)	(177.6)	(135.9)	(137.3)	(135.6)	(141.4)	(135.9)	(124.4)	(119.4)	(96.1)	(617.2)
POC - principal and interest	(29.8)	(25.1)	(28.1)	(38.9)	(39.0)	(55.4)	(61.0)	(63.2)	(65.4)	(67.6)	(312.6)
POC swaps	(45.3)	(49.9)	(50.7)	(50.7)	(50.7)	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(253.1)
Pension contributions	(76.3)	(65.7)	(50.8)	(119.5)	(86.1)	(78.3)	(199.5)	(233.1)	(258.9)	(285.9)	(1,055.8)
Health benefits - retiree	(129.3)	(143.7)	(132.3)	(139.7)	(150.1)	(151.6)	(140.7)	(151.1)	(161.6)	(172.0)	(776.9)
Legacy expenditures	(414.6)	(462.0)	(397.9)	(486.1)	(461.6)	(477.3)	(587.6)	(622.4)	(655.9)	(672.3)	(3,015.6)
<b>Deficit (excl. financing proceeds)</b>	<b>(127.9)</b>	<b>(124.1)</b>	<b>(71.7)</b>	<b>(56.9)</b>	<b>(121.8)</b>	<b>(47.4)</b>	<b>(190.5)</b>	<b>(260.4)</b>	<b>(314.1)</b>	<b>(346.0)</b>	<b>(1,158.4)</b>
Financing proceeds	75.0	-	250.0	-	-	137.0	-	-	-	-	137.0
<b>Total surplus (deficit)</b>	<b>\$(52.9)</b>	<b>\$(124.1)</b>	<b>\$178.3</b>	<b>\$(56.9)</b>	<b>\$(121.8)</b>	<b>\$89.6</b>	<b>\$(190.5)</b>	<b>\$(260.4)</b>	<b>\$(314.1)</b>	<b>\$(346.0)</b>	<b>\$(1,021.4)</b>
Accumulated unrestricted General Fund deficit	\$(219.2)	\$(331.9)	\$(155.7)	\$(196.6)	\$(326.6)	\$(237.0)	\$(427.5)	\$(687.9)	\$(1,002.0)	\$(1,348.0)	

# THE CITY HAS TAKEN ACTION TO ADDRESS ITS FINANCIAL CHALLENGES

The City has already taken numerous steps to improve its financial position including expense savings and revenue increases. These initiatives save the City an estimated \$200 million per year but they also impose substantial burdens on the City's workforce and residents.

## Headcount Reductions.

- Since 2011, the City has reduced its headcount by more than 2,700 employees (from 12,302 employees as of close of FY 2010 to approximately 9,560 as of May 31, 2013).
- The City's headcount reductions have resulted in annual savings of over \$100 million.

## Reductions of Labor Costs through Implementation of City Employment Terms.

- On July 12, 2012, the Financial Advisory Board approved the CETs for (i) employees in unions with expired CBAs and (ii) nonunion employees, effective as of July 17, 2012.
- Among other things, the CETs provide for (i) wage reductions (implemented through imposition of furlough days); (ii) caps/reductions on vacation/holiday pay/overtime/sick days; (iii) the reduction of pension multipliers; and (iv) changes to healthcare coverage.
- Implementation of the CETs provides for an estimated \$102 million in annual savings.
  - \$25 million in savings attributable to wage reductions (24% of savings).
  - \$59 million in savings attributable to reduced active and retiree benefits (59% of savings).
  - \$9 million in savings attributable to reduced pension costs (9% of savings).
  - \$8 million in savings attributable to changes to work rules (8% of savings).

- **Police Work Rules.** The CETs implement a number of changes to work rules governing the DPD. For example, the CETs implement changes related to (i) the establishment of a joint labor/management committee to determine the assignment of civilians to certain job functions (*i.e.*, “civilianization”); (ii) the ability of the chief of police to hire and deploy personnel; (iii) limitations on court time pay, holiday pay, eligibility for overtime pay, holiday pay and bonus vacation days; (iv) elimination of educational reimbursement programs; (v) elimination of “wage differential” compensation while employees are on roster for promotion; and (vi) delaying separation payments.
- **Other Union Rules.** The CETs also implement a number of changes to work rules governing those unions with contracts that expired on or before June 30, 2012. For example, the CETs implement changes related to (i) freezing sick leave banks and eliminating reserve sick leave accrual; (ii) elimination of sick time cash payouts for future earned time; (iii) reserving the City’s right to reinstate furlough days; (iv) elimination of the \$3-per-day allowance for daily car usage; (v) elimination of four to six annual bonus vacation days; and (vi) reduced vacation accrual to 160 hours from 320 hours.

**Revenue Generating Initiatives.**

- **Increased Corporate Tax Rate.** In January 2012, the City’s corporate income tax rate was raised to 2.0% from 1.0%. This increased rate was projected to generate an estimated \$6 million in additional annual revenue.
- **Enhanced Tax Collection Initiatives.** The City has implemented, and is implementing, initiatives designed to (i) improve collection of past due taxes and (ii) enhance collection efforts on a prospective basis. These efforts to enhance collection of taxes could generate an estimated \$13 million in additional annual revenue.
- **Increased Lighting Rates.** In January 2013, the PLD increased its rates to more closely align with market rates/ eliminate practice of charging customers less for power than the City itself was paying. Increased PLD rates could generate an estimated \$9 million in additional annual revenue.

**Significantly Reduced Operating Expenses.**

- **Reductions in Vendor Costs.** The City is implementing an initiative to reduce its vendor-related costs by 10%. Reductions in vendor costs are expected to save an estimated \$10 million annually.
- **Reduction in Subsidy to DDOT.** In 2012, the City undertook steps to improve the efficiency of the Detroit Dep’t of Transportation (*e.g.*, through route rationalization), thereby reducing the subsidy from the City’s General Fund to the DDOT enterprise fund by approximately \$15 million annually.

### Deferred Capital Expenditures.

- The City has deferred capital expenditures.
  - Average aggregate capital outlays for the fiscal years 2008 – 2012 were only \$82.98 million. Average aggregate capital outlays for the preceding fiscal years 2003 – 2007 were \$151.94 million.
  - For fiscal years 2014 – 2023, it is estimated that General Fund necessary capital expenditures will average approximately \$145 million.

### Demolition Initiative.

Program launched in April 2010 with the goal of demolishing 10,000 vacant structures in 3 years.

- Over 5,000 structures have been demolished; the remaining portion of the 10,000 structures in the program are planned to be demolished by December 2013.
- Despite \$72 million in committed and expended funds for this initiative, there is a funding gap of \$40 million to complete the demolition of 10,000 structures and achieve the program's goal.
- Demolition initiative only addresses 13% of the vacant buildings in the City and 26% of such buildings that are classified as dangerous.
  - Ancillary demolition initiative in partnership with State allocated \$10 million related to mortgage-related settlement to targeted demolition of 1,234 structures around schools. 179 structures demolished as of February, 28, 2013 (with another 56 under contract).

### Execution of Consent Agreement/Creation of Financial Advisory Board.

- **Early 2012:** City and State negotiate a “Financial Stability Agreement” (often referred to as the “Consent Agreement”) in an effort to achieve (i) financial stability for the City and (ii) a stable platform for future growth.
- The City Council approved the Consent Agreement on April 4, 2012. The Consent Agreement was executed by the Mayor, the members of a State-appointed Financial Review Team, the State Treasurer and the Governor as of April 5, 2012.

- The Consent Agreement created a “Financial Advisory Board” (the “*FAB*”), of nine members selected by the Governor, the State Treasurer, the Mayor and City Council.
  - Under the Consent Agreement, the FAB had an oversight role and limited powers over certain City reform and budget activities.
  - The FAB has held, and continues to hold, regular public meetings and continues to exercise its oversight functions consistent with the Consent Agreement.
- To implement the reform efforts set forth in the Consent Agreement, the positions of “Chief Financial Officer” and “Program Management Director “were established. Each report to the Mayor.

#### **Legislation Authorizing Appointment of an Emergency Manager (“*EM*”).**

- In 1990, the Michigan Legislature enacted Public Act 72 (“*PA 72*”), which empowered the State to intervene in municipalities facing financial crisis through the appointment of an EM who, once appointed, assumed many of the powers ordinarily held by local elected officials.
- Effective March 16, 2011, the Legislature repealed PA 72 and enacted Public Act 4 (“*PA 4*”). PA 4 enhanced the State’s power to intervene in financially troubled municipalities by, for example, giving EMs the authority to unilaterally modify, reject or terminate municipal contracts.
- Michigan voters rejected PA 4 by referendum on November 5, 2012.
- The Michigan Court of Appeals ruled that the rejection of PA 4 automatically revived PA 72.
- Effective March 28, 2013, the Legislature enacted Public Act 436 (“*PA 436*”), which repealed and replaced the revived PA 72.
  - Like PA 4, PA 436 empowers EMs to modify, reject or terminate municipal contracts.
  - PA 436 contains an appropriations provision that immunizes the law from referendum.

### **Appointment of EM.**

- Pursuant to PA 72, on December 19, 2012, Governor Snyder appointed a Financial Review Team to examine the City's financial situation.
- On February 19, 2013, the Financial Review Team issued a report concluding that Detroit was in a state of financial emergency.
- Based upon the Financial Review Team's findings, on March 1, 2013, the Governor determined that a financial emergency existed in Detroit — a determination that, under PA 72, required the Local Emergency Financial Assistance Loan Board (“LEFALB”) to appoint an EM for Detroit.
- On March 14, 2013, the LEFALB appointed Kevyn Orr as EM for Detroit.
  - Mr. Orr's first employment contract became effective on March 25, 2013, the day Mr. Orr began work as EM. Three days later, on the date PA 436 repealed and replaced PA 72, Mr. Orr and the State entered into a second contract.

### **Litigation Relating to Detroit EM Appointment.**

- In *Davis v. Local Emergency Financial Assistance Loan Board*, pending in the Ingham County Circuit Court, the plaintiff (i) alleges violations of Michigan's Open Meetings Act by the LEFALB in connection with Mr. Orr's appointment as Detroit EM and (ii) requests that the court invalidate that appointment.
  - Case law indicates that the LEFALB is not a public body subject to the Open Meetings Act.
  - Parties are currently engaged in various discovery disputes and dispositive motion practice; answer yet to be filed.
- In *Citizens United Against Corrupt Government v. Local Emergency Financial Assistance Loan Board*, pending in the U.S. District Court for the Eastern District of Michigan, the plaintiff (i) argues that Mr. Orr could not have been appointed under PA 72, because that law could not have been in effect and (ii) asks the court to reverse its previous opinion that voter rejection of PA 4 revived PA 72.

## Litigation Challenging PA 436

- In *Phillips v. Snyder*, pending in the U.S. District Court for the Eastern District of Michigan, the plaintiffs seek, among other things, (i) declaratory relief that PA 436 violates, among other things, the U.S. Constitution and the Voting Rights Act; and (ii) injunctive relief, among other things, preventing the Defendants and any EMs from exercising rights under PA 436. A hearing on the defendants' motion to dismiss is scheduled for August 21, 2013.
- In *Detroit NAACP v. Snyder*, pending in the U.S. District Court for the Eastern District of Michigan, the plaintiffs seek an order declaring that PA 436 violates the Due Process and Equal Protection clauses of the U.S. Constitution. The plaintiffs assert that the Michigan Legislature violated the pre-clearance requirement of section 5 of the Voting Rights Act in passing PA 436. The plaintiffs seek injunctive relief against any actions taken pursuant to PA 436, including all actions initiated by EMs.

## Litigation Concerning Actions Taken by Other EMs.

- Since 1990, EMs have been appointed to restructure the finances of Hamtramck, Highland Park, Flint, Three Oaks, Pontiac, Ecorse, Benton Harbor, Allen Park — and now Detroit. Except for Hamtramck, Highland Park, Ecorse and Three Oaks, each of these municipalities remains under the control of an EM. The school districts of Detroit, Highland Park and Muskegon Heights also are currently operating under EM control.
- Opponents have challenged various EM actions in administrative proceedings, arbitration and lawsuits with mixed results.
  - **Litigation Relating to Actions Affecting CBAs.** Under PA 4, EMs have ordered unilateral modifications to CBA provisions. Plaintiffs have challenged such modifications on federal and state law grounds, including constitutional challenges based on Contracts Clause and Due Process arguments.
    - **Limitation on EM Power to Modify CBAs.** On March 29, 2013, the United States District Court for the Eastern District of Michigan enjoined an EM's unilateral modifications to CBAs with unions representing municipal retirees. The EM had shifted certain health care costs from the municipality to retirees. The court granted the plaintiffs' motion for a preliminary injunction on Contracts Clause and Due Process Clause grounds. An appeal is pending before the Sixth Circuit Court of Appeals.



- **Litigation Relating to Changes in Salaries of Local Elected Officials.**
  - EMs have reduced the compensation paid to mayors and city council members, at least on a temporary basis. Courts have held that local elected officials do not have property rights to continued compensation at a pre-existing level, and that an EM can eliminate elected officials' salaries entirely.
- **Litigation in Connection with Termination of Unelected Municipal Employees with “For Cause” Contracts.**
  - While an EM’s broad power to hire and terminate at-will municipal employees has not been subject to any legal challenges, the Sixth Circuit Court of Appeals recently affirmed a ruling that, under PA 72, an EM did not have authority to fire a municipal employee who was not a department head, and whose employment contract provided for dismissal only “for cause,” without first providing notice and an opportunity to be heard.
- **Litigation in Connection with Modification or Termination of Municipal Contracts.**
  - PA 4 contained a provision authorizing an EM to “[r]eject, modify, or terminate 1 or more terms and conditions of an existing contract.” PA 436 contains identical language.
  - Although no ruling to date has invalidated the statutory authority of an EM to modify or reject contracts, a Michigan circuit court recently ruled PA 4’s contract-modification provision unconstitutional as applied.
  - The U.S. District Court for the Eastern District of Michigan recently rejected cross-motions for summary judgment and scheduled a bench trial to resolve a claim that an EM’s termination of real estate leases violated the Contracts Clause of the U.S. Constitution.
- **Litigation in Connection with Bidding Processes for Municipal Contracts.**
  - Recent litigation regarding the fairness and transparency of a contract bidding process instituted by an EM was settled prior to decision (and after denial of injunctive relief).
- **Litigation Concerning Michigan’s Open Meetings Act.**
  - The Michigan Court of Appeals has held that an EM is not subject to the state Open Meetings Act, even when the EM assumes the duties of a body that is subject to the act (*e.g.*, the city council).
- **Litigation Concerning Restructuring a Municipal Pension Board.**
  - In a case that may be particular to PA 72, displaced pension board members and others obtained an injunction staying an EM’s decision to restructure a city’s largest pension board (reducing its membership from 11 to 5) in Michigan circuit court. The defendants have moved for leave to appeal in the Michigan Court of Appeals.

### **Continuing Role of Mayor and City Council.**

- Under PA 436, Mr. Orr acts for and in the place of the Detroit mayor and city council.
- PA 436 prohibits Detroit's local elected officials from exercising any powers except as expressly authorized by PA 436 or as authorized in writing by Mr. Orr and subject to any conditions he may impose.
- Nevertheless, both the Mayor and the City Council have continuing legal roles and rights under PA 436. Maintaining such offices should help ensure that the executive and legislative branches of City government can resume full functioning upon the City's transition out of receivership.
- On March 25, 2013, Mr. Orr issued an order restoring the full salaries and benefits of the mayor and city council, which compensation otherwise would have been automatically eliminated on PA 436's effective date of March 28, 2013.
- On April 11, 2013, Mr. Orr issued an order authorizing the mayor and city council to continue conducting the day-to-day business of the City, subject to limitations imposed by PA 436 and Mr. Orr's ultimate approval.
- Since Mr. Orr's appointment, the FAB continues to serve, but its responsibilities and powers remain subject to modification.

# RESTRUCTURING AND REINVESTING IN CITY GOVERNMENT

To address the crises confronting the City and remedy the deficiencies in services addressed above (including, in particular, deficiencies in services relating to public safety), and to achieve a sustainable restructuring that promotes the longterm health, safety and growth of the City, the City must aggressively pursue – and devote substantial resources to – the objectives described below.

The City proposes to spend approximately \$1.25 billion over the next ten years to, among other things, (i) improve the performance and infrastructure of its Police, Fire, EMS and Transportation Departments, (ii) comprehensively address and remediate urban blight, (iii) modernize its information technology systems on a City-wide basis and (iv) address lingering issues plaguing the City’s electrical grid and lighting.

A detailed summary of the reinvestments to be made in the City — and the associated costs — is attached hereto as Appendix J.

## PUBLIC SAFETY

### Police.

- **Key Issues and Deficiencies to Be Addressed.**
  - Exceedingly high crime rates.
  - Outdated and obsolete information technology.
  - Poor quantitative performance (*e.g.*, low response times; low case closure rates)
  - Inadequate staffing, low employee morale and lack of employee accountability.
  - Aging infrastructure (*e.g.*, fleet and facilities).



- **Initiatives To Be Undertaken to Achieve Objectives.**

- Hiring of new police chief to drive DPD restructuring (in process).
- Implement Compstat (*i.e.*, data-driven policing) model to increase accountability of command staff; evaluate outsourcing crime analysis to a third party with deep statistical analysis capabilities; implement key performance metrics driven by crime data.
- Restructure department and streamline cumbersome processes to improve operational efficiency; evaluate precincts, districts and special units; utilize accountability metrics and IT systems to eliminate non-productive policing time.
- Enhance DPD collaboration with all facets of community (*e.g.*, individuals, neighborhood groups, clergy, schools, private social service agencies); facilitate relationships with all facets of government.
- Expand “Citizens Radio Patrol” to serve as extended eyes and ears of the DPD, thereby increasing law enforcement effectiveness; deploy to all areas of Detroit. A recently-implemented “Broken Windows” pilot project has achieved positive results in the 8th Precinct’s Rosedale Park neighborhood. This pilot project could be expanded City-wide.
- Restructured operations and deficient sworn staffing levels will be addressed by a comprehensive workload analysis and crime statistics trends; redeploy sworn members based on data-driven approach.
- Civilianize eligible administrative functions and redeploy sworn officers.
- Hold all members (sworn and civilian) of the department accountable; redesign disciplinary process and ensure it is transparent, consistent and effective.
- Develop strategy to address low employee morale.
- Provide adequate operational and technological resources to officers (*e.g.*, uniforms, vests, tasers, vehicles, IT, etc.).
- Better utilize police reserves.
- Develop detailed recruiting strategy (with respect to both new recruits and experienced hires); explore outsourcing all or a portion of Police Academy training to local MCOLES certified academic institutions; continue to provide training courses on DPD rules, regulations, policies, and City ordinances; develop overall training plans for metrics, financials and operations.



- **Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward**  
(numbers in brackets represent increases in expenditures):

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total Restructuring/Reinvestment					
Facility Costs	(4.5)	(4.0)	(4.1)	(18.4)	(1.1)
Fleet Update - Repairs & Maintenance	(0.6)	(1.9)	(2.0)	(2.0)	(2.1)
Technology/Other	(1.3)	(0.2)	(0.2)	(0.2)	(0.2)
Total	(6.3)	(6.1)	(6.2)	(20.6)	(3.4)

- **Initiatives To Be Undertaken to Achieve Objectives.**

- Substantial investments in assets and new information technology are required to improve delivery of services.
- Evaluate and implement revenue enhancements to improve and streamline billing and collections processes, increase charges and fees and enhance grant identification and management.
- Take steps to improve operating efficiency and cost structure, including:
  - Implementing flexible labor work rules and employment terms;
  - Evaluating opportunities to more fully integrate fire-fighting and EMS;
  - Civilianizing administrative functions;
  - Transferring apparatus maintenance to General Services Department in an effort to more efficiently manage the fleet; and
  - Increasing the use of technology to drive efficiencies.
    - Seek assistance from independent experts to assist with designing and vetting DFD-specific restructuring plan.
    - Evaluate opportunities to share administrative costs within public safety structure.
    - Evaluate opportunities to combine fire and/or EMS services with other local municipalities.

**Blight Removal.**

- **Key Issues and Deficiencies to Be Addressed.**

- Large numbers of abandoned and blighted structures.
- Contribution of blight to high fire and crime levels and depressed property values.
- High cost of demolition of blighted structures.
- Cumbersome statutes and regulations governing blight removal efforts.

- **Measurable Objectives.**

- Stabilize and revitalize neighborhoods and communities within the City and improve quality of life.
- Decrease incidence of crime and fire in blighted buildings and areas.
- Increase property values and property taxes.
- Improvement in appearance of City.
- Reduce migration from City.

- **Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward**

- Costs associated with blight removal include demolition, brush removal, recycling centers, disposal of debris, logistics, administration, and legal costs associated with clearing title and preserving the City's right to reimbursement of costs.

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total Blight Costs	50.0	50.0	100.0	100.0	100.0



- **Initiatives to Be Undertaken to Achieve Objectives.**

- The City has begun and will continue to remediate blight within the City by partnering with public and private initiatives and utilizing a mix of Federal, State, municipal and private (commercial and non-profit) resources.
- The City's will participate in broader State initiatives coordinated by the Michigan State Housing Development Authority (MSHDA) and focus on collaboration across public entities holding underutilized lands; effective and appropriate blight removal policies and regulation; efficient and safe demolition and clearing activities from publicly owned properties; and returning properties to the private tax base to create value.
- To the extent that resources become available to remediate blight within the City, the City may be able to accelerate its residential, commercial and industrial blight remediation, or reallocate budgeted resources to other initiatives or spending items, including supporting its liabilities.
- Pursue grant funds to pay for the demolition of abandoned structures.
- Review and, where appropriate, revise ordinances and regulations to speed and reduce the cost of the demolition process.
- Support construction of recycling centers for local demolition materials via volume or other commitments.
- Consolidate and integrate Police and Fire activity data to use strategic demolition activities as a means to reduce crime and arson.

## Electrical Transmission Grid.

- **Key Issues and Deficiencies to Be Addressed.**
  - Inadequate maintenance and deterioration of grid.
  - Need to de-commission segments of the grid, sub-stations and the Mistersky power plant.
  - Inefficient billing and collection efforts.
- **Measurable Objectives.**
  - Improvement in performance of grid and services to citizens.
  - Decommissioning of grid, sub-stations and power plant.
  - Increased revenue collection from customers.
- **Initiatives to Be Undertaken to Achieve Objectives.**
  - The City is considering alternatives to exit the electricity business.
    - An alternative being considered consists of migrating customers to an alternative provider over a five- to seven-year period with the alternative provider providing reimbursement to the City to maintain the distribution grid on the provider's behalf.
      - Five- to seven-year build-out:
        - i. Year 1 — meters changed to alternative provider's system and customers transitioned. PLD continues to operate and maintain the system during the transition period.
        - ii. Years 2-7 — customers migrate to alternative provider's grid on a substation by substation basis as the PLD operation is simultaneously scaled down.
      - Customers (including City) would pay alternative provider's rate book (which could be higher than the current rate charged/incurred by City).
      - PLD workers and/or third party contractors will operate and maintain City grid until build-out is finished (cost reimbursed by alternative provider subject to negotiation). Requires regulatory approval.

## Street lights

- **Key Issues and Deficiencies to Be Addressed.**
  - High percentage of non-functioning streetlights.
  - Working lights not adequately serving current population footprint.
  - Dated infrastructure requiring upgrade and modernization.
- **Measurable Objectives.**
  - Implementation current population-based streetlight footprint.
  - Outsource operations and maintenance to the newly-created Public Lighting Authority structure (in consultation with the City).
  - Improved service to citizens and better cost management.
- **Initiatives to Be Undertaken to Achieve Objectives.**
  - Short term: address outages systematically in an effort to restore light and facilitate the transition of streetlights to the new structure.
  - Long term: newly-established authority to upgrade, operate and maintain streetlights, resulting in an approximately 46,000-55,000 light footprint servicing today's Detroit.
    - Three year build-out (1/3 of lights each year).
    - Alternative provider will potentially manage project for Authority (subject to competitive bid).
    - Authority or City will negotiate special rate for operations and maintenance/electricity of lights as no regulated rate exists for operations and maintenance of municipal-owned system.
- **Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward.**
  - Under the proposed structure, the PLD's net tax cost is expected to be approximately \$12 million annually.
  - The \$12.5 million of utility users' tax will be directed to the Authority as per statute. The Authority may seek to issue debt of \$160 million secured by tax receipts to fund its activities.

## Information Systems Upgrades

- Investment by the City in upgraded information technology is an indispensable aspect of the restructuring and reinvestment proposals and is critical to achieving almost all of the objectives described herein.
- **Key Issues and Deficiencies to Be Addressed.**
  - Old and outdated technology assets and applications.
  - Lack of integration of IT infrastructure between departments and functions.
  - Deficiencies in IT infrastructure present throughout City government.
- **Measurable Objectives.**
  - Enhance City-wide IT infrastructure to assist with effectuating change and augmenting workflows.
  - Increase integration between finance and operational systems City-wide resulting in lower labor costs and improved efficiencies.
  - Improve financial and operational reporting, resulting in:
    - Ability to monitor and improve operating performance.
    - More timely and accurate financial reporting to interested parties.
    - Improve revenue and collection efforts as a result of streamlined processes.
- **Initiatives to Be Undertaken to Achieve Objectives.**
  - **DPD, DFD & EMS.**
    - DPD has identified a fully integrated public safety solution (SunGard/OSSI) that can provide DPD, DFD and EMS (all of which support the solution) with integrated computer aided dispatch, records management and reporting.
    - Regional solution that integrates the City of Detroit with Wayne County, Detroit Public Schools, Wayne State University, Down River communities, etc.
    - Costs to implement Public Safety IT solution: approximately \$5 million.
    - An integrated product will allow for much-needed data exchanges between agencies and will improve efficiency and operations.

- **Payroll System Upgrade.**

- In November 2012, the City contracted to transition its payroll (and benefits and human resources) operations to ADP Payroll Services. The transition is expected to be complete in March 2014.
- Benefits of payroll system upgrade:
  - Approximately \$10 million annual reduction in payroll processing costs.
  - Approximately \$10 million annual reduction to payroll inflation from errors.
  - Improved reporting, efficiency and accuracy.
  - Approximately 50+ uniformed policemen to be re-deployed.

- **Overhaul and Centralize Grant Management System.**

- City receives approximately \$293 million in grants related to its services each year.
- City may invest in an overhaul of the administration of its grant management system, including centralizing oversight and support and standardizing information technology.
- City may appoint an auditor general to screen for potential mismanagement of grant funding.
- Benefits:
  - Implementing a centralized and standardized grant IT system is expected to result in the City receiving more grant funds with better compliance at a lower cost.
  - Ability to comprehensively track Citywide grant funds and status.
  - Citywide accountability structure to prevent disallowed costs and improve service delivery.
  - Improved relations with federal, state and private funders.
  - Ability to discover and apply for more grant opportunities.

- Costs:
  - Training modules to migrate system (cost TBD).
  - Implementation of grants IT module and related training.
  - Potential operating costs for grants management operating unit are approximately \$700,000.
- **Assessor's Office and Property Tax Division.**
  - Recommendations made by consultant in 2011 have not been followed, even though implementation promises to increase efficiency of collection process.
  - A consultant is currently engaged to identify issues and make recommendations at Assessor's Office Division. The consultant's Property Tax Transformation Project engagement includes a review and assessment of operations and related recommendations, assistance with the Property Tax software upgrade and assistance with the preparation of the Summer Tax Bill for mail and distribution on July 1, 2013.
  - Preliminary recommendations to improve the Assessor's Office functionality include additional resources to create a more robust valuation function, additional employee training and updated technology to increase efficiency and improve customer service.
- **Integrate Budgeting, Accounting & Financial Reporting Systems.**
  - Integration of Accounting, Budget Development and Financial Reporting systems into a single process would provide for improved reporting, efficiency, accuracy and accountability.
  - Costs to implement such an integration initiative are not currently known.

- **Permitting.**

- Implement “Enterprise Resource Planning” system to replace the two systems currently being utilized.
- Total costs to implement Enterprise Resource Planning system: approximately \$3 million.

- **36th District Court.**

- State legislature is currently evaluating ability of all courts to go paperless; if accepted, paperless solution would provide many advantages to 36th District Court.
- Transition to paperless court requires substantial investments in assets and new information technology.
- Perform process mapping to determine workflow improvements and implement full use of JIS.

- **Income Tax Division.**

- Update the current Income Tax System, which will result in (i) increased revenues for the City through improved revenue tax processing, tax compliance and collection; and (ii) improved reporting, efficiency and accuracy.
  - A new tax system that allows for automated processing and e-filing capability will free up City resources to focus on compliance.





- Outsourcing could assist in creating appropriate incentive structure to discourage status quo operations.
  - Some City employees would still be required to oversee transferred bus operations.
  - Allow for easier potential transition to RTA.
  - Limited labor and financial resources could be deployed to other city core services.
  - Bus service could improve for residents (e.g., on-time; safety) at lower cost to the City.
- Expected impact on restructuring/reinvestment expenses in FY 2014 and going forward – not including outsourcing of operations or transition to a regional authority (*numbers in brackets represent increases in expenditures*):

(\$ in millions)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Total Restructuring/Reinvestment					
Facility Costs	(6.3)	(8.0)	(1.5)	(2.0)	
Fleet Update - Repairs & Maintenance	(1.0)	(1.0)	(1.0)		
Technology/Other	(3.5)				
Total	(10.8)	(9.0)	(2.5)	(2.0)	–

### Leases and Contracts.

- The City’s restructuring will entail a comprehensive review of the City’s contracts (vendor; employee; construction; financial) and recommendations regarding modification/termination in various restructuring contexts.
  - The City will review its key leases and contracts to determine if such agreements are the most cost-effective approach to managing Detroit’s infrastructure
    - City currently working to assemble database of unexpired contracts and leases.
    - City to analyze and overhaul procurement process to ensure ability to acquire goods and services necessary to restructuring initiatives.

## **Labor Costs and Terms and Conditions.**

As part of the City's overall financial restructuring, reductions in costs associated with represented and unrepresented workers will be necessary. The adoption of modifications to wages and work rules similar to those imposed pursuant to the CETs will serve as a baseline position for the City in its union negotiations (although the City may seek (i) cuts/ changes beyond those included in the CETs and (ii) different language that that used in the CETs). Key elements of the strategy for making these modifications include the following:

- **Collective Bargaining Agreements.**
  - Significant modifications to CBAs and labor-related obligations will be necessary to optimize staffing and reduce employment costs.
  - The City currently does not have agreements with the majority of labor unions representing its employees. Instead, most employees are working under the CETs. As part of its restructuring effort, the City will work cooperatively with organized labor to improve existing relationships and, where possible, reach agreements to implement changes in terms and conditions of employment that mirror the changes included in the CETs.
  - The City will attempt to structure all new labor agreements using a common form of agreement that will promote ease of administration and enable a known, measurable basis for cost evaluation and comparison.
  - If it is not possible to reach agreements with labor representatives to restructure employment liabilities, the City will retain the authority to unilaterally implement restructuring initiatives pursuant to the emergency manager powers established under PA 436.
  - Pursuant to Section 13(c) of the Federal Transit Act, the City is required to engage in collective bargaining with labor unions representing transportation workers and has certain limitations in terms of its rights to make unilateral changes to employment terms. The City will work within the framework established by the FTA to achieve any labor cost reductions for these workers through collective bargaining.

- **Salaries and Wages.**

- The City must reduce employment costs for both represented and unrepresented workers as part of its restructuring. However, the potential for reductions in wages and salaries must be balanced against likely reductions in benefits and the City's need to attract and retain skilled workers.
- Both represented and unrepresented City workers have already been subjected to salary and wage reductions; most City workers covered by CETs already have taken 5-10% salary and/or wage reductions. As a result, the City will need to carefully evaluate the utility of any additional reductions.
- Reductions in non-wage compensation, overtime and premium payments may be achievable.
- Other areas where the City is evaluating potential cost reductions include: (i) attendance policies; (ii) leaves of absence; (iii) vacation days; (iv) holidays; (v) union reimbursement of City costs associated with paid union time and dues check off; (vi) tuition reimbursement and other loan programs; (vii) overtime; (viii) shift scheduling; (ix) shift premiums; (x) creation of new positions (and establishment of wage scale for new positions); and (xi) temporary assignments.

- **Operational Efficiencies/Work Rules.**

- Significant labor cost reductions may be possible by restructuring jobs and streamlining work rules for both represented and unrepresented workers using the work rule changes implemented pursuant to the CETs as a template.
- The City will work with labor representatives to make these improvements, including restructuring the Police Department, Fire Department, and other groups to improve operating efficiency and effectiveness.
- Dispute resolution procedures under the City's CBAs will be simplified and expedited to achieve predictability for both sides. Further, the City will attempt to eliminate undesirable practices and assure that these practices cannot be revived through dispute resolution procedures.
- The City will attempt to restructure CBAs so that employment decisions including promotions, transfers and assignments will be based upon the quality of the employee (*e.g.*, performance, attendance, experience, skill, ability, etc.) rather than by seniority.

- The City will attempt to (i) reduce lateral transfers by limiting bumping rights in its CBAs to job classifications that an employee currently holds or held within the prior year and (ii) increase flexibility to assign employees to work out of classification.
- Joint labor-management committees, if any, will be patterned in structure and role after the committees included in the State's CBAs.
- **Staffing Levels and Headcount.**
  - Significant labor cost savings may be achievable by rationalizing staffing levels and reducing employee headcounts. Consolidation of departments and elimination of redundant functions will be implemented where service improvements or cost savings can be achieved.
  - If necessary, the City will retain the right to reduce salary and wage costs by implementing unpaid furlough days.
  - The City will work with labor representatives to minimize the effects of any headcount reductions and enter into effects bargaining agreements in connection with headcount reductions when appropriate.
- **Outsourcing.**
  - Where cost savings or service improvements can be achieved, the City will explore potential outsourcing of functions.
  - The City will provide unions with advance notice of competitive bids and allow the unions to bid on the work.
  - The City will work with labor representatives to minimize the effects of any headcount reductions resulting from outsourcing initiatives and enter into effects bargaining agreements when appropriate.

# REVENUE ADJUSTMENTS AND TAX REFORM

## EXPANDING THE TAX BASE.

- The personal income tax base can be increased through economic growth, for example, more people working, higher wages, or both.
- Expansion of the property tax base results from appreciation in the value of existing real estate, adding newly constructed buildings to the tax rolls, or expanding the universe of property included in the base (e.g., parcels that are currently exempt, such as churches and public schools).

## RATIONALIZING NOMINAL TAX RATES.

- The City's already high tax rates are widely believed to have contributed to its population loss and economic decline. For a number of reasons, higher tax rates could have a negative effect on revenue.
- The City is currently levying taxes at or near the statutory maximums.
- The City believes that lowering selected tax rates – primarily income and property tax rates – to levels that are at least competitive with surrounding jurisdictions is critical to reversing the City's crippling population and job losses.
- Although tax rate reform will likely lead to decreased revenue in the short term (which decreases may be partially offset by improved collection efforts), the City anticipates that the long term benefits promise to render such reform at least revenue neutral over a reasonable time frame.
- The City's analysis of necessary tax reforms is ongoing.

## INCREASING COLLECTION RATES.

- The City is implementing and will continue to implement initiatives designed to (i) improve collection of past due taxes and (ii) enhance collection efforts on a prospective basis.
- **Income Tax Collection Initiatives:**
  - **Efforts to Improve Collection of Past Due Taxes**
    - Compuware has identified historical non-filers with outstanding tax obligations totaling approximately \$250 million. The City is pursuing the collection of these taxes.
    - The City loses approximately \$30 million to \$45 million of income tax revenue annually (approximately 15% to 20% of the total tax collected) from reverse commuter non-filers.
    - As of March 2013, approximately 50,000 letters were sent to individual and business nonfilers. Goal is to send 100,000 letters total by the end of FY 2013.
    - As of January 31, 2013, the City had received approximately \$870,000 in collections as a result of letters sent to non-filers.
    - Income Tax Amnesty Program: between January 22, 2013 and March 2, 2013, parties with outstanding income tax balances for tax years 2011 and prior could pay their back taxes without penalty.
      - Expected to result in \$3 million in collections and \$1.5 million in payment agreements as of March 2013.
  - **Efforts to Enhance Collection Going Forward**
    - Tax Compliance & Enforcement Unit created in October 2012.
    - Business on-line registration initiative to electronically capture W-2 data from employers launched in January 2013.
    - City considering purchasing a new tax system and moving to a common form.
      - Purchase of new income tax system — \$2 million to \$3 million one-time cost — would improve reporting, efficiency and accuracy.

- 19 of 22 cities in Michigan that collect taxes currently are using the “common form.” Moving to the common form could result in a potentially smoother transition to a new income tax system, although the cost of such a move presently is unknown.
- City also intends to pass legislation to require withholding of City income taxes for reverse commuters.

- **Property Tax Collection Initiatives:**

- Only 53% of City property owners paid their 2011 property taxes. Approximately \$246.5 million in taxes and fees went uncollected for 2011, of which \$131 million was due to the City.
- Treasury Department received recommendations for process improvements from an outside consultant and the City’s own audit department in 2011.
- Subsequently, the City engaged a consultant to conduct a four-week *pro bono* review of the City’s property tax process. The consultant recommended that the City create an actionable work place using existing recommendations supplemented with the consultant’s recommendations.
- As described above, in December 2012, the City engaged a different consultant to implement improvements in the Property Tax and Assessors Offices.

- **Permitting and Licensing Collection Initiatives:**

- **Efforts to Collect on Past Due Invoices**

- City is developing a structured collection effort for the \$50 million outstanding accounts receivable owed to the Buildings, Safety Engineering and Environmental Department (BSEED).
- City has identified, and is seeking payment of, approximately \$8 million due from Wayne County for past due bills for permits and licenses (among other similar fees).
- Updates to information technology systems (discussed earlier) should alleviate bottlenecks in invoicing and collections for permitting and licensing.

- **Efforts to Improve Going Forward**

- The goal is to increase the revenues derived from permits and licenses issued by the City.
  - City ceased waiving permit fees in March 2012.
- City is developing recommendations for action, including a possible survey of businesses operating in the City and their outstanding permit and license requirements.
  - Currently, only 30% of businesses operating in the City have valid licenses. As of July 26, 2012, approximately 2,000 businesses were identified as being without a proper license.



# REALIZATION OF VALUE OF ASSETS

## DETROIT WATER AND SEWERAGE DEPARTMENT.

***The form of transaction described herein is based upon the form of transaction contemplated in the Root Cause Committee report. Any transaction would be contingent upon the City and relevant third parties reaching agreement on many matters, including, but not limited to, governance, amounts to be paid to the City, and the form and terms and conditions of such transaction. Thus, all of the terms and conditions of the transaction described below may change and it is possible that the current structure will not change.***

**Creation of New Metropolitan Area Water and Sewer Authority.** The City may form an authority (the Metropolitan Area Water and Sewer Authority, or “MAWSA”) to conduct the operations currently conducted by the Detroit Water and Sewerage Department (“DWSD”).

- MAWSA would operate as a standalone public authority and, depending on the form of any transaction, may be the employer of the employees engaged in operating the water/sewer systems who are employed by DWSD as of the effective date of any DWSD Transaction (defined below).
- MAWSA would be governed by a Board of Commissioners. The Mayor would have the authority to appoint four of the Board’s members in accordance with the provisions of the February 2011 stipulated order entered in the EPA Litigation (the “February Order”), except that one of the four mayoral appointments would be made from a list of three names presented by the Detroit City Council. The other three Board members would be appointed as set forth in the February Order. The bylaws of MAWSA would include provisions to allow major customers to appoint additional Board members upon a super-majority vote of MAWSA’s Board.
- MAWSA would have all of the powers of a public body corporate in Michigan including, but not limited to, the power to:
  - Hold property in its own name;
  - Contract in its own name;
  - Collect water and sewer fees;
  - Issue taxable and tax exempt revenue bonds or incur other indebtedness;

- Apply for and receive loans from local, private, State and/or Federal sources including SRF loans;
  - Sue and be sued in its own name;
  - Subject to applicable approvals, apply for NPDES and any and all other permits required to operate the water and sewer systems;
  - Subject to applicable approvals, if any, implement the powers delegated by prior Court orders; and
  - Act on its own with respect to local ordinances and regulations that impact MAWSA operations (*i.e.*, downspout disconnects, etc.).
- All other powers granted or reserved to the City, the Mayor or the City Council with respect to DWSD under the State constitution, State statutes, the City's Charter (as it may be revised as part of the City's comprehensive restructuring) or Court orders that are not expressly continued would be eliminated for as long as MAWSA continues to operate.
  - The Detroit City Council would have the authority to appoint each year an individual to serve as a customer advocate for Detroit retail customers. The advocate's compensation would be set by the director of MAWSA or MAWSA's Board of Commissioners in accordance with MAWSA's procurement policy.

**Benefits and Legacy Liability Treatment** (*applicable where MAWSA is the employer of persons operating the water and sewer system*).

- From and after the effective date of the City's comprehensive restructuring plan, for new hires and current employees, MAWSA would establish and serve as its own plan sponsor and administrator with respect to the establishment of a new, separate pension or retirement plan. The new pension or retirement arrangement would govern the future pension or retirement rights of current DWSD employees and the pension or retirement rights of future MAWSA employees, consistent with applicable future CBAs and/or other terms and conditions of employment.
- From and after the effective date of the City's comprehensive restructuring plan, for new hires and current employees, MAWSA would determine whether to provide healthcare to future retirees, and at what level.

- From and after the effective date of the City’s comprehensive restructuring plan, current DWSD retirees and beneficiaries who have vested benefits in the City’s General Retirement System would remain in GRS and receive the same treatment afforded to all other retirees in the GRS as part of the City’s comprehensive restructuring plan. Current DWSD active employees who have accrued vested pensions in GRS would, as to those accrued pensions, receive the same treatment afforded to all other active participants in the GRS as part of the City’s comprehensive restructuring plan. GRS would continue to be liable for pension benefits accrued as of the date of the effective date of the City’s comprehensive restructuring plan, consistent with that restructuring plan.
- From and after the effective date of the City’s comprehensive restructuring plan, current DWSD retirees and beneficiaries who are receiving, or entitled to receive in the future, retiree healthcare benefits from the City would receive the treatment afforded to all other similarly-situated participants as part of the City’s comprehensive restructuring plan. Current DWSD employees who are entitled to receive in the future retiree healthcare benefits from the City would no longer be entitled to such healthcare as of the Effective Date of the comprehensive restructuring plan, and would receive whatever retiree healthcare program is established by MAWSA from and after the effective date of the City’s comprehensive restructuring plan.
- As indicated above, the City would retain DWSD’s accrued pension liabilities and retiree healthcare liabilities as of the effective date of the City’s restructuring plan, as both will be modified by such plan (collectively with DWSD’s allocable portion of the COP payments, “*DWSD Legacy Benefits Obligations*”). As consideration for being relieved of those obligations, from and after the effective date of the City’s comprehensive restructuring plan, MAWSA would include an amount attributable to the value of such relief from the DWSD Legacy Benefits Obligations as part of the Transaction Payment (as defined below).

**Potential Asset Transaction.**

- The City would either permit MAWSA to operate the DWSD assets through a concession agreement or lease the assets of DWSD to MAWSA pursuant to a lease agreement (either form of agreement for purposes of this document will be referred to as the “*City/MAWSA Agreement*”). If a transaction were effected pursuant to a lease agreement rather than a concession agreement, the City/MAWSA Agreement would be structured as a capital lease, and the initial term of the City/MAWSA Agreement would (i) be tied to the length of MAWSA’s bonded indebtedness (but would not exceed 40 years) and (ii) automatically be extended as new bonds are issued by MAWSA as long as MAWSA remains in compliance with the terms of the City/MAWSA Agreement. To the extent that additional value may be obtained for the City, MAWSA could accept the sewer or water assets of other governmental entities. All of the foregoing is collectively referred to herein as the “*DWSD Transaction*.”

- In exchange for the concession for/lease of the DWSD assets in favor of MAWSA and for the relief from DWSD Legacy Benefits Obligations, MAWSA would pay to the City a monthly PILOT, lease or other form of payment (the “*Transaction Payment*”).
- The Transaction Payment would be paid to the City monthly and would be an amount equal to the sum of (i) an amount calculated on either the basis of the value of the DWSD assets or a percentage of water and sewer rates plus (ii) an amount calculated by reference to the value of the relief from DWSD Legacy Benefits Obligations plus (iii) any other amount based on relevant factors as agreed to by the parties in connection with the negotiation of the DWSD Transaction.
- The City would have customary market remedies in the event that MAWSA fails to make payment or otherwise defaults under the City/MAWSA Agreement.
- The City’s use of the new payment stream from the Transaction Payment would be unrestricted, and the City could encumber or otherwise monetize all or a portion of that revenue stream.
- The effective date of the DWSD Transaction would be the effective date of the City’s comprehensive restructuring plan.
- On the effective date of the DWSD Transaction, the existing bond debt of the DWSD would either be refinanced and redeemed or holders of the existing bond debt would receive new or restructured tax-exempt bonds. See Section IX (Restructuring Proposal) *infra*.

## COLEMAN A. YOUNG AIRPORT.

- Coleman A. Young International Airport is a two-runway general aviation airport located within and operated by the City. It includes approximately 263 acres.
- The airport has not offered commercial passenger service since 2000 (runways are too short to serve standard economic carrier traffic); approximately 225 corporate and private flights originate from, or terminate at, the airport daily.
- The airport’s 2012-13 annual budget was \$275,000.

- In November 2012, a consultant prepared a 10-year capital improvement program for the airport which included several rehabilitation plans, ranging from approximately \$55 million (for upgrades to facilities other than runways) to \$273 million (for a rehabilitation including a replacement runway funded in part by federal grants).
- Revitalization of the airport is a long-term project that will be addressed at a later date. The City will continue to subsidize operations as closing of airport would terminate certain federal subsidies and require the repayment of certain FAA grant monies previously received.

## DETROIT-WINDSOR TUNNEL.

- The 83-year-old Detroit-Windsor Tunnel is an automotive tunnel (*i.e.*, cars only; no trucks) connecting Detroit and Windsor, Ontario. Approximately 2 million vehicles pass through the tunnel annually.
- The City of Detroit owns the U.S. portion of the tunnel; the City of Windsor owns the portion located in Canada.
- Detroit Windsor Tunnel LLC leases the City's portion of the tunnel for an annual rental payment equal to 20% of the average annual revenue derived from the operations of the Detroit side of the tunnel over the most recent five years, which recently has been less than \$1 million per year. Operating revenue for the Detroit side of the tunnel is less than \$5 million per year. The lease runs through 2020.

## BELLE ISLE PARK.

- The City owns Belle Isle Park, a 982-acre park on an island in the Detroit River featuring a museum, a conservatory, golf courses and other attractions. The Detroit Recreation Department manages Belle Isle Park at a cost of approximately \$6 million per year in maintenance and operating expenses.
- In January 2013, Governor Snyder proposed that the City lease Belle Isle Park to the State of Michigan, turning it into a state park and charging an admission fee to cover maintenance costs. Mayor Bing supported the proposal, but the offer was rescinded after the Detroit City Council failed to vote on the proposal.
- The City intends to enter into lease transaction with State on generally the same terms as the State's prior proposal.

## DETROIT INSTITUTE OF ARTS.

- As has been widely reported, representatives of the Emergency Manager met with representatives of the nonprofit corporation (“*DIA Corp.*”) that currently operates the Detroit Institute of Arts to discuss the art collection exhibited there.
- It has also been reported that *DIA Corp.* contends that the collection is held by a public trust and cannot be used for any purpose other than exhibition or to maintain and enhance the collection itself.
- Further dialogue is anticipated.

## CITY OWNED LAND.

- An estimated 22 square miles of land within City limits is government-owned, including parcels owned by the City, Wayne County and the State of Michigan. The vast majority of this property has limited current commercial value.
- The City will continue to participate in broader initiatives consistent with the Consent Agreement, focusing on collaboration across public and private entities, blight removal and returning properties to the private tax base to create value.

## PARKING OPERATIONS.

### **Parking Garages/Lots.**

- The City’s Municipal Parking Department (“MPD”) manages nine parking garages containing a total of 8,688 spaces, and two public parking lots together containing 1,240 spaces.
- The City owns certain of these parking facilities; others are owned by the Detroit Building Authority.

### **Parking Meters.**

- MPD also operates 3,404 on-street metered parking spaces; tickets collected through a private vendor.

- MPD's projected revenue for 2012-13 is \$12,900,314. Expenses are projected to be approximately \$19 million (with the General Fund's portion being approximately \$6 million).
- The City intends to market its parking related assets to private operators through a sale, long term lease or concession arrangements (and shutter the related departments) and use any proceeds that may be received to pay down \$10 million in related special revenue debt.
- Transaction involving parking assets could potentially be consummated within six months of commencement of marketing process.

## JOE LOUIS ARENA.

- Joe Louis Arena is an indoor arena located in downtown Detroit, Michigan and is the home to the Detroit Red Wings of the National Hockey League. Completed in 1979, the 20,058 seat arena is Detroit's largest indoor venue and regularly hosts professional sports, college hockey, concerts, ice shows, circuses and other entertainment.
- It has been reported that the Ilitch Holdings, owner of the Detroit Red Wings, is looking to build a new downtown arena for the team.
- The City is evaluating alternatives for Joe Louis Arena.

# TEN-YEAR PROJECTIONS

## (General Fund Only)

(\$ in millions)

	PRELIMINARY FORECAST										10-YEAR TOTAL
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
<b>Revenues</b>											
Municipal income tax	\$243.4	\$247.3	\$249.0	\$250.7	\$252.4	\$254.0	\$255.6	\$257.8	\$260.9	\$264.0	\$2,535.0
State revenue sharing	184.3	186.1	187.9	189.5	191.2	193.0	194.8	188.3	190.0	191.7	1,896.4
Wagering taxes	170.0	168.3	170.0	171.7	173.4	175.1	176.9	178.7	180.4	182.2	1,746.7
Sales and charges for services	124.8	119.4	118.2	117.0	115.7	114.5	113.4	112.3	113.2	114.2	1,162.6
Property taxes	118.4	110.2	105.7	100.8	100.5	99.6	99.7	100.2	100.8	102.1	1,038.0
Utility users' and other taxes	47.2	40.9	40.9	41.3	41.7	42.1	42.5	43.0	43.4	43.8	426.8
Other revenue	75.6	55.8	55.8	55.9	55.9	56.0	56.0	56.0	56.1	56.1	579.2
General Fund reimbursements	30.3	30.3	30.3	30.3	30.3	30.3	30.3	30.3	30.3	30.3	302.6
Transfers in (UTGO millage & non-General Fund POCs)	89.0	87.9	83.8	84.4	83.9	81.2	80.6	80.0	65.0	61.2	797.1
<b>Total revenues</b>	<b>1,082.8</b>	<b>1,046.2</b>	<b>1,041.5</b>	<b>1,041.4</b>	<b>1,045.0</b>	<b>1,045.7</b>	<b>1,049.8</b>	<b>1,046.3</b>	<b>1,040.1</b>	<b>1,045.7</b>	<b>10,484.5</b>
<b>Expenditures</b>											
Salaries/overtime/fringe	(341.5)	(341.9)	(346.4)	(352.5)	(358.8)	(365.1)	(371.4)	(378.4)	(386.0)	(393.7)	(3,635.7)
Health benefits - active	(51.2)	(54.0)	(57.4)	(61.0)	(64.5)	(67.9)	(71.2)	(74.6)	(78.4)	(82.3)	(662.5)
Other operating expenses	(292.9)	(288.2)	(295.9)	(301.5)	(309.7)	(313.5)	(320.0)	(326.5)	(335.3)	(339.7)	(3,123.2)
Operating expenditures	(685.7)	(684.1)	(699.7)	(715.0)	(733.1)	(746.5)	(762.5)	(779.5)	(799.6)	(815.7)	(7,421.5)
<b>Net operating surplus</b>	<b>397.2</b>	<b>362.0</b>	<b>341.8</b>	<b>326.3</b>	<b>311.9</b>	<b>299.2</b>	<b>287.2</b>	<b>266.8</b>	<b>240.5</b>	<b>230.0</b>	<b>3,063.0</b>



**Ten-Year Projections – Continued**

(\$ in millions)	PRELIMINARY FORECAST										10-YEAR TOTAL
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
Debt service (LTGO & UTGO)	(135.9)	(124.4)	(119.4)	(96.1)	(95.0)	(92.5)	(91.8)	(91.5)	(74.8)	(70.9)	(992.4)
POC - principal and interest	(61.0)	(63.2)	(65.4)	(67.6)	(69.9)	(68.1)	(69.0)	(69.9)	(70.7)	(71.4)	(676.3)
POC swaps	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(49.8)	(48.9)	(48.1)	(47.4)	(498.0)
Pension contributions	(199.5)	(233.1)	(258.9)	(285.9)	(314.7)	(321.4)	(331.5)	(337.2)	(339.5)	(343.0)	(2,964.8)
Health benefits - retiree	(140.7)	(151.1)	(161.6)	(172.0)	(182.3)	(192.3)	(201.9)	(212.0)	(222.6)	(233.7)	(1,870.0)
Legacy expenditures	(587.6)	(622.4)	(655.9)	(672.3)	(712.6)	(725.0)	(744.0)	(759.5)	(755.8)	(766.4)	(7,001.5)
<b>Deficit (excl. financing proceeds)</b>	<b>(190.5)</b>	<b>(260.4)</b>	<b>(314.1)</b>	<b>(346.0)</b>	<b>(400.7)</b>	<b>(425.8)</b>	<b>(456.8)</b>	<b>(492.6)</b>	<b>(515.3)</b>	<b>(536.4)</b>	<b>(3,938.5)</b>
Financing proceeds	-	-	-	-	-	-	-	-	-	-	-
<b>Total surplus (deficit)</b>	<b>\$(190.5)</b>	<b>\$(260.4)</b>	<b>\$(314.1)</b>	<b>\$(346.0)</b>	<b>\$(400.7)</b>	<b>\$(425.8)</b>	<b>\$(456.8)</b>	<b>\$(492.6)</b>	<b>\$(515.3)</b>	<b>\$(536.4)</b>	<b>\$(3,938.5)</b>
Accumulated unrestricted General Fund deficit	(427.5)	(687.9)	(1,002.0)	(1,348.0)	(1,748.7)	(2,174.5)	(2,631.3)	(3,123.9)	(3,639.2)	(4,175.6)	
<b>Reinvestment in the City</b>											
Department revenue initiatives	\$22.9	\$22.1	\$24.4	\$24.2	\$24.5	\$24.7	\$25.0	\$25.3	\$25.6	\$25.9	\$244.6
Additional operating expenditures	(53.7)	(37.0)	(21.3)	(22.0)	(21.7)	(22.7)	(29.3)	(29.3)	(29.7)	(30.7)	(297.4)
Capital investments	(107.7)	(74.5)	(38.8)	(51.9)	(33.3)	(30.8)	(28.4)	(29.5)	(28.5)	(29.0)	(452.3)
Blight (excludes heavy commercial)	(50.0)	(50.0)	(100.0)	(100.0)	(100.0)	(100.0)	-	-	-	-	(500.0)
Total reinvestment in the City	(188.5)	(139.3)	(135.7)	(149.7)	(130.5)	(128.8)	(32.8)	(33.4)	(32.6)	(33.8)	(1,005.2)
<b>Adjusted surplus (deficit)</b>	<b>\$(379.0)</b>	<b>\$(399.7)</b>	<b>\$(449.8)</b>	<b>\$(495.6)</b>	<b>\$(531.2)</b>	<b>\$(554.6)</b>	<b>\$(489.6)</b>	<b>\$(526.1)</b>	<b>\$(547.9)</b>	<b>\$(570.2)</b>	<b>\$(4,943.7)</b>
Adj. accumulated unrestricted General Fund deficit	(615.9)	(1,015.6)	(1,465.4)	(1,961.0)	(2,492.2)	(3,046.8)	(3,536.4)	(4,062.5)	(4,610.4)	(5,180.6)	



- Other revenue.
  - **Licenses/Permits/Inspection Charges.** Primarily consists of business licenses, street use permits and fire marshal and construction inspections charges. Based on recent trends. FY 2013 includes one-time permit and inspection revenues from utility providers.
  - **Revenue from Use/Sale Assets.** FY 2012 includes loss from sale of asset. FY 2014 includes proceeds from sale of Veteran's building.
  - **Parking/Court Fines & Other Revenue.** Primarily consists of traffic, criminal and parking fines. Based on recent trends.
  - **Grant Revenue.** Decreases in FY 2014 due to transition of Health and Wellness department and expiration of certain public safety grants.
  - **General Fund reimbursements.** Reflects reimbursements from other departments for expenses incurred by the General Fund. FY 2012 includes \$16 million one-time contribution from DDOT.
  - **UTGO Property Tax Millage.** Property tax millage for UTGO debt service. Revenues and associated expenses offset.
  - **COP Allocation (Governmental).** Transfer from general City, non General Fund for allocated COP debt service. Revenues and associated expenses offset.
  - **COP Allocation (Enterprise Funds (excl. DDOT)).** Transfer from enterprise funds for allocated COP debt service. Revenues and associated expenses offset.

## Operating Expenditures

- Salaries & Wages.
  - Includes CET changes implemented in FY 2013 and continuing through the projection period. 10% wage reduction for uniformed employees beginning FY 2014 for contracts expiring FY 2013; 2% wage inflation assumed for all City employees beginning FY 2015. Headcount changes in projection period primarily due to PLD transaction and transition to ADP payroll and benefits administration services.
- Overtime.
  - Decreases due to wage cuts and FY 2013 run rates. Increases beginning FY 2015 due to wage inflation.
- Health Benefits (Actives).
  - Includes CET changes implemented in FY 2013 and continuing during the projection period. Average 6% inflation assumed annually for hospitalization costs.
- Other operating expenses
  - **Other Benefits.** Based on recent trends.
  - **Professional/Contractual Services.** Assumes higher costs in election years (FY 2014 and every four years thereafter).
  - **Materials/Supplies.** Decreases due to transition of PLD distribution business. 1% cost inflation assumed beginning in FY 2015.
  - **Utilities.** Based on recent trends with minimal changes with 1% cost inflation assumed beginning in FY 2015.
  - **Purchased Services.** Increases beginning in FY 2014 due to costs associated with payroll processing management and prisoner pre-arraignment functions. 1% cost inflation assumed beginning in FY 2015.
  - **Risk Management/Insurance.** Includes costs related to worker's compensation, litigation and other claims. 1% cost inflation assumed beginning in FY 2015.
  - **Maintenance Capital (current run rate).** Represents the General Fund payment for capital expenditures based on recent spend levels. 1% cost inflation assumed beginning in FY 2015.

- **Other Expenses.** Primarily includes printing, rental and other operating costs. 1.0% cost inflation assumed to certain costs beginning FY 2015.
- **Contributions to Non-Enterprise Funds.** Represents General Fund transfers to Municipal parking, the vehicle fund, Museum of African American History, etc. Increases beginning FY 2014 primarily due to contributions to operations to the Public Lighting Authority.
- **DDOT Subsidy.** Reflects the General Fund contribution to cover the DDOT deficit. Excludes DDOT related legacy expenditures shown below the line. Increases primarily due to personnel and operating cost inflation.
- **Grant-Related Expenses.** Decreases in FY 2014 due to transition of Health and Wellness Department. Increases primarily due to wage and operating cost inflation.

#### Legacy Expenditures

- Debt Service (UTGO & LTGO).
  - Reflects currently scheduled principal and interest payments.
- COPs (Principal, Interest & Swaps).
  - Reflects principal, interest and swap payments as currently scheduled.
- Pension.
  - Per preliminary actuarial analysis. Subject to further analysis. Starting in FY 2014, significant increases attributable to use of more realistic actuarial assumptions and use of closed, 15-year amortization period for PFRS and closed, 18-year period for GRS rather than current open 30-year amortization period.
- Retiree Health Benefits.
  - Includes impact of CET changes implemented in FY 2013 and continuing during the projection period. Average 6% inflation assumed annually for hospitalization costs.

#### Financing Proceeds.

- FY 2013 includes \$137 million in refunding bond proceeds.

### **Operational Restructuring Initiatives/Reinvestment in the City.**

- Department revenues initiatives.
  - Reflects increases to fees, improved billing and collection efforts and collection of past due receivables.
- Additional Operating Expenditures.
  - Primarily reflects increases to headcount in order to improve and provide adequate level of City services. Potential efficiencies not reflected.
- Capital investments (Technology).
  - Reflects costs associated with information systems upgrades and maintenance.
- Capital investments (Capital Expenditures).
  - Primarily reflects City's capital improvement plan to invest in facilities and vehicles.
- Capital investments (Implementation Costs).
  - Primarily reflects non-recurring costs associated with implementing technology initiatives.
- Blight.
  - Reflects costs associated with demolition and clean-up efforts of residential and light commercial. Heavy commercial blight removal would require significant additional funding.

## RESTRUCTURING SCENARIO.

(\$ in millions)

	PRELIMINARY FORECAST										10-YEAR TOTAL
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
Total revenues	\$1,082.8	\$1,046.2	\$1,041.5	\$1,041.4	\$1,045.0	\$1,045.7	\$1,049.8	\$1,046.3	\$1,040.1	\$1,045.7	\$10,484.5
Department revenue initiatives	22.9	22.1	24.4	24.2	24.5	24.7	25.0	25.3	25.6	25.9	244.6
Operating expenditures	(685.7)	(684.1)	(699.7)	(715.0)	(733.1)	(746.5)	(762.5)	(779.5)	(799.6)	(815.7)	(7,421.5)
Additional operating expenditures	(53.7)	(37.0)	(21.3)	(22.0)	(21.7)	(22.7)	(29.3)	(29.3)	(29.7)	(30.7)	(297.4)
<b>Net operating surplus</b>	<b>\$366.4</b>	<b>\$347.2</b>	<b>\$344.9</b>	<b>\$328.5</b>	<b>\$314.6</b>	<b>\$301.2</b>	<b>\$282.9</b>	<b>\$262.9</b>	<b>\$236.4</b>	<b>\$225.2</b>	<b>\$3,010.2</b>
<b>Reinvestment expenditures/adjustments</b>											
Reorganization (Capital investments & Professional fees)	(167.0)	(111.7)	(38.8)	(51.9)	(33.3)	(30.8)	(28.4)	(29.5)	(28.5)	(29.0)	(548.8)
Blight (excludes heavy commercial)	(50.0)	(50.0)	(100.0)	(100.0)	(100.0)	(100.0)	-	-	-	-	(500.0)
DC Pension contribution (10% Police/Fire, 5% other)	(25.4)	(25.7)	(26.2)	(26.6)	(27.2)	(27.7)	(28.2)	(28.7)	(29.3)	(29.9)	(274.8)
POC reimbursements	(24.1)	(25.4)	(26.2)	(26.8)	(27.5)	(27.1)	(27.3)	(27.4)	(27.4)	(27.4)	(266.7)
PLD decommission	-	(25.0)	(25.0)	(25.0)	-	-	-	-	-	-	(75.0)
Increased tax revenues	7.4	12.2	16.4	23.8	28.3	36.0	42.0	48.5	56.3	63.8	334.5
<b>Total restructuring</b>	<b>(259.1)</b>	<b>(225.6)</b>	<b>(199.8)</b>	<b>(206.6)</b>	<b>(159.6)</b>	<b>(149.6)</b>	<b>(42.0)</b>	<b>(37.1)</b>	<b>(29.0)</b>	<b>(22.6)</b>	<b>(1,330.9)</b>
<b>Funds available for legacy liabilities</b>	<b>107.3</b>	<b>121.6</b>	<b>145.2</b>	<b>122.0</b>	<b>155.0</b>	<b>151.6</b>	<b>240.9</b>	<b>225.7</b>	<b>207.4</b>	<b>202.6</b>	<b>1,679.3</b>

## Restructuring Scenario – Continued

(\$ in millions)

	PRELIMINARY FORECAST										10-YEAR TOTAL
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
<b>Payments to secured claims (subject to review/negotiation)</b>											
LTGO - secured	(18.7)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(29.2)	(281.6)
UTGO - secured	(8.0)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(9.8)	(96.4)
POC swaps <sup>1</sup>	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(50.6)	(49.8)	(48.9)	(48.1)	(47.4)	(498.0)
Notes/loans payable	-	-	-	-	-	-	-	-	-	-	-
<b>Total payments to secured claims</b>	<b>(77.3)</b>	<b>(89.7)</b>	<b>(89.7)</b>	<b>(89.7)</b>	<b>(89.7)</b>	<b>(89.7)</b>	<b>(88.9)</b>	<b>(88.0)</b>	<b>(87.2)</b>	<b>(86.4)</b>	<b>(876.0)</b>
Funds available for unsecured claims	\$30.0	\$31.9	\$55.5	\$32.3	\$65.4	\$62.0	\$152.1	\$137.7	\$120.2	\$116.2	\$803.3
Asset monetization / revenue opportunities	tdb	tdb	tdb	tdb	tdb	tdb	tdb	tdb	tdb	tdb	-
Funds available for unsecured claims w/opportunities	\$30.0	\$31.9	\$55.5	\$32.3	\$65.4	\$62.0	\$152.1	\$137.7	\$120.2	\$116.2	\$803.3

<b>Estimated unsecured claims</b>	
Unsecured debt	
LTGO - unsecured	\$161.0
UTGO - unsecured	369.1
POC principal balance	1,428.8
Notes/loans payable	33.6
Sub-total: Unsecured debt	1,992.5
<b>Unsecured pension &amp; OPEB</b>	
OPEB liability	5,718.3
Pension unfunded liability (PFRS)	1,437.0
Pension unfunded liability (DGRS)	2,037.0
Sub-total: Pension & OPEB	9,192.3
<b>Other unsecured items</b>	
Other liabilities (FY 2012 CAFR)	264.6
Other potential claims	tdb
Sub-total: Other	264.6
<b>Estimated total unsecured claims</b>	<b>\$11,449.4</b>

Footnote:

(1) Assumes continued payments as scheduled. Treatment to be determined.



- Reorganization (capital investment and professional fees).
  - Consistent with above Technology, Capital Expenditures, and Implementation Costs.
- Blight.
  - Consistent with above.
- DC Pension contribution.
  - Preliminary estimates to be further refined by additional analysis. Assumes new DC plans with employer contributions equal to 10% of wages for uniformed employed and 5% of wages for non-uniform employed.
- POC reimbursements.
  - Represents reversal of revenue received from enterprise and other Non-General Fund agencies.
- PLD decommission.
  - Represents preliminary estimate of cost required to decommission existing substations and Mistersky Plant (to be further refined by additional analysis).
- Increased Tax Revenues.
  - Represents potential revenue opportunities primarily due to increased property values and employment conditions resulting from restructuring efforts.
- Payments on Secured Claims.
  - Includes the unaltered payment schedules of secured debt, COP related swaps and other notes payable. There are no scheduled payments on secured notes payable.

## CONCLUSIONS BASED UPON PROJECTIONS.

- The City acknowledges that it must exert reasonable efforts to maximize recoveries for all creditors.
- As demonstrated by the 10-year projections, however, the City's expected revenues will fall significantly short of the levels required to fund the City's operations and fully satisfy its liabilities.
- Given the City's (i) substantial debt levels (LTGO; UTGO; COPs; Swaps), (ii) significant labor related liabilities and (iii) continuing operating expenses, shared sacrifice will be required from all stakeholders to achieve the City's dual (and complementary) goals of maximizing returns for its stakeholder constituencies while simultaneously establishing the framework for a healthy and growing Detroit moving forward.
- All of the City's stakeholders can benefit from a restructured and revitalized Detroit.

# RESTRUCTURING PROPOSAL

## SUMMARY OF TREATMENT OF DEBT.

### Secured Debt.

**DWSD Debt.** The existing DWSD water and sewer bond debt may be divided into two classes, if applicable:

- **DWSD Class A Debt Claims.**
  - DWSD Class A Debt Claims shall consist of claims under or evidenced by certain debt that may be paid prior to the effective date of the City’s comprehensive restructuring plan without incurring a material premium or penalty.
  - On the effective date of the City’s comprehensive restructuring plan, accrued principal and interest for DWSD Class A Debt Claims accrued through the restructuring plan’s effective date will either (i) be repaid in full in cash or (ii) receive such treatment as may be agreed upon by the parties.
  - **Source of funds for repayment:** New longterm bond issuances with MAWSA as the issuer.
    - **New Series A Bond Principal:** An amount equal to the sum of the principal of the outstanding debt that was issued to redeem the DWSD Class A Debt Bonds plus interest thereon accrued through the restructuring plan effective date and fees incurred in connection with the new financings.
    - **New Series A Bond Collateral:** Lien on net revenues generated by MAWSA assets with the same priorities as the DWSD Class A Debt, but subordinate to the operating and maintenance costs of the system, including the Transaction Payment.
    - **New Series A Bond Interest Rate:** Prevailing market rate for similar long-term municipal bonds at the time of issuance.
    - **New Series A Bond Maturities:** The various series of new municipal bonds would have long-term maturities determined at the time of issuance on the basis of then-existing market conditions.

- **DWSD Class B Debt Claims.**

- DWSD Class B Debt Claims shall consist of all claims under or evidenced by each series of existing water or sewer bond debt (whether callable or not) that are not DWSD Class A Debt Claims.
  - On the effective date of the City's comprehensive restructuring plan, holders of DWSD Class B Debt Claims shall receive Series B Restructured Bonds or such treatment as may be agreed upon by the parties.
- **Series B Restructured Bond Terms:** Series B Restructured Bonds would be issued by MAWSA to holders of outstanding DWSD Class B Debt Claims.
  - **Series B Restructured Bond Principal:** For each series of Series B Restructured Bonds, an amount equal to the sum of the principal of the outstanding DWSD Class B Debt Bonds for which such Series B Restructured Bonds are to be exchanged plus interest thereon accrued through the restructuring plan Effective Date.
  - **Series B Restructured Bond Collateral:** Lien on net revenues generated by MAWSA assets in the same priorities as currently exist for the DWSD Class B Debt Bonds for which such Series B Restructured Bonds are to be exchanged, subordinate to the operating and maintenance costs of the system, including the Transaction Payment.
  - **Series B Restructured Bond Interest Rate:** Prevailing market rate for similar long-term municipal bonds at the time of issuance.
  - **Series B Restructured Bond Maturities:** The same maturity dates as the DWSD Class B Debt Bonds for which the Series B Restructured Bonds will be exchanged.

### Secured General Obligation Debt.

- There are six series of secured General Obligation Debt:
  - \$100,000,000 original principal amount Distributable State Aid Second Lien Bonds (Unlimited Tax General Obligation), Series 2010(A) (Taxable-Recovery Zone Economic Development Bonds-Direct Payment).
  - \$249,790,000 original principal amount Distributable State Aid General Obligation Limited Tax Bonds, Series 2010.
  - \$38,865,000 original principal amount Self-Insurance Distributable State Aid Third Lien Bonds (Limited Tax General Obligation), Series 2012(A)(2).
  - \$30,730,000 original principal amount Self-Insurance Distributable State Aid Third Lien Refunding Bonds (Limited Tax General Obligation), Series 2012(B2).
  - \$6,405,000 original principal amount General Obligation Distributable State Aid Third Lien Capital Improvement Refunding Bonds (Limited Tax General Obligation), Series 2012(B).
  - \$53,520,000 original principal amount Self-Insurance Distributable State Aid Third Lien Bonds (Limited Tax General Obligation), Series 2012(A2-B).

- Total annual debt service is approximately \$39 million per year from FY 2015 through FY 2033.

\$ in millions	FISCAL YEAR						Total for Period
	2013	2014	2015 - 2033	2034	2035	2036	
\$100,000,000 original principal amount Distributable State Aid Second Lien Bonds (Unlimited Tax General Obligation), Series 2010(A) (Taxable - Recovery Zone Economic Development Bonds-Direct Payment)	4.0	8.0	9.8	9.8	9.8	9.8	228.2
\$249,790,000 original principal amount Distributable State Aid General Obligation Limited Tax Bonds, Series 2010	6.3	12.6	18.9	18.8	18.8	18.8	433.5
\$129,520,000 aggregate original principal amount of Distributable State Aid Third Lien Bonds (Limited Tax General Obligation), Series 2012(A)(2), (A2-B), (B) & (B)(2) (Combined)	4.2	6.1	10.4				207.2
<b>Annual Total</b>	<b>14.5</b>	<b>26.7</b>	<b>39.0</b>	<b>28.7</b>	<b>28.7</b>	<b>28.7</b>	<b>868.9</b>

- Treatment: Subject to negotiation with holders.

**Secured Claims Arising in Connection with Installment Notes Payable.**

- The City has issued \$87.8 million in installment notes related to various public improvement projects, which notes were issued in connection with the “Section 108” HUD Loan Guarantee Program and are secured by future “Block Grant” revenues.
- Treatment: Subject to negotiation with holders.

**Secured Claims Arising under Service Agreements Related to COP-Related Interest Rate Swaps.**

- Eight interest rate swaps (the “COP Swaps”) were entered into by the Service Corporations in reference to the COPs.
- The City entered into Service Contracts with the Service Corporations that purport to obligate the City to pay the Service Corporations, among other things, amounts equal to the amounts the Service Corporations are obligated to pay under the COP Swaps.
- The following table shows the estimated amounts due annually under the COP Swaps to maturity:

**\$ in millions**

FISCAL YEAR(S)									Total
2013	2014	2015	2016	2017	2018-2022	2023-2027	2028-2032	2033-2035	
50.7	50.6	50.6	50.6	50.6	248.0	226.9	135.6	15.1	878.7

- Treatment: Subject to negotiation with holders.

### **Secured Automobile Parking Fund Claims.**

- \$9.3 million in outstanding principal amount of Detroit Building Authority Revenue Refunding Bonds: Parking System, Series 1998-A are secured by a pledge of all revenues of the parking system, net of operating expenses.
- Treatment: In the event that the City executes a sale of its parking-related assets, principal and interest accrued through the effective date will be paid in full in cash using proceeds of sales of City's parking-related assets. In the event that sales are not negotiated and consummated prior to the effective date, treatment of such claims will be subject to negotiations with holders.

### **Unsecured Debt.**

#### **Consideration for Unsecured Claims.**

- Limited Recourse Participation Notes (the "Notes").
  - **Relevant Definitions:**
    - "Adjusted Base Covered Revenues" means for a Fiscal Year following the Initial Revenue Participation Year, Base Covered Revenues adjusted for inflation for the period beginning on the first day of the Initial Revenue Participation Year and ending on the first day of the Fiscal Year using the positive change, if any, in the Consumer Price Index during such period.
    - "Base Covered Revenues" means one half of the sum of Covered Revenues for the first two Fiscal Years beginning after the Effective Date.
    - "Covered Revenues" means amounts actually collected by the City's General Fund in a Fiscal Year on account of (a) Property Taxes, Income Taxes and Gaming Taxes levied for such Fiscal Year and (b) Revenue Sharing Payments, determined based upon the City's audited financial statements.
    - "Dutch Auction" means a method for pricing the Notes whereby the price of the Notes offered by the City is the lowest price (the "Auction Price") at which there are bids to sell Notes for an aggregate purchase price equal to the amount the City is required to pay in respect of Revenue Participation Payments and/or Asset Disposition Proceeds then due and payable. During bidding, each Noteholder will indicate how many Notes it is willing to sell to the City and the price such Noteholder is willing to accept. All Notes offered at the Auction Price or at a lower price will be sold to the City at the Auction Price.



- “Effective Date” means the closing date of a comprehensive restructuring of the City’s finances on which the Notes shall be issued.
- “Final Participation Year” means the Fiscal Year beginning on the 20th anniversary of the first day of the Initial Participation Year.
- “Fiscal Year” means a period commencing on July 1 of a year and ending on June 30 of the following year. For greater certainty, the Fiscal Year beginning on July 1, 2014 and ending on June 30, 2015 is the 2015 Fiscal Year.
- “Initial Participation Year” means the second full Fiscal Year following the Effective Date.
- “Trustee” means an indenture trustee or other agent for the Noteholders as defined in definitive documentation for the Notes.
- **Terms:**
  - Initial Principal Amount: \$2,000,000,000.00.
  - Interest Rate: 1.5% per annum on the outstanding principal amount of the Notes, payable semiannually. No interest shall be paid or accrued for any period following the end of the Final Participation Year.
  - Maturity Date: The first September 30 following the Final Participation Year. The City shall have no obligation to pay any amounts other than the Revenue Participation Payment in respect of the Final Participation Year on the maturity date. The Notes may be prepaid in whole or in part at any time without premium or penalty.
  - Revenue Participation Payments: On the September 30 after the end of each Fiscal Year beginning with the Initial Participation Year, an amount equal to the product of (a) 30% (0.30), multiplied by (b) (i) the amount by which Covered Revenues for such Fiscal Year exceed (ii) Adjusted Base Covered Revenues shall be applied to reduce the principal amount of the Notes. No Revenue Participation Payments shall be made for any Fiscal Year after the Final Participation Year.

- Grants and Other Amounts Received to Offset Costs of Addressing Blight: If the City receives any cash grants or other cash payments after the Effective Date and before the Maturity Date from the State of Michigan, the Federal government, or any other government or nonprofit entity not affiliated in any way with the City for the purpose of funding programs or activities to address blight that are included in the 10 Year Plan (“Blight Revenues”) and that can be utilized in place of the General Fund sums in the 10 Year Plan projections, an amount equal to 75% of the General Fund revenues that would otherwise be spent on blight but for the outside funds shall be applied to reduce the principal amount of the Notes.
- Asset Disposition Proceeds: If the City receives cash consideration in connection with the transfer of Specified Assets after the Effective Date and before the Maturity Date, an amount equal to 75% of such cash shall be applied to reduce the principal amount of the Notes. For greater certainty, the assumption of indebtedness shall not constitute cash consideration.
- The City shall make distributions of Blight Revenues and Asset Disposition Proceeds when the amount of such payments that are due equal or exceed \$50 million or at the time a Revenue Participation Payment is due, whichever is sooner.
- **Dutch Auctions.** Any Revenue Participation Payment, Blight Revenues, Asset Disposition Proceeds and other amount made available by the City may be used to fund offers to purchase Notes through a Dutch Auction process. The City shall give notice of its intent to conduct a Dutch Auction using a Revenue Participation Payment on or before the July 15th following the end of the pertinent Fiscal Year and shall conclude the auction and purchase notes offered and accepted in the auction no later than the 90 days following the date such notice is given. The City shall give notice of its intent to conduct such a Dutch Auction using Asset Disposition Proceeds or Blight Revenues on or before the 30 days following the date when the City becomes obligated to make apply Asset Distribution Proceeds and shall conclude the auction and purchase notes offered and accepted in the auction no later than 90 days following the date such notice is given. The City may give notice of its intent to conduct a Dutch Auction using funds provided by the City which are not otherwise required to be applied to repayment of the Notes at any time.
- **Limited Recourse.** The City’s obligation to pay interest on the Notes shall be a general obligation of the City. The City shall have no obligation to pay the principal amount of the Notes except to the extent that Revenue Participation Payments, Blight Revenues, or Asset Disposition Proceeds become due in accordance with the terms hereof.
- **Requirements of Law.** The terms of the Notes may be revised to conform with requirements of law.

**Claims Under Unsecured General Obligation Bonds/Notes.**

- Aggregate amount: Approximately \$650 million.
- Treatment: Exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.

**Claims of Service Corporations (or affiliated trusts) on Account of COPs.**

- Aggregate amount: Approximately \$1.4 billion.
- Treatment: Exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes

**Claims for Unfunded OPEB Liabilities.**

- Current retirees will receive modified medical benefits plans utilizing either the exchanges to be created by January 1, 2014 under the Patient Protection and Affordable Care Act or Medicare, as applicable. The proposed replacement program is preliminarily estimated to have a cost to the City of between \$27.5 million and \$40 million annually depending on choices to be made.
- Claims will result from the modification of benefits. The amount of such claims has not been finally determined.
- Treatment for Allowed Claim: Exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.

**Claims for Unfunded Pension Liabilities.**

- As set forth above, preliminary analysis indicates that the underfunding in the GRS and the PFRS is approximately \$3.5 billion. At this level of underfunding, the City would have to contribute approximately \$200 million to \$350 million annually to fully fund currently accrued, vested benefits. Such contributions will not be made under the plan.
- Claims for the underfunding will be exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.
- Because the amounts realized on the underfunding claims will be substantially less than the underfunding amount, there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.

**Claims on account of Other Liabilities.**

- Aggregate Amount: Approximately \$300 million.
- Treatment: Exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.



# CEMENTING THE CITY'S RESTRUCTURING: DETROIT AFTER THE EMERGENCY MANAGER

In accordance with PA 436 – and similar to post-receivership governance structures established in other municipalities (e.g., New York) – Emergency Manager Orr intends to adopt various measures and impose certain requirements to ensure that the restructuring achieved by the City is sustainable.

## APPOINTMENT OF “TRANSITION ADVISORY BOARD”

In accordance with Section 23(1) of PA 436, the Emergency Manager may recommend that the Governor appoint a “receivership transition advisory board” (a “*Transition Advisory Board*”) to monitor the affairs of the City prior to removing it from receivership.

- The Transition Advisory Board would consist of (i) the State Treasurer (or his/her designee), (ii) the director of the Department of Technology, Management and Budget (or his/her designee) and (iii) in the Governor’s discretion, one or more individuals with relevant professional experience.
- The Transition Advisory Board would be empowered to do any of the following:
  - Require the City to annually convene a consensus revenue estimating conference for the ensuing fiscal year;
  - Require the City to provide monthly cash flow projections and a comparison of actual and budgeted revenues and expenditures;
  - Review and approve the City’s proposed and amended budgets;
  - Review requests by the City to issue debt under applicable law;
  - Review and approve proposed CBAs negotiated under applicable law;.
  - Review the City’s compliance with any deficit elimination plan; and
  - Perform any other duties assigned by the Governor at the time the Transition Advisory Board is appointed.

**Revisions to Model Charter.**

- Consistent with Section 22(4)(b) of PA 436, the Emergency Manager may recommend that the Governor require the City to adopt a model City Charter or model charter provisions developed by the Emergency Manager.

**Development of Two-Year Budget.**

- Pursuant to Section 21 of PA 436, before the conclusion of the Emergency Manager’s term (or before the appointment of a Transition Advisory Board), the Emergency Manager must adopt and implement a two-year budget (including all contractual and employment agreements) for the City, which budget commences upon the termination of the City’s receivership.
- The City Council is prohibited by Section 21(2) of PA 436 from
  - amending the Emergency Manager’s two-year budget (absent the approval of the State Treasurer); and
  - revising any order or ordinance implemented by the Emergency Manager prior to one year after termination of the receivership.

**Potential Appointment of New Emergency Manager.**

- Pursuant to Section 24 of PA 436, the Governor may, at his own initiative or at the recommendation of a Transition Advisory Board, determine that the City’s financial condition has not been corrected in a sustainable fashion and appoint a new emergency manager.

# CALENDAR AND CONTACTS

**Requests for additional information:** June 17, 2013 - June 24, 2013

**Initial round of discussions with stake holders:** June 17, 2013 -July 12, 2013

**Evaluation:** July 15, 2013 - July 19, 2013.

## CONTACTS

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**Appendix A — Schedule of the sewage disposal system bonds and related state revolving loans as of June 30, 2012**

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
<b>Sewage Disposal System Revenue Bonds:</b>							
Series 1998-A	12-14-06	\$18,540,000	5.50 %	7/1/12-17	\$ 16,440,000	MBIA	
Series 1998-A	12-14-06	49,075,000	5.25	7/1/18-23	49,075,000	MBIA	b
Series 1998-B	12-14-06	18,750,000	5.50	7/1/12-17	16,510,000	MBIA	
Series 1998-B	12-14-06	48,770,000	5.25	7/1/18-23	48,770,000	MBIA	b
Series 1999-A (* *)	12-1-99	33,510,118	0.00	7/1/12-21	69,931,075	FGIC	
Series 2001-B	9-15-01	110,550,000	5.50	7/1/23-29	110,550,000	FGIC	
Series 2001-C (1)	6-5-09	6,360,000	5.25	7/1/12-19	4,930,000	Assured Guaranty	
Series 2001-C (1)	6-5-09	148,510,000	6.50 to 7.00	7/1/20-27	148,510,000	Assured Guaranty	b
Series 2001-C (2)	5-8-08	3,275,000	3.50 to 4.00	7/1/12-18	2,305,000	FGIC/Berkshire Hathaway	
Series 2001-C (2)	5-8-08	119,630,000	4.00 to 5.25	7/1/19-29	119,630,000	FGIC/Berkshire Hathaway	b
Series 2001-D	9-23-01	92,450,000	Variable (a)	7/1/32	21,315,000	MBIA	b
Series 2001-E	5-8-08	136,150,000	5.75	7/1/24-31	136,150,000	FGIC/Berkshire Hathaway	b
Series 2003-A	5-22-03	158,000,000	3.30 to 5.00	7/1/12-13	84,125,000	Assured Guaranty	
Series 2003-A	5-22-03	441,380,000	3.50 to 5.50	7/1/14-32	128,940,000	Assured Guaranty	b
Series 2003-B	6-5-09	150,000,000	7.50	7/1/32-33	150,000,000	Assured Guaranty	b
Series 2004-A	1-09-04	101,435,000	5.00 to 5.25	7/1/12-24	74,380,000	Assured Guaranty	
Series 2005-A	3-17-05	3,765,000	3.40 to 3.70	7/1/12-15	2,495,000	MBIA	
Series 2005-A	3-17-05	269,590,000	3.75 to 5.125	7/1/16-35	236,770,000	MBIA	b
Series 2005-B	3-17-05	40,215,000	3.40 to 5.50	7/1/12-22	40,215,000	MBIA	
Series 2005-C	3-17-05	22,065,000	5.00	7/1/12-15	16,185,000	MBIA	
Series 2005-C	3-17-05	41,095,000	5.00	7/1/16-25	41,095,000	MBIA	b
Series 2006-A	5-8-08	123,655,000	5.50	7/1/34-36	123,655,000	FGIC/Berkshire Hathaway	b
Series 2006-B	8-10-06	11,850,000	4.00 to 5.00	7/1/12-16	7,960,000	FGIC	
Series 2006-B	8-10-06	238,150,000	4.25 to 5.00	7/1/17-36	238,150,000	FGIC	b
Series 2006-C	8-10-06	8,495,000	5.25	7/1/16	8,495,000	FGIC	
Series 2006-C	8-10-06	18,065,000	5.00	7/1/17-18	18,065,000	FGIC	b
Series 2006-D	12-14-06	370,000,000	Variable (a)	7/1/12-32	289,430,000	Assured Guaranty/FSA	b
Series 2012-A	6-26-12	95,445,000	5.00	7/1/14-22	95,445,000	Assured Guaranty	
Series 2012-A	6-26-12	564,335,000	5.00 to 5.50	7/1/23-39	564,335,000	Assured Guaranty	b
<b>Total Sewage Disposal System Revenue Bonds</b>					<b>\$ 2,863,856,075</b>		

\* \* - Capital Appreciation Bonds

a - Interest rates are set periodically at the stated current market interest rate.

b - Indicates bonds are callable under terms specified in the indenture; all other bonds are noncallable.



**Appendix A – Continued**

	<b>Bond Date</b>	<b>Amount Issued</b>	<b>Range of Interest Rates</b>	<b>Maturity Date</b>	<b>Balance June 30, 2012</b>
<b>State Revolving Loans:</b>					
Series 1992-A-SRF	6-25-92	\$ 4,360,000	2.00%	4/1/13	\$ 260,000
Series 1992-B-SRF	9-10-92	1,915,000	2.00	10/1/12-13	230,000
Series 1993-B-SRF	9-30-93	6,603,996	2.00	10/1/12-14	1,150,000
Series 1997-B-SRF	9-30-97	5,430,174	2.25	10/1/12-18	2,160,000
Series 1999-SRF-1	6-24-99	21,475,000	2.50	4/1/13-20	9,880,000
Series 1999-SRF-2	9-30-99	46,000,000	2.50	10/1/12-22	28,110,000
Series 1999-SRF-3	9-30-99	31,030,000	2.50	10/1/12-20	15,890,000
Series 1999-SRF-4	9-30-99	40,655,000	2.50	10/1/12-20	20,815,000
Series 2000-SRF-1	3-30-00	44,197,995	2.50	10/1/12-22	23,947,995
Series 2000-SRF-2	9-28-00	64,401,066	2.50	10/1/12-22	39,191,066
Series 2001-SRF-1	6-28-01	82,200,000	2.50	10/1/12-24	57,965,000
Series 2001-SRF-2	12-20-01	59,850,000	2.50	10/1/12-24	42,210,000
Series 2002-SRF-1	6-27-02	18,985,000	2.50	4/1/13-23	11,590,000
Series 2002-SRF-2	6-27-02	1,545,369	2.50	4/1/13-23	935,369
Series 2002-SRF-3	12-19-02	31,549,466	2.50	10/1/12-24	20,554,466
Series 2003-SRF-1	6-28-03	48,520,000	2.50	10/1/12-25	36,415,000
Series 2003-SRF-2	9-25-03	25,055,370	2.50	4/1/13-25	17,550,370
Series 2004-SRF-1	6-24-04	2,910,000	2.125	10/1/12-24	2,025,000
Series 2004-SRF-2	6-24-04	18,353,459	2.125	4/1/13-25	12,748,459
Series 2004-SRF-3	6-24-04	12,722,575	2.125	4/1/13-25	8,832,575
Series 2007-SRF-1	9-20-07	156,687,777	1.625	10/1/12-29	142,272,777
Series 2009-SRF-1	4-17-09	22,684,557	2.50	4/1/13-30	10,164,557
Series 2010-SRF-1	1-22-10	6,793,631	2.50	4/1/13-31	3,338,631
<b>Total State Revolving Loans Payable</b>					<b>\$ 508,236,265</b>

**Appendix B — Schedule of water system bonds and related state revolving loans as of June 30, 2012**

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
<b>Water Supply System Revenue Bonds:</b>							
Series 1993	10-15-93	\$ 38,225,000	6.50%	7/1/14-15	\$ 24,725,000	FGIC	
Series 1995-B	10-15-95	60,485,000	5.55	7/1/12	8,480,000	MBIA	
Series 1997-A	8-01-97	186,220,000	6.00	7/1/14-15	13,430,000	MBIA	
Series 2001-A	5-01-01	301,165,000	5.00	7/1/29-30	73,790,000	FGIC	b
Series 2001-C	5-08-08	4,055,000	3.50 to 4.25	7/1/12-18	2,565,000	FGIC	
Series 2001-C	5-08-08	186,350,000	4.50 to 5.75	7/1/19-29	186,350,000	FGIC	b
Series 2003-A	1-28-03	234,805,000	4.50 to 5.00	7/1/19-34	178,785,000	MBIA	b
Series 2003-B	1-28-03	41,770,000	5.00	7/1/34	41,770,000	MBIA	b
Series 2003-C	1-28-03	4,335,000	Variable(a)	7/1/13-14	4,335,000	MBIA	
Series 2003-C	1-28-03	25,325,000	4.25 to 5.25	7/1/15-22	25,325,000	MBIA	b
Series 2003-D	8-14-06	3,180,000	4.00 to 4.20	7/1/12-16	1,625,000	MBIA	
Series 2003-D	8-14-06	139,575,000	4.25 to 5.00	7/1/17-33	139,575,000	MBIA	b
Series 2004-A	8-14-06	17,600,000	3.75 to 5.25	7/1/12-16	17,580,000	MBIA	
Series 2004-A	8-14-06	55,165,000	4.50 to 5.25	7/1/17-25	55,165,000	MBIA	b
Series 2004-B	8-14-06	52,840,000	4.00 to 5.00	7/1/12-16	35,740,000	MBIA	
Series 2004-B	8-14-06	100,990,000	4.25 to 5.00	7/1/17-23	100,990,000	MBIA	b
Series 2005-A	3-11-05	20,965,000	3.40 to 5.00	7/1/12-15	8,445,000	FGIC	
Series 2005-A	3-11-05	84,035,000	3.90 to 5.00	7/1/16-35	84,035,000	FGIC	b
Series 2005-B	5-08-08	19,070,000	4.00 to 5.50	7/1/12-18	15,465,000	FGIC	
Series 2005-B	5-08-08	175,830,000	4.75 to 5.50	7/1/19-35	175,830,000	FGIC	b
Series 2005-C	3-11-05	36,405,000	5.00	7/1/12-15	23,175,000	FGIC	
Series 2005-C	3-11-05	90,200,000	5.00	7/1/16-22	90,200,000	FGIC	b
Series 2006-A	8-14-06	42,795,000	5.00	7/1/13-16	26,900,000	Assured Guaranty/FSA	
Series 2006-A	8-14-06	237,205,000	5.00	7/1/17-34	237,205,000	Assured Guaranty/FSA	b
Series 2006-B	4-1-09	900,000	3.00 to 5.00	7/1/12-19	800,000	Assured Guaranty/FSA	
Series 2006-B	4-1-09	119,100,000	5.50 to 7.00	7/1/20-36	119,100,000	Assured Guaranty/FSA	b
Series 2006-C	8-14-06	12,585,000	4.00 to 5.00	7/1/12-16	10,650,000	Assured Guaranty/FSA	
Series 2006-C	8-14-06	208,060,000	5.00	7/1/17-33	208,060,000	Assured Guaranty/FSA	b

**Appendix B – Continued**

	<b>Bond Date</b>	<b>Amount Issued</b>	<b>Range of Interest Rates</b>	<b>Maturity Date</b>	<b>Balance June 30, 2012</b>	<b>Insurer</b>	
Series 2006-D	8-14-06	4,430,000	4.00 to 5.00	7/1/12-16	3,465,000	Assured Guaranty/FSA	
Series 2006-D	8-14-06	142,160,000	4.25 to 5.00	7/1/17-32	142,160,000	Assured Guaranty/FSA	b
Series 2011-A	12-22-11	37,880,000	3.00 to 5.00	7/1/12-21	37,880,000	N/A	
Series 2011-A	12-22-11	341,710,000	5.00 to 5.75	7/1/22-41	341,710,000	N/A	b
Series 2011-B	12-22-11	7,455,000	2.496 to 5.00	7/1/12-21	7,455,000	N/A	
Series 2011-B	12-22-11	9,740,000	6.00	7/1/22-33	9,740,000	N/A	b
Series 2011-C	12-22-11	3,925,000	3.00 to 5.00	7/1/12-21	3,925,000	N/A	
Series 2011-C	12-22-11	99,965,000	4.50 to 5.25	7/1/23-41	99,965,000	N/A	b
<b>Total Water Supply System Revenue Bonds</b>					<b>\$ 2,556,395,000</b>		

**State Revolving Loans:**

Series 2005 SRF-1	9-22-05	\$ 13,805,164	2.125%	10/1/12-26	\$ 10,575,164
Series 2005 SRF-2	9-22-05	8,891,730	2.125	10/1/12-26	6,621,730
Series 2006 SRF-1	9-21-06	5,180,926	2.125	10/1/12-26	3,945,926
Series 2008 SRF-1	9-29-08	2,590,941	2.500	10/1/12-26	1,810,941

**Total State Revolving Loans Payable**

**\$ 22,953,761**

a - Interest rates are set periodically at the stated current market interest rate.  
 b - Indicates bonds are callable under terms specified in the indenture; all other bonds are noncallable.

**Appendix C — Schedule of COPs and related swap liabilities as of June 30, 2012**

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer
<b>Pension Obligation Certificates:</b>						
Series 2005-A	6/2/05	\$ 640,000,000	4.00 to 4.95%	6/15/13-25	\$ 503,365,000	FGIC/Syncora
Series 2006-A	6/12/06	148,540,000	5.989%	6/15/34-35	148,540,000	FGIC
Series 2006-B	6/12/06	800,000,000	Variable	6/15/19-34	800,000,000	FGIC/Syncora
<b>Total Pension Obligation Certificates</b>					<b>\$ 1,451,905,000</b>	

Cash-Flow Hedges, Pay-Fixed Interest Rate Swaps	Notional Amount	Effective Date	Fixed Rate Paid	Rate Received	Fair Value	Swap Termination Date	Final Maturity of Bonds
<b>Taxable Certificate of Participation:</b>							
SBSFPC-0009	\$ 96,621,000	6/12/06	6.36%	3mth LIBOR + .34%	(57,173,124)	6/15/2034	6/15/2034
SBSFPC-0012	45,252,000	6/12/06	6.32	3mth LIBOR + .30%	(23,055,836)	6/15/2029	6/15/2029
37380341	96,621,000	6/12/06	6.36	3mth LIBOR + .34%	(57,181,711)	6/15/2034	6/15/2034
37380291	45,252,000	6/12/06	6.32	3mth LIBOR + .30%	(23,056,802)	6/15/2029	6/15/2029
SBSFPC-0010	153,801,500	6/12/06	6.35	3mth LIBOR + .34%	(91,309,463)	6/15/2034	6/15/2034
SBSFPC-0011	104,325,500	6/12/06	6.32	3mth LIBOR + .30%	(48,098,696)	6/15/2029	6/15/2029
37380313	153,801,500	6/12/06	6.35	3mth LIBOR + .34%	(91,322,376)	6/15/2034	6/15/2034
37380351	104,325,500	6/12/06	6.32	3mth LIBOR + .30%	(48,104,661)	6/15/2029	6/15/2029
<b>Total</b>	<b>\$ 800,000,000</b>				<b>(439,302,669)</b>		

**Appendix D — Schedule of secured general obligation liabilities as of June 30, 2012**

	<b>Issue Date</b>	<b>Amount Issued</b>	<b>Range of Interest Rates</b>	<b>Maturity Date</b>	<b>Balance June 30, 2012</b>	<b>Insurer</b>
<b>General Obligation Bonds -</b>						
Unlimited Tax Series 2010-E	12/16/10	100,000,000	5.129 to 8.369	11/1/14-35	100,000,000	N/A
Limited Tax Distributable State Aid 2010	3/18/10	249,790,000	4.25 to 5.25	11/1/14-35	249,790,000	N/A
<b>Total General Obligation Bonds</b>					<b>349,790,000</b>	
<b>Notes and Loans -</b>						
Ferry Street Project	6/12/08		2.62 to 4.62	8/1/12-18	2,041,000	N/A
Garfield Project	6/12/08		2.62 to 4.62	8/1/13-15	750,000	N/A
Stuberstone Project	6/12/08		2.62 to 4.62	8/1/13-16	120,000	N/A
Vernon Lawndale Project	9/14/06		5.05 to 5.74	8/1/13-25	1,800,000	N/A
New Amsterdam Project	8/1/02		4.67 to 6.12	8/1/12-22	8,480,000	N/A
Mexicantown Welcome Center Project	9/14/06		5.03 to 5.70	8/1/13-24	3,600,000	N/A
Book Cadillac Project	9/14/06		5.07 to 5.77	8/1/14-26	7,300,000	N/A
Book Cadillac Project Note 1	6/12/08		4.00 to 5.38	8/1/13-29	10,700,000	N/A
Garfield II Note 1	9/14/06		3.44 to 5.30	8/1/13-25	6,422,000	N/A
Garfield II Note 2	9/14/06		5.07 to 5.77	8/1/14-26	2,058,000	N/A
Garfield II Note 3	9/16/09		LIBOR + 0.2	8/1/12-29	1,723,000	N/A
Garfield II Note 4	9/16/09		LIBOR + 0.2	8/1/17-29	6,697,000	N/A
Fort Shelby Project	6/12/08		3.82 to 5.34	8/1/12-26	18,700,000	N/A
Woodward Garden Project 1	6/12/08		4.48 to 5.05	8/1/16-21	7,050,000	N/A
Woodward Garden Project 2	12/9/08		LIBOR + 0.2	8/1/16-28	6,197,000	N/A
Woodward Garden Project 3	4/20/12		LIBOR + 0.2	8/1/16-31	5,753,000	N/A
Loan Payable GE Capital Schedule –013	4/9/04		4.07	7/1/12-6/1/14	248,289	N/A
Loan Payable GE Capital Schedule – 030	4/30/08		4.57	8/1/12	358,928	
<b>Total Notes and Loans</b>					<b>89,998,217</b>	
<b>Total Secured General Obligation Liabilities</b>					<b>\$439,788,217</b>	

**Appendix E — Schedule of unsecured general obligation liabilities as of June 30, 2012**

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
<b>GOVERNMENTAL ACTIVITIES</b>							
<b>General Obligation Bonds –</b>							
Unlimited Tax:							
Series 1999-A	4-1-99	\$ 28,020,000	5.00 to 5.25%	4/1/13-19	\$ 21,040,000	Assured Guaranty	b
Series 2001-A(1)	7-15-01	83,200,000	5.0 to 5.375	4/1/13-21	80,400,000	MBIA	b
Series 2001-B	7-15-01	23,235,000	5.375	4/1/13-14	13,680,000	MBIA	b
Series 2002	8-2-02	29,205,000	4.00 to 5.13	4/1/13-22	6,645,000	MBIA	b
Series 2003-A	10-21-03	9,640,000	3.70 to 5.00	4/1/2013	2,575,000	Syncora	
Series 2003-A	10-21-03	34,380,000	4.00 to 5.25	4/1/14-23	34,380,000	Syncora	b
Series 2004-A(1)	9-9-04	39,270,000	4.25 to 5.25	4/1/19-24	39,270,000	Ambac	b
Series 2004-B(1)	9-9-04	23,720,000	3.75 to 5.00	4/1/13-14	16,175,000	Ambac	
Series 2004-B(1)	9-9-04	29,365,000	4.0 to 5.25	4/1/15-18	29,365,000	Ambac	b
Series 2004-B(2)	9-9-04	17,270,000	4.16 to 5.24	4/1/13-18	865,000	Ambac	
Series 2005-B	12-1-05	13,840,000	4.00 to 5.00	4/1/13-16	8,955,000	Assured Guaranty	
Series 2005-B	12-1-05	37,920,000	4.30 to 5.00	4/1/17-25	37,920,000	Assured Guaranty	b
Series 2005-C	12-1-05	20,010,000	4.00 to 5.00	4/1/13-16	12,230,000	Assured Guaranty	a
Series 2005-C	12-1-05	10,795,000	4.30 to 5.25	4/1/17-20	10,795,000	Assured Guaranty	b
Series 2008-A	6-9-08	15,120,000	5.00	4/1/14-18	15,120,000	Assured Guaranty	
Series 2008-A	6-9-08	43,510,000	4.00 to 5.00	4/1/19-28	43,510,000	Assured Guaranty	b
Series 2008-B(1)	6-9-08	66,475,000	5.00	4/1/13-18	37,905,000	Assured Guaranty	
<b>Total General Obligation Bonds - Unlimited Tax</b>					<b>\$ 410,830,000</b>		

**Appendix E – Continued**

	Bond Date	Amount Issued	Range of Interest Rates	Maturity Date	Balance June 30, 2012	Insurer	
<b>GOVERNMENTAL ACTIVITIES (continued)</b>							
<b>General Obligation Bonds –</b>							
Limited Tax:							
Self-Insurance Bonds:							
Series 2003	10-2-03	\$ 98,895,000	4.32 to 4.97%	5/1/2013	\$ 17,770,000	Assured Guaranty	
Series 2004	9-9-04	62,285,000	4.16 to 4.85	4/1/13-14	25,405,000	Ambac	
General Obligation:							
Series 2005-A(1)	6-24-05	21,325,000	4.27 to 4.53	4/1/13-15	11,320,000	Ambac	
Series 2005-A(1)	6-24-05	52,175,000	4.61 to 5.15	4/1/16-25	52,175,000	Ambac	b
Series 2005-A(2)	6-24-05	4,055,000	3.50 to 4.50	4/1/12-15	2,145,000	Ambac	
Series 2005-A(2)	6-24-05	9,475,000	4.00 to 5.00	4/1/16-25	9,475,000	Ambac	b
Series 2005-B	6-24-05	4,845,000	3.50 to 5.00	4/1/13-15	2,835,000	Ambac	
Series 2005-B	6-24-05	6,940,000	5.00	4/1/16-21	6,940,000	Ambac	b
Series 2008-A(1)	6-9-08	43,443,278	5.00	4/1/13-16	43,443,278	N/A	
Series 2008-A(2)	6-9-08	25,000,000	8.00	4/1/2014	25,000,000	N/A	
<b>Total General Obligation Bonds - Limited Tax</b>					<b>196,508,278</b>		
Loans - Downtown Development Authority					33,600,000		
<b>Total Unsecured General Obligation Liabilities</b>					<b>\$ 640,938,278</b>		

a - Indicates interest rates are reset periodically at the stated market interest rates.  
 b - Indicates bonds are callable under terms specified in the indenture; all other bonds are noncallable.

**Appendix F – Annual Debt Service on Special Revenue Obligations (\$ in millions).**

<b>Fiscal Year</b>	<b>Sewage Disposal Fund</b>		<b>Water Fund</b>		<b>Parking Fund</b>		<b>Total Special Revenue</b>
	<b>Principal</b>	<b>Interest</b>	<b>Principal</b>	<b>Interest</b>	<b>Principal</b>	<b>Interest</b>	
2013	76.58	123.42	33.20	120.25	1.17	0.50	\$355.12
2014	78.39	143.45	41.46	131.24	1.22	0.44	\$396.20
2015	86.66	140.42	53.43	129.31	1.29	0.38	\$411.49
2016	89.28	137.53	58.75	126.49	1.35	0.31	\$413.71
2017	91.58	134.41	61.81	123.38	1.42	0.24	\$412.84
2018-22	503.05	621.32	353.35	568.23	4.03	0.30	\$2,050.28
2023-27	584.93	515.60	447.03	468.72			\$2,016.28
2028-32	733.64	380.44	555.24	344.23			\$2,013.55
2033-37	810.06	220.48	656.86	193.56			\$1,880.96
2037-42	338.56	35.90	318.25	51.62			\$ 744.33
<b>Total</b>	<b>\$3,392.73</b>	<b>\$2,452.97</b>	<b>\$2,579.38</b>	<b>\$2,257.03</b>	<b>\$ 10.48</b>	<b>\$ 2.17</b>	<b>\$10,694.76</b>



**Appendix G – Annual Debt Service on General Obligation Debt & Other Liabilities (\$ in millions).**

<b>Fiscal Year</b>	<b>General Obligation Bonds</b>		<b>Notes and Loans Payable</b>		<b>Transportation Fund Liabilities</b>		<b>Total</b>
	<b>Principal</b>	<b>Interest</b>	<b>Principal</b>	<b>Interest</b>	<b>Principal</b>	<b>Interest</b>	
2013	\$82.71	\$51.81	\$1.56	\$3.85	\$0.81	\$0.31	\$141.07
2014	\$81.63	\$47.73	\$3.25	\$3.76	\$0.00	\$0.27	\$136.64
2015	\$68.36	\$42.72	\$3.38	\$3.62	\$2.66	\$0.27	\$121.02
2016	\$66.87	\$39.27	\$3.65	\$3.46	\$2.80	\$0.14	\$116.19
2017	\$49.89	\$35.87	\$6.09	\$3.24	\$0.00	\$0.00	\$95.10
2018-22	\$254.12	\$139.73	\$31.33	\$12.03	\$0.00	\$0.00	\$437.21
2023-27	\$150.59	\$81.99	\$30.46	\$4.61	\$0.00	\$0.00	\$267.65
2028-32	\$101.54	\$47.46	\$10.26	\$0.24	\$0.00	\$0.00	\$159.50
2033-37	\$101.43	\$13.26	\$33.60	\$0.00	\$0.00	\$0.00	\$148.29
<b>Total</b>	<b>\$957.13</b>	<b>\$499.84</b>	<b>\$123.60</b>	<b>\$34.83</b>	<b>\$6.27</b>	<b>\$1.00</b>	<b>\$1,622.67</b>

Figures above do NOT include \$129.5 million in general fund refunding bonds issued in FY 2013, which have increased outstanding debt balance further from FY 2012 balances.

**Appendix H – Annual Debt Service on Pension Obligation Certificates and Related Swap Liabilities (\$ in millions).**

<b>Fiscal Year</b>	<b>Principal</b>	<b>Interest</b>	<b>Swap Liability</b>	<b>Total</b>
2013	23.1	39.6	50.7	113.4
2014	29.6	38.5	50.6	118.8
2015	33.3	37.2	50.6	121.1
2016	37.0	35.7	50.6	123.2
2017	41.0	33.9	50.6	125.4
2018-22	242.8	140.5	248.0	631.3
2023-27	311.2	88.3	226.9	626.5
2028-32	416.3	61.8	135.6	613.7
2033-35	317.6	26.4	15.1	359.1
<b>Total</b>	<b>1,451.9</b>	<b>501.9</b>	<b>878.7</b>	<b>2,832.5</b>

**APPENDIX I – City Bargaining Units**

Category	Name of Bargaining Unit	Active CBA?	CBA Expiration	Subject to CETS?	No. of Employees Represented
Uniform	AFSCME - ESOs	Yes	6/30/13	No	93
	Detroit Fire Fighters Ass'n	Yes	6/30/13	No	927
	Detroit Police Command Officers Ass'n		As of 9/30/12	Yes	24
	Detroit Police Lieutenants and Sergeants Ass'n	Yes	6/30/13	No	530
	Detroit Police Officers Ass'n		6/30/12	Yes	1,991
	Emergency Medical Service Officers Ass'n (EMS)		As of 9/30/12	Yes	10
	Police Officers Ass'n of Michigan (EMS)		As of 9/30/12	Yes	187
Coalition and other nonuniform	AFSCME Crossing Guards		6/30/12	Yes	157
	AFSCME Forestry and Landscape Foreman		6/30/12	Yes	4
	AFSCME Motor City Seasonals		6/30/12	Yes	240
	AFSCME Non-Supervisory		6/30/12	No	1,656
	AFSCME Paving Foreperson's		6/30/12	Yes	9
	AFSCME Supervisory, Local 2394		6/30/12	Yes	47
	Assist. Supervisors of Street Maint. & Constr.		6/30/12	Yes	4
	Ass'n of Munic. Engineers (Supervisors of ADE)		6/30/12	Yes	15
	Ass'n of City of Detroit Supervisors		6/30/12	Yes	35
	Ass'n of Detroit Engineers		As of 9/30/12	Yes	82
	Ass'n of Municipal Inspectors		6/30/12	Yes	12
	Ass'n of Prof. & Technical Employees		As of 9/30/12	Yes	102
	Ass'n of Prof. Construction Inspectors		6/30/12	Yes	37
	Building Construction Trades – Foreman		6/30/12	Yes	14
	Building Construction Trades - Non-Supervisory		6/30/12	Yes	172
	Building Construction Trades - Special Service		6/30/12	Yes	26
	Buildings and Safety Inspectors – Tripartite		6/30/12	Yes	19
	Detroit Income Tax Investigators Ass'n		6/30/12	Yes	15
	Detroit License Investigators Ass'n		6/30/12	Yes	0
	Field Engineers Ass'n		6/30/12	Yes	2

Appendix I – Continued

Category	Name of Bargaining Unit	Active CBA?	CBA Expiration	Subject to CETS?	No. of Employees Represented
	International Union of Op. Engineers - Local 324		9/30/12	Yes	27
	Local 324 Park Management Ass'n		6/30/12	Yes	7
	Local 324 Principal Clerks Unit		6/30/12	Yes	64
	Police Officers Labor Council (Detroit Fac. Officers)		6/30/12	Yes	9
	Police Officers Labor Council (Health Department)		6/30/12	Yes	1
	SEIU Local 517M - Non-Supervisory		6/30/12	Yes	5
	SEIU Local 517M – Prof. & Tech. Unit		6/30/12	Yes	22
	SEIU Local 517M - Supervisory		6/30/12	Yes	11
	Senior Accountants, Analysts & Appraisers		6/30/12	Yes	141
	Teamsters, Local 214		6/30/12	Yes	430
	UAW Local 212 (Civilian Police Investigators)		6/30/12	Yes	14
	UAW Local 2211 (Public Attorneys Ass'n)		6/30/12	Yes	37
	UAW Local 412-Unit 86 (Law Dep't Paralegals)		6/30/12	Yes	8
13(c) protected employees	AFSCME Non-supervisory Locals 214 & 312		6/30/12	No	317
	Amalgamated Transit Union (ATU)		6/30/12	No	622
	Building Construction Trades – Non-supervisory		6/30/12	No	4
	DOT Foreman's Ass'n		6/30/12	No	6
	International Union of Op. Engineers		9/30/12	No	2
	Supervisor Chapter of DOT Foreman's Ass'n		6/30/12	No	24
	Teamsters, Local 214		6/30/12	No	9
<b>Total</b>					<b>8,270</b>

## Appendix J – Summary of Capital Improvements in 10-Year Plan

Department / Category	Project	Total Budget Impact	Start Date	Duration
Non-Departmental / Citywide (Included in GSD)	Elevator Improvements Program	\$3,503,911	FY 2014	10 years
	Space Consolidation Improvements	\$16,118,541	FY 2014	10 years
	Other	\$1,517,528	FY 2014	10 years
	<b>Subtotal</b>	<b>\$21,139,980</b>		
Manoogian Mansion	Roof Replacement	\$114,643	FY 2020	2 years
	<b>Subtotal</b>	<b>\$114,643</b>		
Police	Police Academy Improvements	\$1,255,932	FY 2014	4 years
	Existing District/Precinct Improvements	\$2,896,861	FY 2014	9 years
	New PCT #1 & 2	\$6,000,000	FY 2014	2 years
	New PCT #3 & 4	\$6,000,000	FY 2016	2 years
	New PCT #5 & 6	\$6,000,000	FY 2018	2 years
	Electrical Improvements	\$2,000,000	FY 2014	2 years
	Contingent Projects	\$14,000,000	FY 2014	10 years
	Other	\$2,027,887	FY 2014	9 years
	<b>Subtotal</b>	<b>\$40,180,681</b>		
Fire	Fire Training Building Replacement	\$17,010,540	FY 2016	2 years
	Fire Apparatus	\$543,525	FY 2014	5 years
	Engine House Improvements	\$2,022,077	FY 2014	10 years
	Structural Improvements	\$6,000,000	FY 2014	6 years
	Electrical Improvements	\$4,000,000	FY 2014	2 years
	Exhaust System Improvements	\$4,500,000	FY 2014	10 years
	Contingent Projects	\$17,300,000	FY 2016	8 years
<b>Subtotal</b>	<b>\$51,376,142</b>			
DDOT	Facility Improvements	\$20,800,000	FY 2014	4 years
	<b>Subtotal</b>	<b>\$20,800,000</b>		
Airport	Facility Improvements/Expansion	\$13,264,808	FY 2014	10 years
	<b>Subtotal</b>	<b>\$13,264,808</b>		
Public Lighting	PLD HQ HVAC System Replacement	\$1,500,000	FY 2015	1 year
	Other	\$243,432	FY 2014	10 years
	<b>Subtotal</b>	<b>\$1,743,432</b>		
Municipal Parking	Facility Improvements	\$382,698	FY 2014	5 years
	<b>Subtotal</b>	<b>\$382,698</b>		
Health (transferred to DPD)	Animal Control Building Replacement	\$10,899,020	FY 2014	2 years
	<b>Subtotal</b>	<b>\$10,899,020</b>		

**Appendix J – Continued**

<b>Department / Category</b>	<b>Project</b>	<b>Total Budget Impact</b>	<b>Start Date</b>	<b>Duration</b>
Elections	Facility Improvements	\$1,275,000	FY 2014	1 year
	Contingent Projects	\$2,000,000	FY 2020	4 years
	<b>Subtotal</b>	<b>\$3,275,000</b>		
Fleet Purchases	Police Fleet Purchases	\$102,597,588	FY 2014	10 years
	Fire Fleet Purchases	\$19,059,144	FY 2014	10 years
	Grounds Maintenance Fleet Purchases	\$11,872,447	FY 2014	10 years
	Municipal Parking Fleet Purchases	\$3,532,245	FY 2015	9 years
	<b>Subtotal</b>	<b>\$137,061,424</b>		
Information Technology	Administrative Hearings	\$500,000	FY 2014	1 year
	Finance / Budget	\$50,500,000	FY 2014	10 years
	Fire	\$1,800,000	FY 2014	10 years
	Grants	\$400,000	FY 2014	10 years
	Human Resources	\$300,000	FY 2014	1 year
	Law	\$100,000	FY 2014	1 year
	Police	\$19,900,000	FY 2013	11 years
	Ombudsperson	\$7,900,000	FY 2014	10 years
	36th District Court	\$2,200,000	FY 2014	10 years
	<b>Subtotal</b>	<b>\$83,600,000</b>		
General Services	Facility Improvements	\$3,420,151	FY 2014	8 years
	Contingent Projects	\$17,500,000	FY 2015	9 years
	<b>Subtotal</b>	<b>\$20,920,151</b>		
<b>General Fund Capital Improvement Project Total</b>		<b>\$404,757,979</b>		
Reorganization Costs		\$45,800,000		
Training Costs	HR Training (catch-up costs)	\$1,300,000		
	DDOT Training	\$500,000		
Total Including Reorganization and Training Costs		<b>\$452,357,979</b>		
Blight		\$500,000,000	FY 2014	6 years
Additional Operating Expenditures		\$297,400,000		
<b>GRAND TOTAL</b>		<b>\$1,249,757,979</b>		

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
2.	11	7/18/2013	Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Attachments: Exhibit A; Exhibit B; Exhibit C; Exhibit D; Exhibit E; Exhibit F; Exhibit G; Exhibit H; Exhibit I; Exhibit J; Exhibit K; Exhibit L)

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

In re:

Chapter 9

CITY OF DETROIT, MICHIGAN

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

**CONSOLIDATED OBJECTION  
OF THE RETIREE ASSOCIATION PARTIES TO ELIGIBILITY**

The Retired Detroit Police & Fire Fighters Association (“RDPFFA”), Donald Taylor, individually and as President of the RDPFFA, the Detroit Retired City Employees Association (“DRCEA”), and Shirley V. Lightsey, individually and as President of the DRCEA (collectively “Retiree Association Parties”) through their counsel, Lippitt O’Keefe, PLLC and Silverman & Morris, P.L.L.C., submit the following Consolidated Objection to the City of Detroit’s Eligibility to be a Debtor Under Chapter 9 of the U.S. Bankruptcy Code:<sup>1</sup>

**BRIEF STATEMENT**

The City of Detroit (“City”) is not eligible to be a chapter 9 debtor because it does not satisfy the requirements of 11 U.S.C. § 109(c). The City cannot meet its burden to show that it: received valid authorization (any authorization received by

<sup>1</sup> Declarations of Shirley V. Lightsey and Donald Taylor in support of this Consolidated Objection of the Retiree Association Parties to Eligibility are attached as Exhibits A & B.

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the City was illegal, unconstitutional and erroneous); is insolvent; and/or that it negotiated in good-faith with creditors or that it was impracticable to do so (when in fact negotiations were practicable and welcomed). Therefore, for these reasons and for those reasons as more fully stated below the City is not eligible to be a chapter 9 debtor.<sup>2</sup>

### **RELIEF REQUESTED**

1. The Retiree Association Parties seek an order dismissing the case for the reason that the City is ineligible to be a debtor under chapter 9 of the Bankruptcy Code.

2. The Retiree Association Parties further request that the order specifically state that the City is ineligible to be a debtor under chapter 9 of the Bankruptcy Code because Article IX § 24 of the Michigan Constitution prohibits the City from diminishing or impairing accrued pensions.

### **FACTS RELEVANT TO THIS OBJECTION**

#### ***I. Retirement Benefits Are a Substantial Debt of the City***

3. The City has listed as the creditors holding the two largest unsecured claims the General Retirement System of the City of Detroit and the Police and Fire Retirement System of the City of Detroit (together, the “Retirement

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<sup>2</sup> The Retiree Association Parties expect an objection filing by the Retiree Committee, being formed by the U.S. Trustee’s office, and anticipate concurring with the position to be taken by the Retiree Committee.

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Systems”). The Retirement Systems may in fact be the largest creditors in the sense that the ordinances establishing the Retirement Systems provide for the Retirement Systems to determine and collect from the City the amount necessary for the City to contribute in order that retiree pensions are properly funded, but the function of the Retirement Systems is to administer pension funds for the City for the benefit of the City’s retired employees. The City is indebted to its retirees for their accrued benefits, and the Retirement Systems represent a mechanism through which the City is obligated to fulfill its responsibilities to its retired employees. It is the retirees who have the ultimate financial stake in the fulfillment by the City of its pension obligations.

4. It is undeniable that the retirement benefits due to the retirees from the City are substantial. This is in part because the City’s pension obligations represent a continuing obligation to its retirees.

***II. Article IX § 24 of the Michigan Constitution Prohibits the City from Diminishing or Impairing its Obligations for Accrued Pensions.***

5. Article IX § 24 of the Michigan Constitution provides as follows:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

6. Accrued public pensions were not protected by the Michigan Constitution until the adoption of the Michigan Constitution of 1963. The

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applicable language was originally contained in Proposal 40 at the 1961 Constitutional Convention, which was adopted on April 19, 1962, by a vote of 117-1.

7. The City has stated, for example in its June 14, 2013 “Proposal for Creditors” (Docket # 11-1, filed 7/18/13, p. 109), its intention to treat its pension obligations as ordinary unsecured debt. Although the Court must determine the issue of the City’s authority to propose a plan of adjustment which diminishes or impairs the “accrued financial benefits of [its] pension plan and retirement system,” this issue will not be ripe for determination until the City has proposed such treatment under a plan. Nevertheless, the City’s present posture on this issue, in contravention of the Michigan Constitution, precludes a finding that the City attempted to negotiate with the retirees in good faith (especially considering there were no negotiations at all). This lack of good faith negotiation by the City renders the City ineligible for relief under chapter 9.

***III. The Retiree Associations Have Been and Continue to Be Natural Representatives for Retirees***

8. The Retiree Associations (RDPFFA and DRCEA) have provided and continue to provide a highly organized and representative voice of the retirees.

9. The combined membership of the Retiree Associations is estimated to be approximately 70% of all City retirees.

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10. The RDPFFA has represented its constituent retirees for more than 30 years and has won and protected rights for them through litigation, lobbying and other forms of representation.

11. The DRCEA has represented its constituent retirees for more than 50 years and has won and protected rights for them through litigation, lobbying and other forms of representation.

12. Both the RDPFFA and DRCEA's primary purpose is to represent the interests of their respective retiree members. Each of the Retiree Associations operates under its own by-laws and governing documents and serves its members through its elected and/or appointed board of directors and officers.

13. The Retiree Associations are the natural representatives of the retirees capable of bargaining on their behalf.

14. The Retiree Associations are in the process of obtaining proxy forms from their members providing that the retiree appoints his or her respective association to represent him or her in these proceedings. The Retiree Associations have in a short period received over 5,000 proxies and they expect to receive thousands more in the near future.

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#### ***IV. The Retiree Associations' Histories of Negotiating and/or Representing Retirees***

##### ***A. The DRCEA***

15. Over the past 53 years, the DRCEA has been integral in securing pension improvements, protections and/or payment of entitled benefits. The list below is a summary of the many accomplishments made by the DRCEA on behalf of retirees and examples of DRCEA's involvement retiree advocacy:

- 1971: Retiree representative appointed by the mayor begins service as a member of the General Retirement System Board of Trustees.
- 1974: New city charter requires retiree representative serving on the General Retirement System Board of Trustees to be elected by retirees
- 1981: Option to withdraw annuity savings when leaving city service prior to retirement while retaining a right to a vested pension permitted.
- 1996: Pre-July 1992 retirees win part of equity lawsuit in circuit court. City ordered to raise pension payments to reflect 1.56% factor for service beyond 10 years. Retirees do not receive adjustment until February 1999.
- 1996: DRCEA helps defeat Proposal T which would have limited and reduced distribution of excess earnings on investments to retirees.
- 1997: Factors for service years of pre-July 1992 retirees increased to 1.63% by court-ordered pension equity adjustment. Retirees receive increased rate in November 1999.
- 2000-2003: Medical insurance premiums reduced by 50% for retirees and beneficiaries of retirees who retired between July 1, 1984 and June 30, 1994.
- 2008: Most pre-July 1998 retirees receive a \$30 monthly stipend to pay a portion of Medicare Part B monthly health-care premium. (Recently taken away by the City).

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**B. The RDPFFA**

16. Over the past thirty-plus years, the RDPFFA has been integral in securing over eighty million dollars in pension improvements, protections and/or secured payment of entitled benefits. The list below is a summary of the many accomplishments made by the RDPFFA on behalf of retirees:

- 1992: Yank/Gentile lawsuit. When a dispute arose between the City and its police and firemen over the determination of pension benefits, after extensive litigation, the Wayne County Circuit Court ruled that certain fringe benefits such as longevity pay, certain types of holiday pay, and vacation pay, leave time, overtime, shift differential, and cost-of-living allowance were payments made in the course of the policemen and firemen's work for regular work done and must all be included when calculating pension payments.
- 2001: Secured payment of 13<sup>th</sup> checks totaling \$13,820.00 for each eligible retiree (1999-2000-2001).
- 2009: *Weiler v. City of Detroit* healthcare settlement agreement, \$12,000,000.00 in direct payment back to retirees and guaranteed life-time healthcare benefits. In July 2006, the City of Detroit changed healthcare benefits for police and fire fighter retirees by increasing co-payments, deductibles, and contributions for monthly healthcare premiums. A representative action was filed against the City of Detroit over these changes on behalf of approximately 8,000 retirees, their spouses, surviving spouses, and dependents. The case resulted in a settlement which provided restitution to the class members, along with healthcare cost and benefit-level certainty, broadly reducing the overall financial impact of rising healthcare costs on class members. Importantly, the City agreed that these terms, including the healthcare benefits, were “unchangeable”.
- 2011: House Bill 4135 signed into law Public Act 25 of 2011 requiring enforcement of Detroit City Charter placing retiree on Police & Fire Retirement Board.

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impair accrued pension obligations. No negotiation was permitted by the City. The City provided a “data room” to enable the Retiree Associations to research financial and other information.

July 10, 2013, 1:00 p.m. at the Coleman A. Young Municipal Center, 3rd floor Labor Relations Conference Room. Attorney David Heiman led the discussion and other Jones Day attorneys were present. There were presentations regarding potential changes to the Pension Fund configuration, a “four-step process.” The presentation did not get past step one, the presentation by the City of information. No negotiation occurred.

July 11, 2013, 10:00 a.m. at the Coleman A. Young Municipal Center, 3rd floor Labor Relations Conference Room. David Heiman and other attorneys from Jones Day conducted the presentation. The primary topic was health care. A draft of “Medicare Advantage Plan Design Options” was passed out. No negotiation took place because the meeting was purely informational.

18. Ms. Lightsey also sent a letter to Mr. Orr on May 4, 2013, requesting a meeting with him to discuss pension and other retirement benefits. This letter and request went unanswered by Mr. Orr. Counsel for the Retiree Associations also requested additional meetings with Mr. Orr and his representatives and these requests went unanswered.

***B. The RDPFFA***

19. The RDPFFA, through its president, Don Taylor, met with Michigan Treasurer, Andy Dillon, to discuss pension and other retiree issues. Representatives from the RDPFFA (accompanied by counsel on three occasions) also attended various meetings with the City and its representatives. The meetings

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were purely informational. At no point in the meetings was there an opportunity for negotiation or even for the consideration of the position of the retirees. The meetings are summarized as follows:

April 18, 2013, 10:00 a.m. at the Coleman A Young Municipal Center – Meeting with Emergency Financial Manager, Kevyn Orr. The meeting was presentational and Mr. Orr informed the group that he had no intention of impairing pensions or health benefits for retirees. More specifically, Mr. Orr stated that he had no intention to violate the state constitution or to set aside the settlement reached in *Weiler*. No negotiation occurred.

June 14, 2013 at Detroit Metropolitan Airport. The meeting was led by Jones Day attorneys and other professionals representing the City. Mr. Orr and Mr. Dillon were in attendance but did not speak. An initial proposal was presented during the meeting. No negotiation occurred.

June 20, 2013, at the Coleman A. Young Municipal Center, 13<sup>th</sup>-floor auditorium - Several Jones Day attorneys and financial advisors presented a 23-page document and discussed the information. A take-it-or-leave-it (unconstitutional) proposal was made by the City. The proposal made by the City called for pension obligations to be treated as general unsecured debt, which violates the Constitution because the proposal would both diminish and impair accrued pension obligations. No negotiation occurred. The City informed the Retiree Associations of the data room as a source for further information.

July 10, 2013, at the Coleman A. Young Municipal Center, 3<sup>rd</sup>-floor Labor Relations Conference Room. - David Heiman led the discussion and other Jones Day attorneys were present. There were presentations regarding potential changes to the pension fund configuration, a “four-step process.” The presentation did not get past step one of the “four-step process.” No negotiation occurred.

July 11, 2013, at the Coleman A. Young Bldg. 3rd floor Labor Relations Conference Room. David Heiman and associates from

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Jones Day conducted the presentation. The primary topic was health care. A draft of “Medicare Advantage Plan Design Options” was passed out. No negotiation was invited and the presentation was unilateral.

**VI. *Inaccuracies and Omissions in the City’s Filings and Declarations.***

20. The City in its “Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code” (Docket # 10) stated that it “is unable to negotiate (or further negotiate) with creditors because such negotiation is impracticable”. *Id.* ¶ 5. That statement is not accurate as it relates to retirees.

21. The City goes on to state that it “nevertheless, has negotiated in good faith with creditors who ***are represented and organized*** and has failed to obtain the agreement of creditors...” *Id.* That statement is likewise not accurate as it relates to retirees.

22. The retirees are represented and organized through the Retiree Associations, but no negotiations with the Retiree Associations occurred.

23. The “Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan’s Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code” (Docket # 11) only discusses “meetings” with parties concerned with employee legacy obligations (i.e. retirees), but makes no mention of negotiations with retirees, whereas; Mr. Orr specifically mentions “negotiations” with other creditors, such as Swap counterparties and insurers.

24. The Retiree Associations do not object to the formation of a Retiree Committee as requested by the City, but dispute some of the statements made by Mr. Orr in his declaration regarding the formation of a Retiree Committee insofar as those statements may be relevant to the City's lack of pre-petition negotiations with retirees, and therefore the City's eligibility for relief under chapter 9:

A. Mr. Orr's statement that "most of [the City's] approximately 23,500 retirees are not familiar with chapter 9 and lack the means to obtain sophisticated representation in this case on an individual basis", *Id.* ¶ 124, is misleading because most of the City's retirees are members in their respective Retiree Associations, and the Retiree Associations at all times have had the means to obtain sophisticated representation and, in fact, have representation.

B. Mr. Orr states that the "small number of unions and retiree associations that have offered to represent retirees possess no legal authority to bind those individuals to restructure pension and retiree health benefits," but Mr. Orr's statement fails to recognize that all negotiations relative to retirees will be on a representative basis and subject to ratification by the retirees. Even the Retiree Committee requested by the City and being formed by the United States Trustee's Office does not have the unilateral power to bind all retirees. Likewise, Mr. Orr ignores the history of the Retiree Associations which have in the past negotiated on behalf of and won significant benefits for retirees.

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## BASIS FOR RELIEF

25. The Retiree Association Parties object to the City's eligibility because it has failed to meet its burden to show that it has satisfied all of the eligibility requirements of 11 U.S.C. § 109(c).

26. 11 U.S.C §109(c) codifies the eligibility requirements for a municipality to qualify as a chapter 9 debtor, and provides:

An entity may be a debtor under chapter 9 of this title if and only if such entity—

- (1) is a municipality;
- (2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;
- (3) is insolvent;
- (4) desires to effect a plan to adjust such debts; and
- (5)
  - (A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;
  - (B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;
  - (C) is unable to negotiate with creditors because such negotiation is impracticable; or

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(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

27. The burden of establishing eligibility as a chapter 9 debtor is on the municipality. *In re City of Harrisburg*, 465 B.R. 744, 752 (Bankr. M.D. Pa. 2011)(citing *In re Valley Health Sys.*, 383 B.R. 156, 161 (Bankr. C.D. Cal. 2008)); *In re Barnwell County Hosp.*, 459 B.R. 903, (Bankr. D. S.C. October 27, 2011); *In re Pierce County Housing Authority*, 414 B.R. 702, 710 (Bankr. W.D. Wash. 2009); UNITED STATES TRUSTEE PROGRAM POLICY & PRACTICES MANUAL, Vol.5, CHAPTER 9 ADMINISTRATION 6 (“The municipality filing the petition bears the burden of proving each element in the chapter 9 eligibility calculus.”).

28. The Retiree Association Parties do not contest that the City is a municipality.

29. The Retiree Association Parties also do not contest that the City desires to effect a plan to adjust its debt.

30. The Retiree Associations dispute that: (I) the City received a lawful authorization to file for bankruptcy under Chapter 9; (II) that the City is insolvent; and (III) that the City negotiated in good-faith with creditors (i.e., the retirees) when negotiations were practicable.

***I. Any Unconditional Authorization Received by the City to File for Bankruptcy that Could Impair or Diminish Accrued Pensions was Illegal, Unconstitutional and Erroneous.***

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31. Governor Snyder is an executive officer of the state of Michigan and has sworn to “support the...Constitution of this state.”

32. Governor Snyder also has the obligation to ensure that the laws of the state “be faithfully executed.” Mich. Const. 1963, Art. V, §8.

33. Kevyn Orr, as Emergency Manager of the City, has also sworn to “support the...Constitution of this state.”

34. Article IX § 24 of the Michigan Constitution prevents the state and its political subdivisions from impairing or diminishing accrued pensions of the state and its political subdivisions. Mich. Const. 1963 Art. XI, § 1.

35. The Constitutional protections provided to accrued public pension benefits cannot be abrogated by state statute, state executive action or any other state action short of a duly adopted constitutional amendment. Specifically, nothing in PA 436 or any other statute gives the power to Governor Snyder or Mr. Orr to impair or diminish accrued pension obligations of the City.

36. Contrary to the oaths taken by Governor Snyder and Mr. Orr, each has taken, and/or threatened to take, affirmative steps to impair or diminish accrued pension obligations.

37. Mr. Orr’s request for Governor Snyder to authorize the City to file for bankruptcy, without excluding accrued pension obligations from the request, is unconstitutional.

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38. Section 18 of PA 436 provides Governor Snyder with the power to authorize Mr. Orr to file for bankruptcy on behalf of the City as follows:

If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and emergency manager in writing of the decision...Upon receipt of this written approval, the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States Code, 11 USC 101-1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9.

39. Governor Snyder, under section 26(2) of PA 436, also has the power to “place contingencies on a local government in order to proceed under chapter 9.”

40. Despite the constitutional protection of accrued public pensions, Governor Snyder failed to condition his authorization for the City to file bankruptcy on the requirement that all accrued pension benefits not be impaired or diminished.

41. In drafting chapter 9 eligibility requirements in the Bankruptcy Code, Congress contemplated federalism concerns and stated that a municipality may only be a chapter 9 debtor if it “is specifically authorized, in its capacity as a

municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization *empowered by State law to authorize such entity to be a debtor under such chapter.*”

42. Congress, in section 109(c) of the Bankruptcy Code, does not discuss the treatment of contracts or any other obligation once a municipality meets the eligibility requirements of 109(c) and is a chapter 9 debtor, but *only* articulates eligibility requirements. The treatment of debts once a municipality is a chapter 9 debtor is a completely different question and is irrelevant to the inquiry here.

43. Congress tempered its bankruptcy power over municipalities in section 109(c) and provided that the states and only the states have the ability to authorize municipalities to seek relief as a chapter 9 debtor.

44. Nothing in the Bankruptcy Code alters the hierarchy of state laws and in the state of Michigan the constitution is supreme. All laws of the state and all persons acting on behalf of the state must comply with the Michigan Constitution. *Campbell v. Detroit*, 51 Mich. App. 34, 37 (1973) (internal citations omitted) (“An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never passed.”)

45. No state law, governmental officer or organization is empowered by the laws of the state of Michigan to violate the Michigan Constitution.

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46. Mr. Orr’s request for unconditional authority from the governor to file for chapter 9 bankruptcy violates the Michigan Constitution because it is a step (the first step and a significant step) towards the unconstitutional impairment or diminishment of accrued pension benefits.

47. Governor Snyder’s unconditional approval for Mr. Orr to file chapter 9 bankruptcy is unconstitutional because it fails to protect accrued pensions as required by the Constitution.

48. Any unconditional authorization given by the state for the City to file bankruptcy that does not expressly preclude impairing or diminishing accrued pension benefits is unconstitutional, illegal, and void. *Taxpayers of Michigan Against Casinos v. State*, 478 Mich. 99, 107-08 & n.3 (2007) (even “broad discretion” granted to Governor by statute to act unilaterally must be exercised “within the limits of the constitution”).

49. The City did not receive an authorization empowered by and lawful under State law.

50. The City fails to satisfy the eligibility requirement of 11 U.S.C. § 109(c)(2) and, therefore, the City is not eligible to be a chapter 9 debtor.

***II. There are Issues of Fact with respect to Insolvency***

51. To qualify as a chapter 9 the City must meet its burden of showing that the City is insolvent.

52. Section 101(32)(C) of the Bankruptcy Code defines insolvency for a municipality as having a financial condition such that the municipality is:

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due.

53. The City in its “Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code” (Docket # 11) claims that the “City is insolvent.” *Id.* ¶ 3.

54. The City’s financial statements and analyses submitted during the bankruptcy proceeding have been the subject of much scrutiny, criticism and concern. The critiques concerning the accuracy of the City’s financial statements and analyses range from disputes over actuarial assumptions to questions pertaining to more basic accounting issues. Such concerns, include, but are not limited to:

A. President of the Detroit Fire Fighters Association, Dan McNamara, has publicly stated that Mr. Orr “is engaged in a propaganda campaign, using, ‘deeply flawed research that grossly inflates pension liabilities to the city’s police and fire fighters.” (July 24, 2013, Press Release from Detroit Fire Fighters Association).

B. Reuters reporter, Cate Long, has also questioned the pension assumptions by stating “[t]here is a question as to whether the EM’s plan is inflating pension liabilities. The unfunded pension liability was adjusted from \$650 million reported in 2011 to approximately \$3.5 billion – increasing more than five times over two years through unspecified changes to accounting assumptions.”

C. Gabriel Roeder Smith & Company, a highly regarded actuarial firm, has pegged the city of Detroit’s liability at \$977 million, a far cry from the \$3.5 billion alleged by Milliman, a company hired by the City and directed by Mr. Orr.

D. Milliman has described their own conclusions and actuarial reports as “guesstimates.”

E. Richard P. Larkin, Sr. VP, Director of Credit Analysis at HJ Sims & Co., recently questioned the City’s debt calculation in a commentary article published in the Bond Buyer. Richard P. Larkin, *Why Detroit Could Have Avoided Bankruptcy*, THE BOND BUYER, Aug. 8, 2013, available at [http://www.bondbuyer.com/issues/122\\_153/richard-larkin-detroit-bankruptcy-commentary-1054496-1.html](http://www.bondbuyer.com/issues/122_153/richard-larkin-detroit-bankruptcy-commentary-1054496-1.html). One of Larkin’s main criticisms of the City’s financial analyses is the calculation of its long term liabilities. Larkin stated “Detroit’s bankruptcy is NOT \$18 billion; it’s only \$15.7 billion.”

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F. Larkin also comments on the improper use of 4% to 9% annual salary increases, “In general, if you assume high future salary increases, pension liabilities will grow faster because pensions are based on final salaries. In Detroit, the assumption is that salary increases will range from 4% to 9% annually. In light of Detroit’s economic and financial distress, I don’t believe that raises of that magnitude are realistic.” Moreover, the City has actually enforced two 10% pay cuts on City employees in the past 3 years.

55. The Retiree Association Parties do not take a position on the accuracy or validity of the many critiques concerning the City’s financial analyses or even of the City’s own figures and analyses.

56. However, the Retiree Association Parties ***do assert*** that the presence of so many questions and uncertainties about the City’s finances shows that the City has not met its burden of establishing insolvency.

57. Since the City fails to satisfy the eligibility requirement of 11 U.S.C. § 109(c)(3), the City is not eligible to be a chapter 9 debtor.

### ***III. The City Did Not Negotiate in Good-Faith With Retirees When Negotiation Was Practicable***

58. Negotiation is[a]process of submission and consideration of offers until [an] acceptable offer is made and accepted. *Gainey v. Brotherhood of Ry. and S.S. Clerks, Freight Handlers, Exp. & Station Emp., D.C. Pa.*, 275 F. Supp. 292, 300 (E.D. of PA 1967). The deliberation, discussion, or conference upon the terms

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of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction. Black's Law Dictionary, 5th Edition, 1979.

59. The City does not contend that it negotiated with retirees in this case.

60. The City did not negotiate with retirees in this case.

61. To the extent that the City views its meetings with the unions and Retiree Associations, or its presentation of its take-it-or-leave-it (unconstitutional) proposal, as negotiations, the negotiations were not in good faith because the proposed diminution and impairment of pension obligations is prohibited by the Michigan Constitution. *City of Bethany v. Public Employees Relation Board of the State of Oklahoma*, 904 P.2d 604, 611 (Okl. 1995) (a party violates “their duty to bargain in good faith when they assert a position...if accepted, require the other side to agree to terms contrary to those mandated by statute); *In re White Crane Trading Co.*, 170 B.R. 694 (E.D. of Cal 1994) (actions taken in violation of law are not made in good-faith).

62. The City does not satisfy the requirement of 11 U.S.C. § 109(c)(5)(a).

63. Therefore, the City is ineligible to be a chapter 9 debtor, unless it can meet its burden to show that negotiation with retirees was impracticable.

64. The City cannot meet this burden of showing that negotiation was impracticable because negotiation was practicable.

65. The determination of “whether negotiations with creditors is impracticable depends on the circumstances of the case.” *In re City of Vallejo*, 408 B.R. 280, 298 (9th Cir. B.A.P 2009).

66. Impracticability is defined as a “circumstance that excuses a party from performing an act...., because (though possible) it would cause *extreme and unreasonable* difficulty.” *Id.* (emphasis added; internal citation omitted).

67. The City alleges that negotiation with retirees was impracticable because there is no representative body that can bind each and every retiree.

68. The City may be correct in its assertion that there is not a single body that can bind all of the City’s retirees, but that is irrelevant because the City does not use the proper legal standard. *In re City of Stockton, California*, \_\_\_ B.R. \_\_\_, 2013 WL 2629129 ( E.D. Cal. 2013).

69. The proper legal standard, as announced in *Stockton*, is whether there is a “natural representative capable of bargaining on their behalf.” *Id.* p 23. The Court in *Stockton* did state a requirement that the “natural representative” have the legal authority to bind all of the retirees. *Id.* Even the retiree committee formed in *Stockton* and the one being formed in the present case do not or will not have the authority to bind any retiree.

70. In *Stockton*, the court reasoned that in order for negotiations with numerous retirees to be practicable, there needs to be “natural representative capable of bargaining on their behalf.”

71. The Retiree Associations are the natural representatives of the retirees and are capable of bargaining and negotiating on their behalf. The Retiree Associations (with counsel) attended presentational meetings held by the City and its representatives. The City could have engaged in good-faith negotiations with retiree representatives at these meetings, but chose not to do so. Follow-up requests to the City by the Retiree Associations (and counsel) for additional meetings were ignored.

72. The City has not and cannot argue that it would have “cause[d] *extreme and unreasonable* difficulty” to engage in negotiations at the many meetings held and attended by the Retiree Associations (with counsel) or at future meetings that it could have held and at which the Retiree Associations (with counsel) would have been prepared to negotiate.

73. The City cannot prove that good-faith pre-petition negotiations were impracticable.

74. Therefore, the City fails to satisfy the eligibility requirement of 11 U.S.C. § 109(c)(5)(d) and, accordingly, the City is not eligible to be a chapter 9 debtor.

## CONCLUSION

75. For the reasons stated above, the Retirees Association Parties are entitled to an Order:

A. Dismissing the case for the reason that the City is ineligible to be a debtor under chapter 9 of the Bankruptcy Code.

B. Specifically stating that the City is ineligible to be a debtor under chapter 9 of the Bankruptcy Code because Article IX § 24 of the Michigan Constitution prohibits the City from diminishing or impairing accrued pensions.

Dated: August 19, 2013

Lippitt O'Keefe, PLLC

/s/ Ryan C. Plecha

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

In re:

Chapter 9

CITY OF DETROIT, MICHIGAN

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

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**EXHIBIT LIST**

**CONSOLIDATED OBJECTION  
OF THE RETIREE ASSOCIATION PARTIES TO ELIGIBILITY**

- A. Declaration Of Shirley V. Lightsey In Support Of Consolidated Objection Of The Retiree Association Parties To Eligibility
- B. Declaration Of Donald Taylor In Support Of Consolidated Objection Of The Retiree Association Parties To Eligibility

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

In re:  
CITY OF DETROIT, MICHIGAN  
Debtor.

Chapter 9  
Case No. 13-53846  
Hon. Steven W. Rhodes

**DECLARATION OF SHIRLEY V. LIGHTSEY IN SUPPORT OF  
CONSOLIDATED OBJECTION  
OF THE RETIREE ASSOCIATION PARTIES TO ELIGIBILITY**

1. Except as otherwise stated herein, I make the statements contained herein from personal knowledge, and if sworn as a witness, will testify to the truth thereof.
2. I am the President the Detroit Retired City Employees Association (DRCEA).
3. Approximately 7,900 of an estimated 12,100 "non-uniformed" retirees of the City of Detroit (i.e. retirees who were not employed as police officers or fire fighters) are members of the DRCEA. The DRCEA operates under its own by-laws and governing documents and serves its members through its elected board of directors and appointed officers.
4. The DRCEA was founded more than fifty-two years ago and has been active in protecting and improving pensions for retirees since its inception. The DRCEA has been integral in advocating on behalf of retirees before the City and state governments, and has participated in court cases and administrative actions on behalf of retirees as a group.
5. The DRCEA, through its President, Shirley V. Lightsey (together with counsel two occasions), attended three restructuring meetings held by the City and led by attorneys from Jones Day. The meetings were purely informational and conducted as unilateral presentations; at

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no point during any of these meetings was there bilateral negotiation. The meetings are summarized as follows:

June 20, 2013, 10 a.m. at the 13th floor auditorium of the Coleman A. Young Municipal Center. Several Jones Day attorneys and financial advisors presented a 23-page document and discussed the information. No proposal was made by the City and no negotiation was permitted by the City. The City provided a "data room" to enable the DRCEA to research financial and other information.

July 10, 2013, 1 p.m. at the Coleman A. Young Municipal Center, 3rd floor Labor Relations Conference Room. Attorney David Heiman led the discussion and other Jones Day attorneys were present. There were presentations regarding potential changes to the Pension Fund configuration, a "four-step process," was discussed.

July 11, 2013, 10 a.m. at the Coleman A. Young Municipal Center, 3rd floor Labor Relations Conference Room. David Heiman and other attorneys from Jones Day conducted the presentation. The primary topic was health care. A draft of "Medicare Advantage Plan Design Options" was passed out. No negotiation took place because the meeting was purely informational.

6. Although, like the committee of retirees to be appointed by the United States Trustee in this case, the DRCEA is not empowered to enter into a binding agreement with the City regarding pension benefits, the DRCEA is the representative of the interests of its members and other non-uniformed City retirees and was at all times relevant to this matter in a position to negotiate on their behalf. The DRCEA retained counsel to assist it in the discussions with the City.
7. No negotiation with the City occurred with the DRCEA, or, to the best of my knowledge, any other organization purporting to represent the interests of retirees. The DRCEA also reached out to Mr. Orr directly to discuss pension and other retirement benefit issues, that request went unanswered.

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8. The sole proposal made by the City with respect to pensions called for the City's pension obligations to be treated as a non-priority unsecured claim, notwithstanding the prohibition contained in the Michigan Constitution of the City's impairment or diminishment of "the accrued financial benefits of each pension plan and retirement system."

9. It is therefore my belief that the City did not engage in good-faith negotiations with retirees.

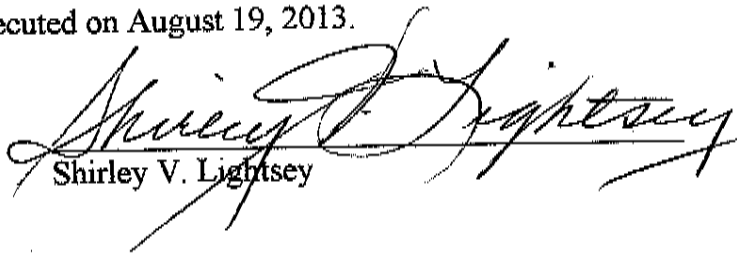
10. The DRCEA was prepared and willing to enter into good-faith negotiations with the City.

11. My counterparts with the Retired Detroit Police and Fire Fighters Association expressed to me their willingness to enter into good-faith negotiations with the City, and I believe that they were likewise prepared and willing to enter into good-faith negotiations.

12. Negotiations between the City and its retirees were therefore practicable.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2013.

  
Shirley V. Lightsey

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

In re:

Chapter 9

CITY OF DETROIT, MICHIGAN

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

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**DECLARATION OF DONALD TAYLOR IN SUPPORT OF  
CONSOLIDATED OBJECTION  
OF THE RETIREE ASSOCIATION PARTIES TO ELIGIBILITY**

1. Except as otherwise stated herein, I make the statements contained herein from personal knowledge, and if sworn as a witness, will testify to the truth thereof.
2. I am the President the Retired Detroit Police and Fire Fighters Association (RDPFFA).
3. Approximately 6,500 of an estimated 7,800 "uniformed" retirees of the City of Detroit (i.e. retirees who were employed as police officers or fire fighters) are members of the RDPFFA. The RDPFFA operates under its own by-laws and governing documents and serves its members through its elected board of directors and elected officers.
4. The predecessor of the RDPFFA was founded in 1946 and became known, in 1970, upon the merger of two organizations, as the RDPFFA. The RDPFFA has been active in protecting and improving pensions for police and fire retirees since its inception. The RDPFFA has been integral in advocating on behalf of retirees before the City and state governments, and has participated in court cases and administrative actions on behalf of police and fire retirees as a group.

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5. The RDPFFA, through its President, Donald Taylor (together with counsel on three occasions), attended five restructuring meetings held by the City and led by attorneys from Jones Day. The meetings were purely informational and conducted as unilateral presentations; at no point during any of these meetings was there negotiation. The meetings are summarized as follows:

April 18, 2013, 10 a.m. at the Coleman A Young Municipal Center – Meeting with Emergency Financial Manager, Kevyn Orr. The meeting was presentational and Mr. Orr informed the group that he had no intention of impairing pensions or health benefits for retirees. More specifically, Mr. Orr stated that he had no intention to violate the state constitution or to set aside the settlement reached in *Wieler*. No negotiation occurred.

June 14, 2013 at Detroit Metropolitan Airport. The meeting was led by Jones Day attorneys and other professionals representing the City. Mr. Orr and Mr. Dillon were in attendance but did not speak. An initial proposal was presented during the meeting. No negotiation occurred.

June 20, 2013, at the Coleman A. Young Municipal Center, 13<sup>th</sup>-floor auditorium - Several Jones Day attorneys and financial advisors presented a 23-page document and discussed the information. No negotiation occurred. The City informed the RDPFFA of the data room as a source of further information.

July 10, 2013, at the Coleman A. Young Municipal Center, 3<sup>rd</sup>-floor Labor Relations Conference Room. - David Heiman led the discussion and other Jones Day attorneys were present. There were presentations regarding potential changes to the pension fund configuration, and a methodology for negotiating the proposed changes- a “four-step process.” The presentation did not get past step one of the “four-step process.” No negotiation occurred.

July 11, 2013, at the Coleman A. Young Municipal Center, 3rd floor Labor Relations Conference Room. David Heiman and associates from Jones Day conducted the presentation. The primary topic was health care. A draft of “Medicare Advantage Plan Design Options” was passed out.

6. Although, like a committee of retirees to appointed by the United States Trustee in this case, the RDPFFA is not empowered to enter into a binding agreement with the City regarding pension benefits, the RDPFFA is the representative of the interests of its members and other

police and fire City retirees and was at all times relevant to this matter in a position to negotiate on their behalf, to communicate and comment upon proposals made by the City, and to recommend to its members, and to all police and fire retirees, an acceptable proposal. The RDPFFA retained counsel to assist it in the discussions with the City.

7. No negotiation with the City occurred with the RDPFFA, or, to the best of my knowledge, any other organization purporting to represent the interests of retirees.
8. The sole proposal made by the City with respect to pensions called for the City's pension obligations to be treated as a non-priority unsecured claim, notwithstanding the prohibition contained in the Michigan Constitution of the City's impairment or diminishment of "the accrued financial benefits of each pension plan and retirement system."
9. It is therefore my belief that the City did not engage in good-faith negotiations with retirees.
10. The RDPFFA was prepared and willing to enter into good-faith negotiations with the City.
11. My counterparts with the Detroit Retired City Employees Association expressed to me their willingness to enter into good-faith negotiations with the City, and I believe that they were likewise prepared and willing to enter into good-faith negotiations.
12. Negotiations between the City and its retirees were therefore practicable.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 19, 2013.

  
\_\_\_\_\_  
Donald Taylor

{00199035}

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
3.	12	7/18/2013	Declaration of Gaurav Malhotra in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

In re:

CITY OF DETROIT, MICHIGAN

Case No. 13-53846

Chapter 9

Hon. STEVEN W. RHODES

Debtor \_\_\_ /

OBJECTION TO ELIGIBILITY OF CITY OF DETROIT FOR CHAPTER 9  
FILED BY MICHIGAN AUTO RECOVERY, INC.

Michigan Auto Recovery, Inc. comes by its Counsel, KURT THORNBLADH P25858, and for its Objection to Eligibility of the City of Detroit for Chapter 9 says as follows:

1. The City of Detroit filed a petition for relief under Chapter 9 of the U.S. Bankruptcy Court on July 18, 2013.
2. Michigan Auto Recovery Service, Inc. is a creditor of the City of Detroit, Michigan and has a claim for over \$300,000 for towing services performed for the City.
3. Michigan Auto Recovery, Inc. was not given a fair opportunity to negotiate its claim prior to the filing of Chapter 9 by the City of Detroit.
4. Michigan Auto Recovery Service, Inc. challenges the eligibility of the City of Detroit for Chapter 9 pursuant to 11 USC § 108(c)(5)(B).
5. There are 27 contract towers for the City of Detroit, and on information and belief, the City of Detroit has failed to negotiate in good faith with the towers prior to filing this case.

Wherefore Michigan Auto Recovery Service, Inc prays the Court will dismiss the Bankruptcy of The City of Detroit, Michigan.

FOR MICHIGAN AUTO RECOVERY SERVICE,  
Inc.

By: \_\_\_/s/ kurt thornbladh\_\_\_\_\_

KURT THORNBLADH P25858

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Dated: August 19, 2013





UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

In re:

CITY OF DETROIT, MICHIGAN

Case No. 13-53846

Chapter 9

Hon. STEVEN W. RHODES

Debtor \_\_\_ /

CERTIFICATE OF SERVICE

Kurt Thornbladh certifies and says that on August 19, 2013 he served copies of Objection to Eligibility of the City of Detroit, Michigan to file Chapter 9 as follows:

1. The following were served by electronic notification:

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2. And the parties to the attached matrix provided by the Clerk of the U.S. Bankruptcy Court were served by First Class U.S. Mail.

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Dated: August 19, 2013

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(u)Detroit Police Lieutenants and Sergeants A

(u)Detroit Police Officers Association

(u)Deutsche Bank Securities Inc.

(u)Dexia Credit Local	(u)Dexia Holdings, Inc.	(u)Downtown Development Authority
(u)Enjoi Transportation, LLC	(u)General Motors LLC	(u)General Retirement System of the City of D
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(u)International Union of Operating Engineers	(u)Maddin Hauser Wartell Roth & Heller, PC	(u)Merrill Lynch Capital Services, Inc.
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(u)Michigan Property Tax Relief, LLC	(u)National Public Finance Guarantee Corporat	(u)Nuveen Asset Management
(u)P.P.T.A., Inc., or Harold Hoyt	(u)Schneiderman and Sherman, P.C.	(u)Service Employees International Union, Loc
(u)Syncora Capital Assurance Inc.	(u)Syncora Guarantee Inc.	(u)Syncora Holdings Ltd.
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(u)United States of America	(u)Wade Trim Associates, Inc.	(u)Xerox Corporation
(u)Brown Rehabilitation Management, Inc. 29688 Telegraph Suite 100 Southfield48034	(d)Chase Paymentech, LLC Attn: Lazonia Clark, Business Analyst 14221 Dallas Pkwy, Bldg II Dallas, TX 75254-2942	(d)Eaton Vance Management William Delahunty 2 International Place Boston, MA 02110-4101
(d)Iron Mountain Information Management, LLC 745 Atlantic Avenue Boston, MA 02111-2735	(d)Michigan Auto Recovery Service, Inc. 8850 Southfield Detroit MI 48228-1976	(u)Michigan Community Action Agency Associati
(du)Michigan Council 25 of the American Feder	(u)Daniel M. McDermott	(u)Donald Glass
(u)Gary Segatti	(u)Gerald Rosen	(u)Heidi Peterson
(u)James Herbert	(u)John Denis	(u)Johnnie R. Carr 11310 Mansfield
(u)Judith West	(u)Karl E. Shaw	(u)Keetha R. Kittrell 22431 Tireman
(u)Lou Ann Pelletier	(u)Mary Washington	(u)Mary Whitson
(u)Michael Wells	(u)Michael J. Abbott	(u)Mignon Lott

(d)Nathaniel Brent  
538 South Livernois  
Detroit, MI 48209-3031

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(u)Sylvester Davis

End of Label Matrix  
Mailable recipients 163  
Bypassed recipients 75  
Total 238

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
4.	13	7/18/013	Declaration of Charles M. Moore in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code

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

Hassan Aleem and Carl Williams  
Creditors

vs

Case No. 13-53846

Hon. Steven W. Rhodes

CITY OF DETROIT, MICHIGN  
AND EMERGENCY MANAGER  
KEVYN D. ORR

Debtors

U.S. BANKRUPTCY COURT  
E.D. MICHIGAN-DETROIT

2013 AUG 22 P 1:32

FILED

**OBJECTION TO CHAPTER 9 BANKRUPTCY**

Now Comes the creditor in pro se Hassan Aleem a retired builder inspector for city of Detroit and Carl Williams an interest party and both taxpayers in the city of Detroit and the state of Michigan.

The creditor and interest party object to the Bankruptcy for the following:

- 1) The Public Act 436 that the Bankruptcy is relying on did not receive the constitutional three-four vote as required to challenge the referendum of



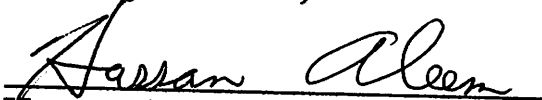


5) The emergency manager failed to comply with P.A. 436 by not providing a written mandatory financial and operating plan for the local government within 45 days after the emergency manager appointment, thus due process of law violation Article 1 section 2 of Michigan State Constitution and the 5th and 14th Amendment of the Constitutions of the United States

The Financial manager, Kevyn Orr have not shown any plan to reduce the so call financial trouble the local city have before or after the 45 days.

Wherefore and the above reason we pray that this court grant relief declaring the bankruptcy invalid and null and void.

Sincerely submitted,



Hassan Aleem  
2440 Taylor  
Detroit, Michigan 48205



Carl Williams  
10112 Somerset  
Detroit, Michigan 48224



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Hassan Aleem and Carl Williams  
Creditors

VS

Case No. 13-53846

Hon. Steven W. Rhodes

CITY OF DETROIT, MICHIGN  
AND EMERGENCY MANAGER  
KEVYN D. ORR

Debtors

2013 AUG 22 P 1:32  
U.S. BANKRUPTCY COURT  
E.D. MICHIGAN-DETROIT

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AFFIDAVIT IN SUPPORT OF OBJECTION  
TO CHAPTER 9 BANKRUPTCY

STATE OF MICHIGAN)  
) SS  
COUNT Y OF WAYNE)

We Carl Williams Hassan Aleem

being first duly sworn, deposes and Say:

That we make this affidavit of personal knowledge; That we are a creditor

and interest party in this bankruptcy action and resident of Detroit, Taxpayers of the State of Michigan, and Citizens of the United States.

We never received notice and hearing, which is a denial of due process of law. In the present context these principles require that a person have timely and adequate notice detailing the reasons for the notice and an effective opportunity to defend. *Armstrong v. Manzo*, 380 U. S. 545, 552 (1965).

That the law and facts herein this in this affidavit in support of the objection of the bankruptcy. We have read and understand the facts to be true.

That we the affiants, if sworn as a witness, can testify competently to the facts stated in the objection and is true and correct to the best of our knowledge and belief.

Signed Carl Williams Hassan Ameer

Subscribed and sworn to before me,

This 20<sup>th</sup> Day of August 2013

Gloria Ann Surles  
Notary Public

GLORIA ANN SURLES  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Sep 15, 2017  
ACTING IN COUNTY OF Wayne

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Hassan Aleem and Carl Williams  
Creditors

vs

Case No. 13-53846

Hon. Steven W. Rhodes

CITY OF DETROIT, MICHIGN  
AND EMERGENCY MANAGER  
KEVYN D. ORR

Debtors

U.S. BANKRUPTCY COURT  
E.D. MICHIGAN-DETROIT

2013 AUG 22 P 1:32

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STATE OF MICHIGAN)

) SS

COUNT Y OF WAYNE)

**PROOF OF SERVICE**

Carl Williams, being first duly sworn, deposes  
and Say: that on August 21 2013. I sent a copies of Objection to Chapter 9  
Bankruptcy upon the concern parties by certified mail, at the following  
address:

City of Detroit  
Corporation Council  
First National Building  
600 Woodward Ave  
Detroit, Michigan 48226

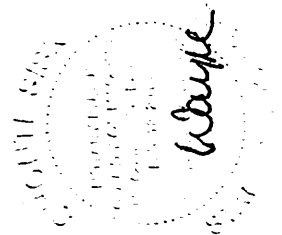
Emergency Manager  
Kevyn Orr  
Coleman A. Young Municipal Center  
2 Woodward 11th floor  
Detroit, Michigan 48226

Sign Carl Williams

Subscribed to and sworn to before me

This 21 day of August 2013,

Shanta Auel  
Notary



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
5.	14	7/18/2013	Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:  
City of Detroit, Michigan,  
  
Debtor.

Chapter 9  
Case No. 13-53846  
Hon. Steven W. Rhodes

Order Regarding Further Briefing on Eligibility

For the reasons stated on the record in open Court on October 16, 2013, it is hereby ordered that the objecting parties may file supplemental briefs by October 30, 2013, and the City, the State Attorney General and the United States Attorney General may file supplemental briefs by November 6, 2013. Such supplemental briefs may be no more than 10 pages in length, which page limit will not be extended. Counsel are requested not to address issues that their briefs have already addressed.

**Signed on October 17, 2013**

/s/ Steven Rhodes  
**Steven Rhodes**  
**United States Bankruptcy Judge**



UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF MICHIGAN  
 SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
 TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
6.	438	8/19/2013	Objection To The City of Detroit's Eligibility To Obtain Relief Under Chapter 9 of the Bankruptcy Code filed by creditor Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (Attachments: Affidavit/Declaration of Steven Kreisberg; Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 12; Exhibit A; Exhibit B; Exhibit C)

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

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

**AMENDED FINAL PRE-TRIAL ORDER**

Having been advised in the premises and having considered the City’s Motion for Entry of Amended Final Pre-Trial Order (“Motion”), the Court hereby GRANTS the Motion and enters the following Pre-Trial Order:

**I. JURISDICTION**

**A. City of Detroit**

The City asserts that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.





## **B. Objectors**

The Objectors assert that this Court lacks the authority and jurisdiction to decide whether chapter 9 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”) violates the Constitution or to determine the constitutionality of PA 436, the Local Financial Stability and Choice Act, M.C.L. §141.1541, *et seq.* (“PA 436”). Accordingly, and with respect, this Court should immediately refer this constitutional challenge to chapter 9 and PA 436 to the District Court for the Eastern District of Michigan.

## **II. STATEMENT OF CITY’S CLAIMS**

The City of Detroit asserts that it qualifies to be a debtor under Section 109(c) of Title 11 of the Bankruptcy Code and meets all of the eligibility requirements to seek debt relief under Chapter 9.

The City is a municipality as such term is defined in Section 101(40) of the Bankruptcy Code. 11 U.S.C. § 101(40). The City is a “political subdivision” of the State of Michigan and thus a “municipality” within the meaning of Section 101(40), and the eligibility requirement of section 109(c)(1) of the Bankruptcy Code is satisfied.

The City is specifically authorized in its capacity as a municipality to be a debtor under Chapter 9 under the laws of the State of Michigan and by the appropriate state officers empowered thereby, as contemplated by Section

109(c)(2) of the Bankruptcy Code. On July 16, 2013 Kevyn D. Orr, the duly appointed Emergency Manager for the City (the “Emergency Manager”), based on his assessment of the City’s financial condition recommended to Richard Snyder, Governor of the State of Michigan, and Andrew Dillon, Treasurer of the State of Michigan, that the City be authorized to proceed under Chapter 9. On July 18, 2013, the Governor issued his written decision approving the Emergency Manager’s recommendation to seek protection under the bankruptcy laws. Pursuant thereto, also on July 18, 2013, the Emergency Manager issued an order approving the filing of the City’s Chapter 9 case consistent with the Governor’s authorization.

The City is insolvent within the meaning of Section 101(32)(C) of the Bankruptcy Code. The City therefore meets the eligibility requirement of Section 109(c)(3) of the Bankruptcy Code.

The City desires to effect a plan of adjustment under Section 109(c)(4) of the Bankruptcy Code.

The City is unable to negotiate (or further negotiate) with its creditors because such negotiation is impracticable. The City has nevertheless negotiated in good faith with creditors who are represented and organized, but has failed to obtain the agreement of creditors holding at least a majority in amount of the

claims of each class that the City intends to impair under a plan of adjustment in this Chapter 9 case.

### **III. STATEMENT OF OBJECTORS' CLAIMS**

#### **A. The Committee asserts the following claims:**

1. The City cannot meet the criteria for eligibility under Section 109(c)(5)(B) of the Bankruptcy Code, in that it did not put forth a plan of adjustment, and did not negotiate in good faith, both as required under that Section.

2. The City cannot establish that negotiations were impracticable under Section 109(c)(5)(C) of the Bankruptcy Code, in that the City failed to set forth a plan of adjustment, and did not negotiate in good faith with classes of creditors with whom negotiations were practicable, both as required under that Section.

3. Because the Governor's authorization to file this bankruptcy case did not prohibit the City from impairing the pension rights of its employees and retirees, the authorization was not valid under the Michigan Constitution, as required for eligibility by 11 U.S.C. §109(c)(2).

4. The City cannot meet its burden under Section 921(c) of demonstrating that it filed its Chapter 9 petition in good faith, in that (a) the Emergency Manager commenced this proceeding for the purpose of using Chapter 9 as a vehicle to attempt to impair and violate rights relating to vested pensions that

are explicitly protected under Article IX, Section 24, of the Michigan Constitution (the “Pension Clause”) and (b) in connection with its petition, the City made representations that were inaccurate, misleading and/or incomplete.

**B. The Detroit Public Safety Unions, consisting of the Detroit Fire Fighters Association (the “DFFA”), the Detroit Police Officers Association (the “DPOA”), the Detroit Police Lieutenants & Sergeants Association (the “DPLSA”) and the Detroit Police Command Officers Association (the “DPCOA”) assert the following claims:**

1. The City failed to negotiate with the Detroit Public Safety Unions in good faith, as required by 11 U.S.C. §109(c)(5)(B).
2. Michigan Public Act 436 of 2012 violates the Michigan Constitution and therefore the City was not validly authorized to file this bankruptcy case as required for eligibility by 11 U.S.C. §109(c)(2).
3. Because the Governor’s authorization to file this bankruptcy case did not prohibit the City from impairing the pension rights of its employees and retirees, the authorization was not valid under the Michigan Constitution, as required for eligibility by 11 U.S.C. §109(c)(2).
4. Chapter 9 of the Bankruptcy Code violates the 10th Amendment of the United States Constitution, U.S. Const., Am. X, to the extent it can be read to authorize the City to impair the vested pension rights of City employees in violation of the Michigan Constitution.

5. The city was not “unable to negotiate with creditors because such negotiation is impracticable,” as required (in the alternative) for eligibility by 11 U.S.C. §109(c)(5)(C).

6. The City’s bankruptcy petition should be dismissed because it was filed in bad faith under 11 U.S.C. §921(c).

**C. The Retiree Association Parties, consisting of the Retired Detroit Police & Fire Fighters Association (“RDPFFA”), Donald Taylor, individually and as President of the RDPFFA, the Detroit Retired City Employees Association (“DRCEA”), and Shirley V. Lightsey, individually and as President of the DRCEA assert the following claims:**

1. The City failed to negotiate with the Retiree Association Parties in good faith, as required by 11 U.S.C. § 109(c)(5)(B).

2. The City was not “unable to negotiate with creditors because such negotiation is impracticable,” as required (in the alternative) for eligibility by 11 U.S.C. § 109(c)(5)(C).

3. Negotiations with the retiree constituents was practicable, as the DRCEA and the RDPFFA were ready, willing, and able to negotiate with the City as natural representatives of retirees.

4. Because the Governor’s authorization to file this bankruptcy case did not prohibit the City from impairing the pension rights of its employees and retirees, the authorization was not valid under the Michigan Constitution, as required for eligibility by 11 U.S.C. §109(c)(2).

5. The City's bankruptcy petition should be dismissed because it was filed in bad faith under 11 U.S.C. §921(c).

**D. UAW and the *Flowers* Plaintiffs assert the following claims:**

The UAW and the Plaintiffs claim that the City of Detroit is not eligible for bankruptcy under Chapter 9 of the Bankruptcy Code for the reasons set forth in the Amended Joint Objection of International Union, UAW and the Flowers Plaintiffs to the City of Detroit, Michigan's Eligibility for an Order for Relief Under Chapter 9 of the Bankruptcy Code [DE 1170], the Objection of International Union, UAW to the City of Detroit, Michigan's Eligibility for an Order for Relief Under Chapter 9 of the Bankruptcy Code [DE 506] (to the extent such Objection is not superseded by DE 1170), the Objection of Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman to the Putative Debtor's Eligibility to be a Debtor [DE 504], and the Pre-Trial Brief of International Union, UAW and the Flowers Plaintiffs with Respect to the Eligibility of the City of Detroit, Michigan for an Order for Relief Under Chapter 9 of the Bankruptcy Code [filed October 17, 2013].

**E. The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (“AFSCME”) assert, in addition to and including herein by reference, the claims raised in this order, in filed pleadings, oral argument and adduced through evidence at trial, assert the following claims:**

1. Chapter 9 violates the United States Constitution and

AFSCME’s active and retired members have individual standing to assert that chapter 9 violates the Constitution.

2. The City is not eligible to file for chapter 9 protection under 11

U.S.C. § 109(c) because (i) it is not authorized by Michigan State Law or the Michigan Constitution to be a Debtor under chapter 9, and (ii) the law purporting to authorize the City to file chapter 9 - PA 436 - is unconstitutional including, without limitation, because it violates the strong home rule provisions of the Michigan Constitution.

3. The City is not eligible to file for chapter 9 protection under 11

U.S.C. § 109(c) of the Bankruptcy Code because (i) it failed to participate in any good faith negotiations with creditors such as AFSCME prior to the filing for bankruptcy, and (ii) such negotiations were not impracticable, as required for eligibility under chapter 9 of the Bankruptcy Code.

4. The City’s Petition should be dismissed under 11 U.S.C. §

921(c) because it was filed in bad faith.

5. The City has failed to meet its burden of proving its insolvency as require under 11 U.S.C. § 109(c)(3).

**F. The Retired Detroit Police Members Association (RDPMA) assert, in addition to and including herein by reference, the claims raised in this order by the other objectors, the claims set forth in pleadings, raised in oral argument and adduced through evidence presented at trial, assert the following claims:**

1. The City of Detroit is not eligible for relief under Chapter 9 pursuant to Section 109(c) of the Bankruptcy Code because it is not authorized under Michigan State Law and the Constitution of the State of Michigan to be a debtor under Chapter 9.

2. Public Act 436 was passed in derogation of the right of referendum set forth in Article II Section 9 of the Michigan Constitution and is therefore unconstitutional under Michigan Law.

3. Emergency Manager Kevyn Orr was not authorized by Public Act 436 to file the instant Chapter 9 proceeding on behalf of the City of Detroit.

4. RDPMA's Exhibit A is a true and correct copy of the March 2, 2012 1:35:25 PM Email from Jeffrey B. Ellman to Corinne Ball and copying Heather Lennox and Thomas Wilson.

5. RDPMA's Exhibit B is a true and correct copy of the March 3, 2012 4:00:44 PM Email from Heather Lennox to Andy Dillon and copying Corinne Ball, Hugh Sawyer, Jeffrey Ellman, Ken Buckfire, Kyle Herman, Laura



Marcero, Sanjay Marken, Brom Stibitz, Stuart Erickson, David Kates and Thomas Wilson.

6. RDPMA's Exhibit C is a true and correct copy of the State of Michigan, Comprehensive Annual Financial Report, for the Fiscal Year Ended September 30, 2012.

7. RDPMA's Exhibit D is a true and correct copy of the January 31, 2013 3:45:47 PM Email from Kevyn Orr to Corinne Ball and copying Stephen Brogan.

**G. The Police and Fire Retirement System of the City of Detroit ("PRFS") and the General Retirement System of the City of Detroit ("GRS" and together with PFRS, the "Retirement Systems") assert the following claims.**

1. The City is not specifically authorized to be a debtor under chapter 9 by State law or a by a governmental officer empowered by State law to authorize such entity to be a debtor under such chapter and cannot satisfy 11 U.S.C. § 109(c)(2).

2. The City cannot meet its burden of proof under 11 U.S.C. § 109(c)(5)(B) because it did not engage in good faith negotiations with its creditors.

3. The City cannot meet its burden of proof under 11 U.S.C. § 109(c)(5)(C) because it did not negotiate with its creditors and negotiations were not impracticable.

4. The City's bankruptcy petition should be dismissed because the City did not file the petition in good faith as required by 11 U.S.C. § 921(c).

#### **IV. STIPULATED FACTS**

1. The City of Detroit is a municipality for purposes of Section 109(c)(1) of the Bankruptcy Code.

2. On March 15, 2013 the Local Emergency Financial Assistance Loan Board created by the Emergency Municipal Loan Act, MCL §§ 141.931-141.942, appointed Kevyn D. Orr to the position of "emergency financial manager" for the City of Detroit.

3. Mr. Orr formally took office as Emergency Manager on March 25, 2013.

4. A meeting took place in Detroit on June 14, 2013 between the Emergency Manager and the City's advisors, on the one hand, and numerous creditor representatives, on the other, relating to the City's creditor proposal. Representatives of all Objectors except the Retiree Committee, which had not yet formed, attended the meeting.

5. City's Exhibit 42 is a true and correct copy of a list of persons and corporate affiliations who responded that they would attend the June 14, 2013 creditor meeting in Detroit and is admissible as proof of such responses, without

prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

6. A meeting took place in Detroit on the morning of June 20, 2013 between the City's advisors, on the one hand, and non-uniformed employee representatives from the City's unions and four retiree associations, on the other, relating to retiree health and pension obligations. Representatives and advisors the General Retirement System ("GRS") also attended the meeting.

7. A second, separate meeting took place in Detroit in the afternoon of June 20, 2013 between the City's advisors, on the one hand, and uniformed employee representatives from the City's unions and four retiree associations, on the other, relating to retiree health and pension obligations. Representatives and advisors from the PFRS also attended the meeting.

8. City's Exhibit 45 is a true and correct copy of a list of persons and corporate affiliations who were invited to attend at least one of the two June 20, 2013 creditor meeting in Detroit and is admissible as proof of such invitations, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

9. City's Exhibit 46 is a true and correct copy of the sign-in sheet for the morning June 20, 2013 creditor meeting in Detroit and is admissible as proof of

such attendance, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

10. City's Exhibit 47 is a true and correct copy of the sign-in sheet for the afternoon June 20, 2013 creditor meeting in Detroit and is admissible as proof of such attendance, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

11. A meeting took place on June 25, 2013 between the City's advisors, on the one hand, and representatives and advisors from the City's six bond insurers and U.S. Bank, the trustee or paying agent on all of the City's bond issuances. Representatives from Objectors GRS and PFRS also attended the meeting.

12. City's Exhibit 50 is a true and correct copy of the sign-in sheet and typewritten transcription thereof for the June 25, 2013 creditor meeting in Detroit and is admissible as proof of such attendance, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

13. Meetings took place in Detroit on July 9 and 10, 2013 with representatives from certain bond insurers and Objectors GRS and PFRS relating to follow-up due diligence on the City's financial condition and creditor proposal.

14. City's Exhibit 53 is a true and correct copy of a typewritten attendance sheet for the July 9 and 10, 2013 creditor meetings in Detroit and is

admissible as proof of such attendance, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

15. A meeting took place in the afternoon of July 10, 2013 between the City's advisors, on the one hand, and non-uniformed employee representatives from the City's unions and four retiree associations, on the other, relating to pension funding and related matters. Representatives and/or advisors from Objectors UAW, DRCEA, AFSCME, and GRS attended the meeting.

16. City's Exhibit 56 is a true and correct copy of the sign-in sheet for the first July 10, 2013 creditor meeting in Detroit and is admissible as proof of such attendance, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

17. A second, separate meeting took place in the afternoon of July 10, 2013 between the City's advisors, on the one hand, and uniformed employee representatives from the City's unions and four retiree associations, on the other, relating to pension funding and related matters. Representatives and/or advisors from Objectors DFFA, DPLSA, DPCOA, DPOA, RDPFFA, and PFRS attended the meeting.

18. City's Exhibit 57 is a true and correct copy of the sign-in sheet for the second July 10, 2013 creditor meeting in Detroit and is admissible as proof of such

attendance, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

19. A meeting took place on the morning of July 11, 2013 between the City's advisors, on the one hand, and non-uniformed employee representatives from the City's unions and four retiree associations, on the other, relating to retiree health issues and related matters. Representatives and/or advisors from Objectors UAW, DRCEA, AFSCME, and GRS attended the meeting.

20. City's Exhibit 58 is a true and correct copy of the sign-in sheet for the morning July 11, 2013 creditor meeting in Detroit and is admissible as proof of such attendance, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

21. A second, separate meeting took place in the afternoon of July 11, 2013 between the City's advisors, on the one hand, and uniformed employee representatives from the City's unions and four retiree associations, on the other, relating to retiree health issues and related matters. Representatives and/or advisors from Objectors DFFA, DPLSA, DPOA, RDPFFA, and PFRS attended the meeting.

22. City's Exhibit 59 is a true and correct copy of the sign-in sheet for the afternoon July 11, 2013 creditor meeting in Detroit and is admissible as proof of

such attendance, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

23. City's Exhibit 55 is a true and correct copy of a list of persons and corporate affiliations who were invited to attend one or more of the July 10 and 11, 2013 creditor meetings in Detroit and is admissible as proof of such invitations, without prejudice to any individual Objectors' right to offer evidence as to its actual attendance.

24. City's Exhibit 35 is a true and correct copy of a non-exclusive log of creditor meetings or communications between the City and various creditors or creditor representatives and is admissible as evidence that such meetings or communications took place between the individuals or entities reflected thereon. This stipulation is without prejudice to the City's right to offer evidence that additional persons attended such meetings or that additional meetings took place, and is without prejudice to any individual Objectors' right to offer evidence as to its actual participation or attendance.

25. On July 16, 2013, the Emergency Manager sent a letter to the Governor, recommending a Chapter 9 proceeding pursuant to Section 18(1) of PA 436.

26. On July 18, 2013, the Governor sent a reply letter to the Emergency Manager authorizing the City to file its voluntary petition for protection under Chapter 9 of title 11 of the United States Code.

27. The City filed its voluntary petition for protection under Chapter 9 on July 18, 2013.

28. On August 2, 2013, the City held a meeting with local union representatives respecting active employee health insurance.

29. On September 13, 2013 the City filed the City of Detroit, Michigan's Objections and Responses to Detroit Retirement Systems' First Requests for Admission Directed to the City of Detroit Michigan [Docket No. 849], in which the City "[a]dmit[s] that the City intends to seek to diminish or impair the Accrued Financial Benefits of the participants in the Retirement Systems through this Chapter 9 Case."

30. The representatives of the DFFA, DPOA, DPLSA and DPCOA, respectively, have authority to negotiate wages and benefits for the active employee members of the respective Detroit Public Safety Unions.

31. Each of the respective Detroit Public Safety Unions represents the active employees of each of the DFFA, DPOA, DPLSA and DPCOA.



## V. ISSUES OF FACT AND LAW TO BE LITIGATED

### A. City's Position

The City identifies the following issues of fact and law to be litigated:

1. Whether the City was generally not paying its debts as they become due.
  - a. City's authority
    - (1) 11 U.S.C. § 109(c)(3).
    - (2) 11 U.S.C. § 101(32)(C)(i).
    - (3) *In re New York City Off-Track Betting Corp.*, 427 B.R. 256, 272 (Bankr. S.D.N.Y. 2010) (finding deferral of current payments evidence of debtor's insolvency).
2. Whether the City was unable to pay its debts as they become due.
  - a. City's authority
    - (1) 11 U.S.C. § 109(c)(3).
    - (2) 11 U.S.C. § 101(32)(C)(ii).
    - (3) *In re City of Stockton*, 493 B.R. 772, 788-90 (Bankr. E.D. Cal. 2013) (test for cash insolvency is prospective; demonstration of cash insolvency within current or succeeding fiscal year satisfies cash flow test; concepts of "budget insolvency" and "service delivery insolvency" inform inquiry into "cash insolvency").
    - (4) *In re City of Bridgeport*, 129 B.R. 332, 336-38 (Bankr. D. Conn. 1991) (test for municipal insolvency set forth at 11 U.S.C. § 101(32)(C)(ii))

is a “cash flow” test; “[T]o be found insolvent a city must prove that it will be unable to pay its debts as they become due in its current fiscal year or, based on an adopted budget, in its next fiscal year.”).

- (5) *Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo)*, 408 B.R. 280, 293-94 (B.A.P. 9th Cir. 2009) (a municipality need not pursue all possible means of generating and conserving cash prior to seeking chapter 9 relief; affirming finding of insolvency where raiding city’s other funds to satisfy short term cash needs “would leave Vallejo more debilitated tomorrow than it is today”; finding city insolvent where further funding reductions would threaten its ability to provide for the basic health and safety of its citizens).
- (6) *New York City Off-Track Betting Corp.*, 427 B.R. at 282 (“Even assuming [the debtor] could have theoretically done more to avoid bankruptcy, courts do not require chapter 9 debtors to exhaust every possible option before filing for chapter 9 protection.”).

3. Whether the City desires to effect a plan to adjust its debts.

a. City’s authority

- (1) 11 U.S.C. § 109(c)(4).
- (2) *New York City Off-Track Betting Corp.*, 427 B.R. at 272 (“no bright-line test for determining whether a debtor desires to effect a plan” exists because of the “highly subjective nature of the inquiry”).
- (3) *City of Vallejo*, 408 B.R. at 294-95 (A putative debtor need only show that the “purpose of the filing of the chapter 9 petition [is] not simply ... to

buy time or evade creditors”; a municipality may meet the subjective eligibility requirement of section 109(c)(4) by attempting to resolve claims, submitting a draft plan or producing other direct or circumstantial evidence customarily submitted to show intent).

- (4) *City of Stockton*, 493 B.R. at 791-92 (fact that a city would be left in worse financial condition as a result of the decision not to attempt to adjust its debts through the chapter 9 process is persuasive evidence of the municipality’s honest desire to effect such an adjustment of debt).

4. Whether the City was unable to negotiate with its creditors prior to the filing of its chapter 9 petition because such negotiation was impracticable.

a. City’s authority

- (1) 11 U.S.C. § 109(c)(5)(C).
- (2) *New York City Off-Track Betting Corp.*, 427 B.R. at 276-77 (“Congress added [11 U.S.C. § 109(c)(5)(C)] to satisfy section 109’s negotiation requirement in response to possible large municipality bankruptcy cases that could involve vast numbers of creditors.”; “[I]mpracticability of negotiations is a fact-sensitive inquiry that depends upon the circumstances of the case.”) (quotation omitted).
- (3) *In re Cnty. of Orange*, 183 B.R. 594, 607 n.3 (Bankr. C.D. Cal. 1995) (“Section 109(c)(5)(C) was necessary because it was otherwise impossible for a large municipality, such as New York, to identify all creditors, form the proper committees, and obtain the necessary consent in a short period of time.”).

- (4) *City of Vallejo*, 408 B.R. at 298 (“Petitioners may demonstrate impracticability by the sheer number of their creditors ....”; finding that section 109(c)(5)(C) is satisfied where negotiation with any significant creditor constituency is impracticable).
- (5) *City of Stockton*, 493 B.R. at 794 (finding that the inability of a municipal debtor to negotiate with a natural representative of a numerous and far-flung creditor class (with the power to bind such class) may satisfy the “impracticability” requirement; refusal of creditors to negotiate establishes independent grounds for a finding of impracticability).
- (6) *In re Valley Health Sys.*, 383 B.R. 156, 163 (Bankr. C.D. Cal. 2008) (“Negotiations may also be impracticable when a municipality must act to preserve its assets and a delay in filing to negotiate with creditors risks a significant loss of those assets.”).

5. Whether the City negotiated in good faith with creditors holding at least a majority in amount of the claims of each class that the City intends to impair pursuant to a plan of adjustment.

- a. City’s authority
  - (1) 11 U.S.C. § 109(c)(5)(B).
  - (2) *In re Vills. at Castle Rock Metro. Dist. No. 4*, 145 B.R. 76, 84-85 (Bankr. D. Colo. 1990) (a municipality need not negotiate with every creditor within a given class; negotiations with large or prominent blocs of creditors will suffice to render a city eligible for chapter 9 relief; municipality satisfied requirement of negotiating with creditors by consulting with large institutional bondholders,

even though all series of bonds were not invited to participate in negotiations).

- (3) *New York City Off-Track Betting Corp.*, 427 B.R. at 274-75 (finding that debtor had satisfied section 109(c)(5)(B) of the Bankruptcy Code where it had “engaged in negotiations with creditors regarding the possible terms of a reorganization plan prior to filing”; stating that “talks need not involve a formal plan to satisfy section 109(c)(5)(B)’s negotiation requirement.”).
- (4) *City of Vallejo*, 408 B.R. at 297 (noting that section 109(c)(5)(B) is satisfied where the debtor conducts “negotiations with creditors revolving around a proposed plan, at least in concept.... [that] designates classes of creditors and their treatment....”).

6. Whether the City’s petition was filed in good faith within the meaning of section 921(c) of the Bankruptcy Code.

a. City’s authority

- (1) 11 U.S.C. § 921(c).
- (2) *City of Stockton*, 493 B.R. at 794 (good faith “is assessed on a case-by-case basis in light of all the facts, which must be balanced against the broad remedial purpose of chapter 9”; “[r]elevant considerations in the comprehensive analysis for § 921 good faith include whether the City’s financial problems are of a nature contemplated by chapter 9, whether the reasons for filing are consistent with chapter 9, the extent of the City’s prepetition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City’s residents would be prejudiced by denying chapter 9 relief.”).

- (3) *Cnty. of Orange*, 183 B.R. at 608 (Bankr. C.D. Cal. 1995) (“[T]he purpose of the filing must be to achieve objectives within the legitimate scope of the bankruptcy laws;” applying chapter 11 case law and finding the debtor’s financial condition and motives, local financial realities and whether the debtor was seeking to “unreasonably deter and harass its creditors or attempting to effect a speedy, efficient reorganization on a feasible basis” as relevant factors in the good faith analysis).
- (4) *In re McCurtain Municipal Auth.*, No. 07-80363, 2007 WL 4287604, at \*5 (Bankr. E.D. Okla. Dec. 4, 2007) (holding that the existence of a factor precipitating a chapter 9 filing does not require a finding that the debtor’s filing was made in bad faith when other reasons for filing bankruptcy are present).

**B. Objectors’ position**

B-1. The Committee identifies the following issues of fact and law to be litigated:

1. Whether the City can meet the criteria for eligibility under

Section 109(c)(5)(B) of the Bankruptcy Code and, in particular:

- a. whether the City presented a plan of adjustment to the City's creditors as is required under Section 109(c)(5)(B); and
- b. whether the City negotiated in good faith as is required under Section 109(c)(5)(B).

2. Whether the City can establish that good faith negotiations were

impracticable under Section 109(c)(5)(C) of the Bankruptcy Code and, in

particular:

- a. whether the City presented a plan of adjustment to the City's creditors as is required under Section 109(c)(5)(C); and
- b. whether the City negotiated in good faith with classes of creditors with whom negotiations were practicable, as is as required under Section 109(c)(5)(C).

3. Whether the Governor's authorization to file this bankruptcy case is void and/or unconstitutional under the Michigan Constitution because he did not prohibit the City from impairing the pension rights of its employees and retirees, as required for eligibility by 11 U.S.C. §109(c)(2).

4. Whether the City can meet its burden under 11. U.S.C. § 921(c) of demonstrating that it filed its Chapter 9 petition in good faith and, in particular:

- a. whether the City's Emergency Manager filed this Chapter 9 proceeding for the purpose of attempting to use Chapter 9 as a vehicle to impair and violate rights related to vested pensions that are expressly protected from such impairment and violation under the Pension Clause of the Michigan Constitution; and
- b. whether the City, in connection with filing its Chapter 9 petition, made representations that were false, misleading and or incomplete statements, particularly as regards the magnitude of the City's unfunded pension liability, the cash flow available to meet such liability and the availability of substantial additional cash from assets owned by the City that are capable of being monetized.

B-2. The Detroit Public Safety Unions, consisting of the Detroit Fire Fighters Association (the "DFFA"), the Detroit Police Officers Association (the "DPOA"), the Detroit Police Lieutenants & Sergeants Association (the "DPLSA") and the

Detroit Police Command Officers Association (the "DPCOA") assert the following claims:

1. Whether the City failed to negotiate with the Detroit Public Safety Unions in good faith, as required by 11 U.S.C. §109(c)(5)(B).
2. Whether Michigan Public Act 436 of 2012 violates the Michigan Constitution, Art. IX, Sec. 24, and therefore the City was not validly authorized to file this bankruptcy case as required for eligibility by 11 U.S.C. §109(c)(2).
3. Whether there was valid authorization for the filing of the chapter 9 petition as required by 11 U.S.C. §109(c)(2), because the Governor's authorization did not prohibit the impairment of the pension rights of the City's employees and retirees, and therefore was not valid under the Michigan Constitution, Art. IX, Sec. 24 (the "Pension Clause").
4. Whether chapter 9 of the Bankruptcy Code violates the Tenth Amendment, U.S. Const., Am. X, to the extent it allows the City to use the Bankruptcy Code to impair the vested pension rights of City employees and retirees in direct violation of the Pension Clause.
5. Whether the city was not "unable to negotiate with creditors because such negotiation in impracticable," as required (in the alternative) for eligibility by 11 U.S.C. §109(c)(5)(C).



6. Whether the City's bankruptcy petition should be dismissed because it was filed in bad faith under 11 U.S.C. §921(c).

B-3. The Retiree Association Parties, consisting of the Retired Detroit Police & Fire Fighters Association ("RDPFFA"), Donald Taylor, individually and as President of the RDPFFA, the Detroit Retired City Employees Association ("DRCEA"), and Shirley V. Lightsey, individually and as President of the DRCEA identify the following issues of fact and law to be litigated:

1. Whether the City failed to negotiate with the Retiree Association Parties in good faith, as required by 11 U.S.C. § 109(c)(5)(B).

2. Whether City was not "unable to negotiate with creditors because such negotiation is impracticable," as required (in the alternative) for eligibility by 11 U.S.C. § 109(c)(5)(C).

3. Whether negotiations with the retiree constituents was practicable, as the DRCEA and the RDPFFA were ready, willing, and able to negotiate with the City as natural representatives of retirees.

4. Whether the Governor's authorization to file this bankruptcy case is void and/or unconstitutional under the Michigan Constitution because he did not prohibit the City from impairing the pension rights of its employees and retirees, as required for eligibility by 11 U.S.C. §109(c)(2).

5. Whether the City's bankruptcy petition should be dismissed because it was filed in bad faith under 11 U.S.C. §921(c).

B-4. The UAW and the Flowers Plaintiffs identify the following factual and legal issues to be litigated:<sup>1</sup>

1. Whether the City has met the eligibility requirement of Section 109(c)(4) of the Bankruptcy Code that a municipality “desires to effect a plan to adjust such debts” where the City’s proposed plan is a plan that cannot be lawfully implemented under state law as required by Section 943(b)(4) and (6) of the Bankruptcy Code.

2. Whether the City failed to negotiate with the UAW in good faith, as required by 11 U.S.C. §109(c)(5)(B).

3. Whether the City was unable to negotiate with creditors because such negotiation was impracticable as required (in the alternative) for eligibility by 11 U.S.C. §109(c)(5)(C).

4. Whether the City was authorized to be a debtor under Chapter 9 as required by 11 U.S.C. Section 109(c)(2), as follows: whether the Governor’s authorization was valid under State law, where (a) the City and the Governor manifested an intent to proceed in Chapter 9 in order to reduce the accrued pension rights of the City’s employees and retirees, and the accrued pension rights of employees and retirees of the Detroit Public Library; (b) the City and the Governor

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<sup>1</sup> The issues set forth herein are the UAW’s and the Flowers Plaintiffs’ principal legal and factual issues to be presented at, or in connection with, the eligibility trial. UAW reserves all of the issues set forth in its Amended Objection which (a) are not listed herein but which may depend upon the resolution of its principal issues set forth above or (b) have been asserted and argued principally by other parties, such as whether the decision in Webster must be applied by the bankruptcy court.

did so proceed based on such intent of the City and the Governor, which in whole or in part motivated the Governor's authorization for the City's Chapter 9 filing and the City's filing itself; (c) the Governor's authorization did not prohibit the diminishment or impairment of the pension rights of such persons as a condition of authorizing the Chapter 9 filing; (d) neither the Governor nor the state Legislature had authority to act in derogation of Article 9, Section 24 of the Michigan Constitution; and (e) for any and all of the foregoing reasons, the Governor's authorization for the Chapter 9 filing, and the City's filing itself were and are contrary to the Michigan Constitution, Art. 9, Sec. 24.

5. Whether the City's bankruptcy petition was filed in bad faith under 11 U.S.C. §921(c).

6. Whether, under the U.S. Constitution, Chapter 9 is constitutional as applied to the City's petition where the City does not comply with Article 9, Section 24 of the Michigan Constitution.

B-5. The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees ("AFSCME") assert, in addition to and including herein by reference, the claims raised in this order, in filed pleadings, oral argument and adduced through evidence at trial, identifies the following issues of fact and law to be litigated:

1. Whether the City failed to negotiate in good faith with creditors as required by 11 U.S.C. § 109(c)(5), including, without limitation:

- a. Whether the City engaged only in "discussions," which it emphasized were not negotiations.
- b. Whether the City's June 14, 2013 Restructuring Plan was not open to negotiations, which falls short of the requirements of section 109(c)(5)(B).
- c. Whether the City refused AFSCME's offers to negotiate.
- d. Whether the City refused AFSCME's requests for adequate backup data used to generate the City's financial assumptions, which would have been necessary information for any "negotiations."
- e. Whether the City's refusal to negotiate with AFSCME continued post-filing.
- f. Whether assuming, *arguendo*, that any negotiations took place, such negotiations did not relate to a plan that was in the best interests of creditors as required by section 109(c)(5)(B).

2. Whether the City can meet its burden of proving that it was "unable to negotiate with creditors because such negotiation is impracticable," as required for eligibility by 11 U.S.C. § 109(c)(5)(C), and including, without limitation:

- a. Whether the circumstances surrounding the City's hiring of the EM, an experienced bankruptcy counsel demonstrate that the City never had any intention of negotiating outside of bankruptcy.
- b. Whether negotiations with the City's main creditors, the unions, its retirees, and the bond trustees, were practicable.
- c. Whether the City cannot demonstrate impracticability where the City failed to negotiate with its largest

creditors, especially where those creditors have, like AFSCME, sought negotiations.

3. Whether the City's bankruptcy petition should be dismissed because it was filed in bad faith under 11 U.S.C. § 921(c), including, without limitation:

- a. Whether the State authorized (without contingencies) and the City commenced its filing to avoid a bad state court ruling in the Webster litigation, and declined to take action to cease the filing in violation of the Declaratory Judgment issued in that litigation.
- b. Whether the City never intended to negotiate (in good faith or otherwise) and failed to consider reasonable alternatives to chapter 9.

4. Whether the City is "insolvent," as defined in 11 U.S.C. § 101(32)(C) and as required for eligibility by 11 U.S.C. § 109(c)(3), including, without limitation:

- a. Whether the City has failed to prove its insolvency by expert evidence, by expert testimony, or by anything other than unproven assumptions (including assumptions regarding the unfunded amount of the City's pension and other retiree benefits).
- b. Whether the City failed to explore options to enable it to pay debts, such as taking into account un-monetized assets and possible funding sources not included in the City's financial projections.
- c. Whether the City's current financial difficulties are less severe than in prior years, and the City already had means to enhance revenues prior to the filing including the deal reached with the swap counterparties.

5. Whether the Governor's authorization to the EM to file for chapter 9 under Section 11 of PA 436 was improper, including, without limitation, because it was invalid, unconstitutional, failed to contain contingencies (such as not using the bankruptcy proceedings to diminish vested pension benefits), and/or failed to require that any plan of adjustment not violate Article IX Section 24 of the Michigan Constitution.

- a. Whether the EM's exercise of authority under PA 436 violated the strong home rule provisions of the Michigan Constitution.

B-6. The Retired Detroit Police Members Association ("RDPMA") assert, in addition to and including herein by reference, the claims raised in this order by the other objectors, the claims set forth in pleadings, raised in oral argument and adduced through evidence presented at trial, identifies the following issues of fact and law to be litigated:

1. Whether Public Act 436 violates the Michigan Constitution, Article II, Section 9.
  - a. Whether the spending provisions found in Sections 34 and 35 of Public Act 436 were included as an artifice to avoid the referendum provisions in Art. II, Sec. 9 of the Michigan Constitution.
  - b. Whether any provisions of Public Act 436 should be stricken on the grounds that such provisions were not approved by a majority of the electors of the State of Michigan in a general election.

2. Whether the City of Detroit acted in bad faith when it filed its Chapter 9 Petition having knowledge that Public Act 436 was passed in derogation of the Michigan Constitutional referendum requirement.

3. Whether Emergency Manager Kevyn Orr was properly appointed under Public Act 436.

B-7. The Retirement Systems identify the following issues of fact and law to be litigated:

1. Whether the City was validly authorized under State law by a governmental officer empowered by State law to authorize it to be a debtor when the Governor's authorization was in violation of Article IX, section 24 of the Michigan Constitution, because the authorization did not prohibit the City from diminishing or impairing accrued financial benefits.

2. Whether the City failed to negotiate in good faith prepetition with the Retirement Systems (and possibly other creditors), when all meetings with the Retirement Systems (and possibly other creditors) were presentations to an audience of multiple parties at which no bilateral negotiations occurred.

3. Whether the City can meet its burden of proof under 11 U.S.C. § 109(c)(5)(B).

4. Whether negotiations with the Retirement Systems and the City's other creditors were impracticable.

5. Whether the City can meet its burden of proof under 11 U.S.C. § 109(c)(5)(C).

6. Whether the City can meet its burden of proof under 11 U.S.C. § 921(c) and demonstrate that it filed the bankruptcy petition in good faith when:

- a. The City filed the case with the intention to diminish and impair accrued financial benefits in violation of Article IX, section 24 of the Michigan Constitution;
- b. The Emergency Manager repeatedly threatened to file a bankruptcy immediately in the weeks before the filing, thus otherwise creating an environment of impracticability;
- c. As of the petition date, the Emergency Manager and the City did not have a clear picture of the City's assets, income, cash flow, and liabilities;
- d. The City did not even consider a restructuring scenario that did not impair accrued financial benefits; and
- e. Whether the City can demonstrate that it negotiated in good faith under section 109(c)(5) and the case law construing it where the City has admitted it does not have (and therefore did not negotiate) a formulated plan of adjustment.

## **VI. EVIDENTIARY PROBLEMS LIKELY TO ARISE AT TRIAL**

### **A. City's Position**

The City believes that evidentiary disputed likely to arise at trial can be addressed at the pre-trial conference.

### **B. Objectors' Position**

Objectors concur.



## VII. WITNESSES

### A. City's Witnesses

The City will call the following individuals as part of its case in chief or on rebuttal:

1. Kevyn D. Orr
2. Kenneth A. Buckfire
3. Gaurav Malhotra
4. Charles M. Moore
5. James E. Craig

The City may call the following individuals as part of its case in chief or on rebuttal:

1. Glenn Bowen
2. Kyle Herman, Director at Miller Buckfire (only as needed to sponsor City exhibits 99-101)
3. Custodial Witnesses. The City Objectors have been conferring as to the authenticity and admissibility of certain exhibits which would otherwise require the appearance in court of a custodial witness. The City reserves the right to call such witnesses if appropriate stipulations are not reached.

The City will call the following witnesses to testify, by deposition, as follows:

1. Richard Baird, October 10, 2013  
58:10-12  
58:16-19

59:25-60:14  
100:13-101:6

4. Treasurer Andrew Dillon, October 10, 2013

34:6-35:10  
63:17-20  
64:2-5  
65:4-24  
65:14-6:6  
66:19-68:18  
68:23-69:22  
74:13-77:6  
98:13-99:3

5. Governor Richard D. Snyder, October 9, 2013

19:17-21:7  
32:14-33:14  
46:7-9  
46:20-23  
51:17-53:16  
53:24-55:8  
56:9-25  
57:23-58:3  
65:21-66:1  
67:9-14  
77:15-78:13  
81:21-82:18  
82:25-83:8  
86:5-25  
89:1-8  
92:23-93:5  
104:14-16  
104:22-105:16  
104:25-106:17  
110:7-12  
115:3-8  
115:20-116:12  
117:3-13

118:3-7  
118:12-119:24  
122:21-123:22  
129:14-130:5  
131:10-133:9  
134:18-22  
142:19-143:4  
143:13-18

The City counter designates the following testimony in response to all of  
Objectors' deposition designations:

1. Lamont Satchel, September 19, 2013

11:11-14:13  
46:12-47:21  
47:12-48:21  
48:23-49:6  
49:22-50:6  
54:11-55:20  
58:17-59:15  
60:18-61:21  
61:2-63:5  
62:16-25  
65:7-66:9  
68:1-74:24  
70:5-71:4  
71:17-72:2  
79:2-81:16  
82:9-84:22  
86:12-87:2  
88:13-19  
88:14-89:18  
89:25-90:1  
90:4-91:12

2. Glen Bowen, September 24, 2013

12:7-9  
18:9-20  
19:12-20  
19:21-21:15  
22:14-23:5  
23:12-21  
24:17-22  
28:10-29:1  
29:2-30:14  
33:15-34:7  
34:8-21  
35:12-36:4  
36:10-12  
40:3-41:12  
44:11-13  
43:15-44:8  
60:13-61:10  
63:21-64:5  
66:15-67:22  
68:17-71:3  
81:20-83:10  
91:18-92:13  
93:4-14  
93:15-94:2  
98:13-99:3  
99:9-17  
100:18-22  
111:20-112:22  
129:14-22  
130:8-132:11  
133:10-134:18  
141:9-17  
142:8-10  
142:13-19  
143:1-6  
143:8-19  
146:8-19  
147:2-148:15  
148:19-22  
149:2-3

149:6-8  
150:5-15  
174:11-176:21  
177:3-11  
177:18-178:3  
177:4-16  
183:17-185:11  
192:8-193:11  
194:4-12  
194:13-195:10  
198:5-7  
198:17-19  
203:20-204:9  
204:11-14  
204:16-19  
205:7-206:11

3. David Bing, October 14, 2013

10:5-10:21  
14:22-16:16  
18:10-19:4  
20:25-21:4  
36:10-37:12  
58:12-58:16  
64:24-65:5  
75:12-75:21  
101:14-103:11  
108:10-108:25  
109:6-109:8

The City has not counterdesignated deposition testimony in response to any Objectors' designations from witnesses on the City's will-call witness list because the City will call those witnesses to testify in person at trial. The City nevertheless reserves its rights to offer appropriate counterdesignations in the event that any

witness on its will-call list becomes unavailable to testify under Federal Rule of Evidence 804(a).

The City reserves its rights to offer appropriate counterdesignations in response to deposition designations offered by any Objector without reasonable notice to the City prior to the submission of this Joint Final Pre-trial Order.

Given the short time frame within which the City was required to assert objections to Objectors' documents, the City reserves its rights to provide supplemental objections should it need to do so. Similarly, should the same document appear more than once in Objectors' collective exhibit lists, an objection by the City to any one instance of the exhibit applies to all such copies, even if no objection was indicated for the other copies.

The City objects to the following deposition testimony offered by Objectors, other than form of the question.

Kevyn Orr - 9/16/13 & 10/4/2013

RETIRED DETROIT POLICE MEMBERS ASSOCIATION'S

Designations

p. 43 L18 – p. 46, L. 6

Objections

Hearsay; Form; Speculation

OFFICIAL COMMITTEE OF RETIREES' CONSOLIDATED DESIGNATIONS

Designations

p. 10, L. 23 - p. 11, L. 14  
p. 12, L. 1 - p. 13, L. 25

Objections

Speculation; Hearsay  
Form;

p. 14, L. 14 - p. 15, L. 17	
p. 17, L. 7 - p. 19, L. 19	Speculation; Hearsay
p. 20, L. 19 - 25	Hearsay;
p. 21, L. 3 - 6	
p. 21, L. 21 - 24	Hearsay; Speculation; Form
p. 23, L. 13 - 19	Speculation;
p. 23, L. 24 - 25	Hearsay;
p. 24, L. 4 - p. 25, L. 22	Form; Hearsay
p. 26, L. 20 - 25	Hearsay;
p. 29, L. 6 - p. 31, L. 5	Hearsay;
p. 32, L. 14 - 23	Hearsay;
p. 33, L. 5 - 13	Hearsay;
p. 38, L. 11 - p. 41, L. 17	Form; Speculation; Hearsay
p. 43, L. 15 - p. 45, L. 19	Hearsay; Form; Speculation
p. 46, L. 7 - p. 47, L. 18	Hearsay; Speculation; Calls for legal conclusion;
p. 48, L. 1 - p. 49, L. 8	Calls for legal conclusion; Speculation; Hearsay
p. 50, L. 23 - p. 53, L. 7	Hearsay; Calls for legal conclusion; Form
p. 53, L. 16 - 24	Calls for legal conclusion; Form
p. 54, L. 2 - 5	Hearsay;
p. 54, L. 13 - 19	Form; Calls for legal conclusion;
p. 54, L. 22 - p. 55, L. 5	Calls for legal conclusion;
p. 55, L. 8 - 17	Calls for legal conclusion;
p. 55, L. 20 - p. 56, L. 19	Calls for legal conclusion; Form
p. 56, L. 21	Form;
p. 57, L. 11 - p. 60, L. 13	Hearsay; Speculation; Form;
p. 61, L. 17 - p. 62, L. 24	Hearsay;
p. 63, L. 25 - p. 64, L. 11	Hearsay;
p. 65, L. 15 - p. 66, L. 1	
p. 69, L. 3 - p. 71, L. 2	Hearsay; Speculation
p. 71, L. 6 - 8	
p. 71, L. 17 - p. 78, L. 5	Calls for legal conclusion; Form;
p. 78, L. 21	
p. 79, L. 2 - 6	

p. 79, L. 16 - p. 80, L. 8	Speculation; Calls for legal conclusion;
p. 80, L. 25 - p. 82, L. 23	Hearsay; Form;
p. 82, L. 25 - p. 83, L. 3	Form;
p. 83, L. 16 - p. 84, L. 2	Form;
p. 84, L. 13 - 16	Form;
p. 84, L. 18 - 24	
p. 85, L. 19 - p. 86, L. 1	Form;
p. 86, L. 16 - p. 95, L. 1	Form; Calls for legal conclusion; Hearsay
p. 96, L. 25 - p. 108, L. 7	Hearsay; Calls for legal conclusions; Form; Foundation; Relevance
p. 110, L. 12 - p. 119, L. 10	Speculation; Form; Hearsay;
p. 119, L. 20 - p. 120, L. 16	Form;
p. 120, L. 19 - p. 121, L. 12	Hearsay;
p. 122, L. 7 - p. 123, L. 14	
p. 123, L. 17 - p. 125, L. 10	Hearsay;
p. 125, L. 24 - p. 127, L. 4	Form
p. 127, L. 24 - p. 130, L. 23	Hearsay; Form; Foundation;
p. 132, L. 12 - p. 133, L. 25	Form; Hearsay;
p. 134, L. 3 - p. 135 L. 4	Hearsay;
p. 136, L. 18 - p. 137, L. 1	
p. 137, L. 12 - p. 144, L. 23	Form; Hearsay; Speculation; Foundation;
p. 145, L. 25 - p. 146, L. 10	Hearsay
p. 147, L. 19 - 25	
p. 148, L. 16 - p. 153, L. 8	Form; Hearsay;
p. 166, L. 12 - 24	
p. 168, L. 5 - p. 172, L. 4	Speculation; Form; Hearsay
p. 172, L. 19 - p. 176, L. 20	Speculation; Hearsay
p. 177, L. 21 - p. 178, L. 1	
p. 179, L. 2 - p. 185, L. 23	Form; Hearsay;
p. 187, L. 3 - p. 190, L. 12	Speculation;
p. 192, L. 2 - 8	
p. 215, L. 13 - 24	
p. 247, L. 1 - 7	
p. 248, L. 15 - p. 249, L. 5	Form;



p. 251, L. 16 – 18	Hearsay
p. 252, L. 4 – 5	
p. 252, L. 12 - p. 253, L. 6	Hearsay;
p. 260, L. 8 – 21	
p. 261, L. 21 - p. 262, L. 4	Form;
p. 262, L. 13 – 23	
p. 266, L. 18 – 25	Hearsay;
p. 267, L. 11 - p. 268, L. 1	Hearsay;
p. 270, L. 25 - p. 272, L. 6	Form;
p. 272, L. 20 - p. 273, L. 13	Form;
p. 273, L. 24 - p. 276, L. 8	Foundation; Hearsay; Speculation
p. 277, L. 19 - p. 279, L. 6	Speculation;
p. 279, L. 23 - p. 280, L. 4	
p. 280, L. 17 – 19	
p. 280, L. 23 – 25	
p. 288, L. 10 - p. 289, L. 6	Form;
p. 302, L. 9 - p. 303, L. 7	Form;

MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES' DESIGNATIONS

Designations

Objections

p. 18, L. 12 - p. 21, L. 20	Speculation; Hearsay
p. 21, L. 3-6	
p. 24, L. 24 – 25	
p. 31, L. 5	Hearsay;
p. 137, L. 25 – p. 138, L. 8	Form; Hearsay; Speculation; Calls for legal conclusion;
p. 220, L. 19 - p. 221, L. 10	
p. 237, L. 15 – p. 237, L. 5	
p. 252, L. 25 – p. 253, L. 16	Hearsay;
p. 288, L. 2- 9	Form;
p. 301, L. 19 – p. 302, L. 8	Hearsay;
p. 377, L. 1 – p. 380, L. 13	Form; Speculation;

UAW'S AND *FLOWERS* DESIGNATIONS

<u>Designations</u>	<u>Objections</u>
p. 17, L. 15-18	
p. 25, L. 23 – p. 26, L. 18	Hearsay;
p. 29, L. 6 – 12	Hearsay;
p. 40, L. 1 – L. 14	Form; Speculation;
p. 69, L. 16 – p. 70, L. 2	Speculation
p. 74, L. 6 – 9	Speculation;
p. 81, L. 22 – p. 82, L. 11	Hearsay; Form;
p. 84, L. 13 – p. 86, L. 1	Form;
p. 94, L. 8 – 17	Form;
p. 95, L. 10 – p. 96, L. 6	Form; Hearsay;
p. 99, L. 6 – 15	Calls for legal conclusions; Form; Foundation;
p. 103, L. 20 -23	Hearsay; Form;
p. 104, L. 5-7	
p. 105, L. 18 – p. 108, L. 7	Hearsay; Form;
p. 110, L. 20 – p. 111, L. 5	Speculation; Form; Hearsay;
p. 113, L. 13 – 22	Form; Hearsay;
p. 124, L. 10 – p. 125, L. 3	Hearsay
p. 128, L. 9 – 11	Speculation;
p. 129, L. 14 – 18	
p. 136, L. 18 – p. 137, L. 1	Form;
p. 155, L. 1 – p. 156, L. 22	Form; Hearsay
p. 155, L. 16 – p. 156, L. 22	Form; Hearsay
p. 163, L. 8-17	Speculation;
p. 164, L. 16-25	Speculation;
p. 168, L. 5 – p. 170, L. 9	Speculation; Form; Hearsay
p. 173, L. 21-23	
p. 182, L. 9 – 21	Form; Speculation;
p. 183, L. 23- p. 184, L. 2	Speculation
p. 185, L. 10-23	Speculation
p. 189, L. 14-16	Form;
p. 220, L. 19 – p. 221, L. 10	

p. 222, L. 13 – p. 223, L. 21	Form;
p. 225, L. 16 – p. 226, L. 5	Form; Hearsay
p. 239, L. 7 – 15	
p. 246, L. 12 – p. 247, L. 7	
p. 252, L. 16 – p. 253, L. 6	Hearsay;
p. 257, L. 17 – 20	
p. 260, L. 8 – 21	
p. 261, L. 21 – p. 262, L. 4	Form;
p. 262, L. 16 – 23	Form; Speculation;
p. 263, L. 22 – p. 264, L. 19	Form; Hearsay; Speculation;
p. 267, L. 11 – p. 268, L. 1	Hearsay;
p. 273, L. 6 -17	Form; Foundation;
p. 361, L. 7-20	
p. 374, L. 9 – p. 375, L. 7	Speculation; Hearsay
p. 376, L. 12-21	Speculation; Hearsay
p. 379, L. 21 – p. 380, L. 20	Form; Speculation;
p. 383, L. 3 – L. 6	
p. 385, L. 1-7	Form;
p. 408, L. 6 – p. 419, L. 7	Foundation; Hearsay; Form
p. 422, L. 17 – p. 423, L. 7	
p. 427, L. 11 – p. 428, L. 11	Hearsay; Form;
p. 429, L. 16 – 21	Speculation; Form
p. 446, L. 1 – p. 447, L. 10	Hearsay; Form;
p. 478, L. 7 – p. 479, L. 1	Form; Hearsay
p. 479, L. 13 – p. 479, L. 21	Form;

RETIREMENT SYSTEMS’ CONSOLIDATED OBJECTIONS

Designations

Objections

p. 10, L. 23 – p. 11, L. 14	Speculation; Hearsay
p. 10, L 17–22	Speculation;
p. 12, L. 1 – p. 13, L. 25	Form;
p. 14, L. 14 – p. 15, L. 17	
p. 17, L. 7 – p. 19, L. 19	Speculation; Hearsay
p. 20, L. 19 – 25	Hearsay;

p. 21, L. 3 – 20	Hearsay;
p. 21, L. 21 – 24	
p. 23, L. 13 – 19	Speculation;
p. 23, L. 24 – 25	Hearsay;
p. 24, L. 4 – p. 25, L. 22	Form; Hearsay
p. 26, L. 20 – 25	Hearsay;
p. 29, L. 6 – p. 32, L. 4	Hearsay;
p. 32, L. 14 – 23	Hearsay;
p. 33, L. 5 – 13	Hearsay;
p. 38, L. 11 – p. 41, L. 17	Form; Speculation; Hearsay
p. 43, L. 15 - p. 45, L. 19	Hearsay; Form; Speculation
p. 46, L. 7 - p. 47, L. 18	Hearsay; Speculation; Calls for legal conclusion;
p. 48, L. 1 - p. 49, L. 8	Calls for legal conclusion; Speculation; Hearsay
p. 50, L. 23 - p. 53, L. 7	Hearsay; Calls for legal conclusion; Form
p. 53, L. 16 – 24	Calls for legal conclusion; Form
p. 54, L. 2 – 5	Hearsay;
p. 54, L. 13 – 19	Form; Calls for legal conclusion;
p. 54, L. 22 - p. 55, L. 5	Calls for legal conclusion;
p. 55, L. 8 – 17	Calls for legal conclusion;
p. 55, L. 20 - p. 56, L. 19	Calls for legal conclusion; Form
p. 56, L. 21	Form;
p. 57, L. 11 - p. 60, L. 13	Hearsay; Speculation; Form;
p. 61, L. 17 - p. 62, L. 24	Hearsay;
p. 63, L. 25 - p. 64, L. 11	Hearsay;
p. 65, L. 15 - p. 66, L. 1	
p. 69, L. 3 - p. 71, L. 2	Hearsay; Speculation
p. 71, L. 6 – 8	
p. 71, L. 17 - p. 78, L. 5	Calls for legal conclusion; Form;
p. 78, L. 21	
p. 79, L. 2 – 6	
p. 79, L. 16 - p. 80, L. 8	Speculation; Calls for legal conclusion;
p. 80, L. 25 - p. 82, L. 23	Hearsay; Form;
p. 82, L. 25 - p. 83, L. 3	Form;

p. 83, L. 16 - p. 84, L. 2	Form;
p. 84, L. 13 - 16	Form;
p. 84, L. 18 - 24	
p. 85, L. 19 - p. 86, L.1	Form;
p. 86, L. 16 - p. 95, L. 1	Form; Calls for legal conclusion; Hearsay
p. 96, L. 25 - p. 108, L. 7	Hearsay; Calls for legal conclusions; Form; Foundation; Relevance
p. 110, L. 12 - p. 119, L. 10	Speculation; Form; Hearsay;
p. 119, L. 20 - p. 120, L. 16	Form;
p. 120, L. 19 - p. 121, L. 12	Hearsay;
p. 122, L. 7 - p. 123, L. 14	
p. 123, L. 17 - p. 125, L. 10	Hearsay;
p. 125, L. 24 - p. 127, L. 4	Form
p. 127, L. 24 - p. 130, L. 23	Hearsay; Form; Foundation;
p. 129: 14-18	
p. 132, L. 12 - p. 133, L. 25	Form; Hearsay;
p. 134, L. 3 - p. 135 L. 4	Hearsay;
p. 136, L. 18 - p. 137, L. 1	
p. 137, L. 12 - p. 144, L. 23	Form; Hearsay; Speculation; Foundation;
p. 145, L. 25 - p. 146, L. 10	Hearsay
p. 147, L. 19 - 25	
p. 148, L. 16 - p. 153, L. 8	Form; Hearsay;
p. 166, L. 12 - 24	
p. 168, L. 5 - p. 172, L. 4	Speculation; Form; Hearsay
p. 172, L. 19 - p. 176, L. 20	Speculation; Hearsay
p. 177, L. 21 - p. 178, L. 1	
p. 179, L. 2 - p. 185, L. 23	Form; Hearsay;
p. 187, L. 3 - p. 190, L. 12	Speculation;
p. 192, L. 2 - 8	
p. 215, L. 13 - 24	
p. 247, L. 1 - 7	
p. 248, L. 15 - p. 249, L. 5	Form;
p. 251, L. 16 - 18	Hearsay
p. 252, L. 4 - 5	

p. 252, L. 12 – p. 253, L. 6	Hearsay;
p. 260, L. 8 – 21	
p. 261, L. 21 – p. 262, L. 4	Form;
p. 262, L. 16 – 23	Form; Speculation;
p. 266, L. 18 – 25	
p. 267, L. 11 – p. 268, L. 1	Hearsay;
p. 270, L. 25 – p. 272, L. 6	Form;
p. 271:18–21	Hearsay
p. 272, L. 20 – p. 273, L. 13	Form;
p. 273, L. 24 – p. 276, L. 8	Foundation; Hearsay; Speculation
p. 277, L. 19 – p. 279, L. 6	Speculation;
p. 279, L. 23 – p. 280, L. 4	
p. 280, L. 17 – 19	
p. 280, L. 23 – 25	
p. 288, L. 10 – p. 292, L. 11	Form;
p. 293, L. 12 – p. 297, L. 19	Form; Hearsay; Speculation
p. 299, L. 22 – p. 303, L. 7	Form;
p. 323, L. 22 – p. 324, L. 14	Form;
p. 328, L. 4 – p. 329, L. 3	Hearsay; Form;
p. 330, L. 13 – 17	Relevance
p. 331, L. 18 – p. 332, L. 1	Form;
p. 332, L. 2	
p. 333, L. 11 – p. 335, L. 9	Form;
p. 361, L. 7 – p. 362, L. 22	Hearsay; Form;
p. 364, L. 5 – p. 365, L. 7	Form;
p. 368, L. 10–15	
p. 369, L. 12 – p. 381, L. 2	Hearsay; Form; Foundation; Speculation
p. 409, L. 9 – p. 412, L. 18	Foundation; Hearsay; Form
p. 415, L. 7 – p. 417, L. 11	Hearsay;
p. 419, L. 2 – 7	Form;
p. 455, L. 3 – p. 457, L. 1	Form;
p. 477, L. 8 – p. 481, L. 22	Hearsay; Foundation; Speculation
p. 489, L. 8 – 22	Relevance; Speculation

Treasurer Andrew Dillon 10/10/13

THE RETIRED DETROIT POLICE MEMBERS ASSOCIATION  
DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 34, L. 3 - 5	Speculation
p. 35, L. 11 – p. 36, L. 22	Speculation; Form

THE OFFICIAL COMMITTEE OF RETIREES' DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 7, L. 18 - 20	Hearsay; Form;
p. 60, L. 10 – p. 61, L. 2	Foundation; Form
p. 61, L. 9 – p. 63, L. 10	Speculation; Form
p. 64, L. 10 - 15	
p. 68, L. 23 – p. 69, L. 1	
p. 69, L. 23 – p. 71, L. 12	Form; Speculation
p. 89, L. 15 – p. 90, L. 24	Speculation; Form
p. 91, L. 10 – p. 93, L. 1	Hearsay; Form; Speculation
p. 94, L. 11 – p. 96, L. 9	Speculation; Form
p. 119, L. 1 – p. 120, L. 14	Speculation; Hearsay; Form

MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES' DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 63, L. 5 – p. 66, L. 1	Hearsay; Form; Speculation
p. 68, L. 23 – p. 71, L. 12	Hearsay; Speculation; Form
p. 119, L. 1 – p. 121, L. 17	Hearsay; Speculation; Form

RETIREEES' SYSTEMS DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 40, L. 14–23	Speculation
p. 63, L. 17 – p. 66, L. 1	Hearsay; Form; Speculation
p. 68, L. 23 – p. 71, L. 12	Hearsay; Speculation; Form
p. 84, L. 20 – p. 88, L. 23	Hearsay; Speculation; Foundation; Form

p. 89, L. 15–22 – p. 91, L. 10 – 22	Hearsay; Form; Speculation
p. 107, L. 18 – p. 110, L. 4	Speculation; Hearsay; Form;
p. 110, L. 23 – p. 111, L. 1–18	Speculation; Hearsay; Form; Foundation
p. 112, L. 16 – p. 114, L. 25	Hearsay; Speculation;
p. 119, L. 1 – p. 120, L. 14	Hearsay; Speculation; Form
p. 120, L. 24 – p. 121, L. 17	Hearsay; Speculation

Richard Baird - 10/10/2013

MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES’ DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 13, L. 11- p. 15, L. 10	Foundation; Hearsay; Form; Speculation
p. 16, L. 2 - 18	Hearsay; Form; Speculation
p. 19, L. 2 – 20	Form; Hearsay

Mayor David Bing - 10.14.2013

MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES’ DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 12, L. 7 – p. 13, L. 24	Hearsay; Speculation
p. 14, L. 9 - 21	
p. 20, L. 19 – 24	Form; Foundation
p. 45, L. 24 – p. 46, L. 10	Form; Foundation; Speculation
p. 76, L. 2 – p. 68, L. 9	Form; Foundation; Hearsay
p. 69, L. 8 – p. 70, L. 25	Form; Hearsay; Speculation
p. 100, L. 15 – p. 101, L. 13	Hearsay; Foundation; Form
p. 103, L. 15 – p. 106, L. 6	Form; Foundation; Speculation
p. 106, L. 11 – p. 108, L. 9	Form; Foundation; Hearsay; Speculation
p. 107, L. 16 – p. 108, L. 1	Form; Foundation; Hearsay

RETIREMENT SYSTEMS DESIGNATIONS



Designation

p. 60, L. 11 – p. 61, L. 8

p. 67, L. 2–25

p. 9, L. 17–19

p. 12, L. 7 – p. 13, L. 7

p. 20, L. 19–21/ p. 20, L. 23–24

p. 69, L. 14 – p. 70, L. 4

p. 112, L. 13–21

p. 116, L. 17 – p. 117, L. 11

Objection

Form; Foundation

Form; Foundation; Speculation

Hearsay;

Foundation; Form;

Form; Hearsay; Speculation

Hearsay; Speculation

Speculation; Foundation

THE OFFICIAL COMMITTEE OF RETIREES’ DESIGNATIONS

Designation

p. 11, L. 9 – p. 13, L. 7

p. 50, L. 7 - p. 51, L. 8

p. 53, L. 15 - p. 58, L. 11

p. 59, L. 25 - p. 64, L. 23

p. 66, L. 21 - p. 68, L. 9

p. 72, L. 13 - p. 75, L. 11

p. 75, L. 22 - p. 90, L. 3

p. 91, L. 4 - 24

Objection

Hearsay; Speculation

Form;

Foundation; Form; Speculation;

Foundation; Form;

Hearsay; Speculation; Form;

Foundation; Form; Speculation;

Hearsay;

Foundation; Form; Speculation;

Hearsay;

Foundation; Form; Hearsay;

Governor Richard D. Snyder - 10/9/2013

THE RETIRED DETROIT POLICE MEMBERS ASSOCIATION  
DESIGNATIONS

Designation

p. 27, L. 8 – p. 29, L. 12

Objection

Speculation; Form;

THE OFFICIAL COMMITTEE OF RETIREES’ DESIGNATIONS

Objection

Designation

p. 9, L. 24 – p. 10, L. 1	
p. 11, L. 20 – p. 12, L. 12	Speculation; Form
p. 13, L. 3 - 17	Speculation; Form; Foundation
p. 13, L. 20 - 22	
p. 29, L. 18 – p. 30, L. 2	
p. 46, L. 3 - 6	Form;
p. 46, L. 16 - 19	
p. 46, L. 24 - 47, L. 5	
p. 51, L. 17 – p. 53, L. 3	Hearsay; Form
p. 55, L. 20 – p. 56, L. 1	
p. 57, L. 4 - 6	Form; Speculation
p. 57, L. 9 - 11	Form; Speculation
p. 59, L. 2 - 5	Speculation
p. 60, L. 16 - 23	Hearsay;
p. 61, L. 1 - 4	
p. 61, L. 8	
p. 63, L. 9 - 64, L. 10	Hearsay; Form;
p. 64, L. 14 - 18	Speculation; Hearsay
p. 64, L. 20 – p. 65, L. 6	
p. 71, L. 12 - 17	Form; Speculation; Hearsay
p. 76, L. 11 - 13	
p. 77, L. 6 - 19	Speculation; Form
p. 78, L. 14 – p. 79, L. 14	Speculation; Form; Hearsay
p. 79, L. 25 – p. 80, L. 6	Form;
p. 85, L. 10 - 18	
p. 87, L. 1 - 9	Form;
p. 92, L. 16 - 20	
p. 109, L. 10 - 110, L. 6	Form;
p. 120, L. 11 - 19	Form; Speculation
p. 122, L. 10 - 13	Form;
p. 122, L. 18 - 20	Form;
p. 124, L. 3 - 17	Form; Hearsay; Speculation
p. 125, L. 21 – p. 126, L. 10	Form; Hearsay

p. 126, L. 18 - 21	Hearsay;
p. 127, L. 13 - 15	Form; Speculation;
p. 128, L. 18 - 22	Form; Speculation; Hearsay
p. 130, L. 6 - 24	Form; Hearsay
p. 131, L. 5 - 9	Form; Hearsay
p. 141, L. 4	
p. 141, L. 7 - 10	Hearsay
p. 141, L. 17 - 19	
p. 142, L. 1 - 14	Hearsay; Form;
p. 149, L. 25 – p. 150, L. 13	Form; Hearsay

MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES' DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 46, L. 3 - 23	Form; Speculation; Hearsay
p. 52, L. 13 - 15	Form; Hearsay
p. 63, L. 9 – p. 64, L. 18	Form; Foundation; Hearsay

RETIREMENT SYSTEMS DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 13, L. 24 – p. 14, L. 24	Form; Hearsay;
p. 15, L. 12 – L. 21	Form;
p. 32, L.18 – p. 33, L. 1	Speculation;
p. 39, L. 5–16	Form;
p. 40, L. 1–12	Speculation;
p. 43, L. 22 – p. 44, L. 1 – 5	Speculation;
p. 45, L. 8–23	Form;
p. 46, L. 24 – p. 47, L. 5	Form; Hearsay
p. 52, L. 13 – p. 53, L 15	Form; Hearsay
p. 55, L. 9 – p. 57, L. 11	Form; Foundation; Hearsay
p. 63, L. 12 – p. 64, L. 18	Form; Foundation; Hearsay
p. 65, L. 1 – p. 67, L. 8	Form; Speculation; Hearsay; Foundation
p. 76, L. 11 – p. 80, l. 21	Form; Speculation; Hearsay; Foundation

p. 81, L. 21 – p. 82, L. 18	Form; Hearsay
p. 83, L. 21 – p. 84, L. 1	Hearsay; Form
p. 87, L. 1 – p. 88, L. 5	Hearsay; Form; Speculation
p. 91, L. 18 – p. 93, L. 1	Form; Hearsay; Foundation
p. 94, L. 18 – p. 95, L. 22	Form; Hearsay
p. 122, L. 4 – p. 124, L. 17	Form; Hearsay
p. 125, L. 21 – p. 126, L. 15	
p. 127, L. 5 – L. 15	
p. 128, L. 18—22	Form; Speculation; Hearsay
p. 129, L. 4 – L. 13	
p. 132, L. 13 – L. 21	Form;
p. 149, L. 25 – p. 152, L. 3	Form; Speculation; Foundation; Hearsay

Howard Ryan - 10/14/13

THE RETIRED DETROIT POLICE MEMBERS ASSOCIATION  
DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 29, L.4 – 15	Speculation; Hearsay; Form
p. 30, L. 13 – 25	Hearsay; Speculation; Form
p. 43, L. 14 - p. 47, L. 5	Hearsay; Speculation;

THE OFFICIAL COMMITTEE OF RETIREES’ DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 7, L. 15 - p. 8, L. 7	
p. 18, L. 14 - p. 19, L. 4	Hearsay;
p. 25, L. 9 - p. 28, L.17	Hearsay; Speculation; Form
p. 30, L. 13 - p. 31, L. 3	Hearsay; Speculation; Form
p. 35, L. 25 - p. 37, L. 20	Form;
p. 46, 6 - p. 46, L. 23	Hearsay; Speculation;

RETIREEES’ SYSTEMS DESIGNATIONS

<u>Designation</u>	<u>Objection</u>
p. 43, L. 14 – p. 45, L. 5	Hearsay; Speculation; Form;

p. 46, L. 1 – L. 23

Hearsay; Speculation;

UAW’S AND FLOWERS DESIGNATIONS

Designation

Objection

Deposition in its Entirety

Hearsay; Form; Foundation; Speculation

The City reserves its rights to call any witness identified by any Objector.

**B. Objectors’ Witnesses**

Objectors’ witnesses are indicated in Attachments A-G.

**VIII. EXHIBITS**

**A. City’s Exhibits**

1. Charter – City of Detroit
2. Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2008
3. Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2009
4. Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2010
5. Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2011
6. Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2012
7. November 13, 2012, Memorandum of Understanding City of Detroit reform Program
8. July 18, 2013 Declaration of Gaurav Malhotra in Support of the Debtor’s Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (the “Malhotra Declaration)
9. Cash Flow Forecasts

10. Ten-Year Projections
11. Legacy Expenditures (Assuming No Restructuring)
12. Schedule of the sewage disposal system bonds and related state revolving loans as of June 30, 2012
13. Schedule of water system bonds and related state revolving loans as of June 30, 2012
14. Annual Debt Service on Revenue Bonds
15. Schedule of COPs and Swap Contracts as of June 30, 2012
16. Annual Debt Service on COPs and Swap Contracts
17. Schedule of UTGO Bonds as of June 30, 2012
18. Schedule of LTGO Bonds as of June 30, 2012
19. Annual Debt Service on General Obligation Debt & Other Liabilities
20. July 18, 2013 Declaration of Kevyn D. Orr In Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (the "Orr Declaration")
21. January 13, 2012, City of Detroit, Michigan Notice of Preliminary Financial Review Findings and Appointment of a Financial Review Team
22. March 26, 2012, Report of the Detroit Financial Review Team
23. April 9, 2012, Financial Stability Agreement
24. December 14, 2012, Preliminary Review of the City of Detroit
25. February 19, 2013, Report of the Detroit Financial Review Team
26. March 1, 2013, letter from Governor Richard Snyder to the City
27. July 8, 2013, Ambac Comments on Detroit

28. July 16, 2013, Recommendation Pursuant to Section 18(1) of PA 436
29. July 18, 2013, Authorization to Commence Chapter 9 Bankruptcy Proceeding
30. July 18, 2013, Emergency Manager Order No. 13 Filing of a Petition Under Chapter 9 of Title 11 of the United States Code
31. Declaration of Charles M. Moore in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (the "Moore Declaration")
32. Collection of correspondence between Jones Day and representatives of Unions regarding the representation of current retirees
33. Chart on verbal communications with Unions regarding the representation of current retirees authored by Samantha Woo
34. Memorandum to File about communications with Unions regarding the representation of current retirees authored by Samantha Woo dated October 4, 2013
35. Redacted log of meetings and correspondence between the City and its advisors and various creditors prior to July 18, 2013
36. FRE 1006 chart summarizing meetings and communications with union creditors
37. FRE 1006 chart summarizing meetings and communications with nonunion creditors
38. FRE 1006 chart summarizing monthly cash forecast absent restructuring
39. February 21, 2013 to June 21, 2013 Calendar of Lamont Satchel
40. List of Special Conferences for Association held with Members of Police Labor Relations

41. June 10, 2013, City of Detroit Financial and Operating Plan Slides
42. RSVP List of June 14, 2013 Proposal for Creditors Meeting
43. June 14, 2013, City of Detroit Proposal for Creditors
44. June 14, 2013, Proposal for Creditors – Executive Summary
45. List of Invitees to the June 20, 2013 Meetings
46. Sign-in sheets from June 20, 2013, 10:00 AM-12:00 PM (Non-Uniform Retiree Benefits Restructuring)
47. Sign-in sheets from June 20, 2013 2:00-4:00 PM (Uniform Retiree Benefits Restructuring)
48. June 20, 2013 City of Detroit Retiree Legacy Cost Restructuring – Non-Uniform Retirees
49. June 20, 2013 City of Detroit Retiree Legacy Cost Restructuring – Uniform Retirees
50. Invitee List and Sign-in Sheet for the June 25, 2013 Meeting
51. Cash Flow Forecasts provided at June 25, 2013 Meeting
52. Composite of emails attaching 63 letters dated June 27, 2013 to participants of the June 20, 2013 meetings
53. List of Attendees at July 9 and 10, 2013 Creditor Meetings
54. Detroit Future City Plan 2012
55. Collection of correspondence regarding invitations to the July 10 Pension Meetings and July 11 Retiree Health Meetings
56. July 10, 2013 City of Detroit Sign In Sheet for 1:00 PM Pension and Retiree Meeting
57. July 10, 2012 City of Detroit Sign In Sheet for 3:00 PM Police and Fire Meeting



58. July 11, 2013 City of Detroit Sign-in Sheet for 10:00 AM Non-Uniformed Meeting
59. July 11, 2013 City of Detroit Sign-in Sheet for the 1:30 PM Uniformed Meeting
60. July 11, 2013 City of Detroit Union – Retiree Meeting Draft Medicare Advantage Plan Design Options
61. Correspondence between representatives of AFSCME and representatives of the City
62. Michigan Attorney General Opinion No. 7272
63. July 31, 2013 Notice of Filing Amended List of Creditors Holding 20 Largest Unsecured Claims
64. September 30, 2013 Notice of Filing of Second Amended List of Creditors and Claims, Pursuant to Section 924 and 925 of The Bankruptcy Code
65. June 4, 2013 Letter from Glenn Bowen and Katherine A. Warren to Evan Miller
66. June 4, 2013 Letter from Glenn Bowen and Katherine A. Warren to Evan Miller
67. June 14, 2013 Letter from Glenn Bowen and Katherine A. Warren to Evan Miller
68. June 30, 2011, Gabriel Roeder Smith & Company, 73<sup>rd</sup> Annual Actuarial Valuation of the General Retirement System of the City of Detroit
69. April 2013, Gabriel Roeder Smith & Company, Draft 74<sup>th</sup> Annual Actuarial Valuation of the General Retirement System of the City of Detroit as of June 30, 2012
70. June 30, 2012, Gabriel Roeder Smith & Co., 71<sup>st</sup> Annual Actuarial Valuation of the Police and Fire Retirement System of the City of Detroit

71. November 8, 2012 Letter from Kenneth G. Alberts to The Retirement Board Police and Fire Retirement System for the City of Detroit
72. November 21, 2011 Memorandum from Irvin Corley, Jr., to Council Members of the City of Detroit City Council
73. July 17, 2013 Letter from Evan Miller to representatives of the City of Detroit Police and Firefighters Unions
74. July 15, 2013 Quarterly Report with Respect to the Financial Condition of the City of Detroit (period April 1<sup>st</sup> – June 30<sup>th</sup>)
75. May 12, 2013 City of Detroit, Office of the Emergency Manager, Financial and Operating Plan
76. Responses of International Union, UAW to Debtor's First Set of Interrogatories
77. UAW Privilege Log
78. Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees Responses and Objections to Debtor's First Set of Interrogatories
79. The Detroit Retirement Systems' Responses and Objections to the Debtor's First Interrogatories
80. Amended (Signed) Response of Detroit Police Command Officers Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions
81. Response of Detroit Police Lieutenants & Sergeants Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions
82. Response of Detroit Police Officers Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions
83. Answers to Debtor's First Interrogatories to Retiree Association Parties

84. Retired Detroit Police Members Association's Answers to Debtor's First Set of Interrogatories
85. Responses of the Official Committee of Retirees to Debtor's First Set of Interrogatories
86. Objection and Responses of International Union, UAW to Debtor's First Request for Production of Documents
87. Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees Responses and Objections to Debtor's First Set of Requests for Production of Documents
88. The Detroit Retirement Systems' Responses and Objections to the Debtor's First Set of Request for Production of Documents
89. Amended (Signed) Response of Detroit Police Command Officers Association to Debtor's First Requests for Production of Documents to the Detroit Public Safety Unions
90. The Detroit Fire Fighters Associations' (DFFA) Response to Debtor's First Request for Production of Documents
91. Response of Retiree Association Parties to Debtor's First Requests for Production of Documents
92. Retired Detroit Police Members Association Response to Debtor's First Requests for Production
93. June 14, 2013 Index Card #1 from Nicholson
94. June 14, 2013 Index Card #2 from Nicholson
95. June 20, 2013 Typewritten Notes from June 20, 2013 Presentation
96. July 16, 2013 Nicholson Affidavit in *Flowers*
97. August 19, 2013 UAW Eligibility Objection
98. Nicholson Letter To Irwin re UAW Discovery Responses

99. FRE 1006 Chart summarizing the approximate number of documents uploaded to the data room before July 18, 2013
100. FRE 1006 Chart summarizing the approximate number of pages in documents uploaded to the data room before July 18, 2013
101. Declaration of Kyle Herman, Director at Miller Buckfire, in support of the FRE 1006 charts summarizing the approximate number of documents and pages uploaded to the data room
102. July 15, 2013 Letter from Assured Guaranty Municipal Corp., Ambac Assurance Corporation and National Public Finance Guarantee Corporation to Kevyn D. Orr [redacted]
103. Any exhibit identified by any Objector.

**B. Objectors' Exhibits and City's Objections**

Objectors' exhibits are indicated in Attachments A-G.

**C. Objections to City's Exhibits**

Objectors' objections to the City's Exhibits are indicated in Attachment H.

Objectors reserve their rights to assert objections to City Exhibits 76-101.

# ATTACHMENT A

## THE RETIRED DETROIT POLICE MEMBERS ASSOCIATION'S WITNESS LIST, EXHIBIT LIST AND DEPOSITION DESIGNATIONS

**THE RETIRED DETROIT POLICE MEMBERS ASSOCIATION'S  
WITNESS LIST, EXHIBIT LIST AND DEPOSITION DESIGNATIONS**

The Retired Detroit Police Members Association ("RDPMA"), through its counsel, Strobl & Sharp, P.C., hereby submits the following unique Exhibit List and Witness List:

**I. Revised Witness List**

A. The RDPMA hereby submits this witness list of individuals who will be called for live testimony in the eligibility trial:

1. Howard Ryan

B. The RDPMA hereby submits this consolidated witness list of individuals who will be called as witnesses via deposition testimony in the eligibility trial:

1. Howard Ryan
2. Treasurer Andrew Dillon
3. Governor Richard Snyder
4. Emergency Manager Kevyn Orr, September 16, 2013

C. The RDPMA hereby reserves the right to call as a witness any witness identified by any other party, regardless of whether such witness is called to testify.

D. The RDPMA hereby reserves the right to call as a witness any rebuttal and/or impeachment and/or foundation witness as necessary.

**II. Unique Exhibit List**

The RDPMA hereby submits this consolidated list of evidence that will or may be used as evidence during the eligibility trial:

201	3/02/13-Dillon Dep. Ex. 6- DTMI00234878 (email correspondence)	Hearsay; Relevance
202	3/02/12-Dillon Dep. Ex. 7-	Hearsay, Relevance

	DTMI00234877-880 (email correspondence)	
203	Basic Financial Statements, pages 27 - 32 of the State of Michigan Comprehensive Annual Financial Report for Fiscal Year Ending 2012	Relevance
205	Comparison Chart of Public Act 4 and Public Act 436	

### ***III. Deposition Designations***

**The RDPMA hereby submits the following deposition designations:**

10/14/13 Howard Ryan

p. 29, L.4 - 15

p. 30, L. 13 - 25

p. 43, L. 14 - p. 47, L. 5

10/09/13 Richard Snyder

p. 27, L. 8 - p. 29, L. 12

10/10/13 Andrew Dillon

p. 34, L. 3 - 5

p. 35, L. 11 - p. 36, L. 22

09/16/13 Kevyn Orr

p. 43 L18 – p. 46, L. 6

# ATTACHMENT B

## THE RETIREE ASSOCIATION PARTIES' CONSOLIDATED (1) WITNESS LIST AND (2) EXHIBIT LIST



**THE RETIREE ASSOCIATION PARTIES' CONSOLIDATED  
(1) WITNESS LIST AND (2) EXHIBIT LIST**

The Retired Detroit Police & Fire Fighters Association (“RDPFFA”), Donald Taylor, individually and as President of the RDPFFA, the Detroit Retired City Employees Association (“DRCEA”), and Shirley V. Lightsey, individually and as President of the DRCEA (collectively “Retiree Association Parties”) through their counsel, Lippitt O’Keefe, PLLC and Silverman & Morris, P.L.L.C., submit the following Consolidated (1) Witness List, (2) Exhibit List and (3) Deposition Designations:

***I. Witness List***

A. The Retiree Association Parties hereby submit this consolidated witness list of individuals who will be called as witnesses in the eligibility trial:

1. Shirley V. Lightsey (see Declaration, Dkt. 502)  
c/o Lippitt O’Keefe, PLLC  
370 E. Maple Road  
Third Floor  
Birmingham MI, 48009  
(248) 646-8292

Ms. Lightsey is prepared to testify on matters including, but not limited to, the fact that the City did not negotiate on retiree matters (pension and OPEB), her attendance at multiple presentational meetings, that the DRCEA is a natural representative of the City of Detroit general retirees, that the DRCEA was ready, willing and able to negotiate with the City on Retiree issues, that the DRCEA

unsuccessfully requested to meet with Kevyn Orr and on the qualifications, history, successes and structure of the DRCEA.

2. Donald Taylor (see Declaration, Dkt. 502)  
c/o Lippitt O'Keefe, PLLC  
370 E. Maple Road  
Third Floor  
Birmingham MI, 48009  
(248) 646-8292

Mr. Taylor is prepared to testify on matters including, but not limited to, the fact that the City did not negotiate on retiree matters (pension and OPEB), his attendance at multiple presentational meetings, that the RDPFFA is a natural representative of the City of Detroit uniformed (police and fire) retirees, that the RDPFFA was ready, willing and able to negotiate with the City on Retiree issues, that the RDPFFA met with Kevyn Orr during which he stated that pensions would not be diminished or impaired and that certain classes of retirees covered by a consent judgment would not have their medical benefits impaired, the unsuccessful requests for follow up meetings with Mr. Orr or City officials and on the qualifications, history, successes and structure of the DRCEA.

3. Any and all witnesses listed, regardless of whether they are called, on the witness list of any party.

4. Any and all witnesses necessary to provide a proper foundation for any physical and/or documentary evidence or to rebut the same regarding testimony or other evidence sought to be admitted by any party.

## II. Exhibit List

The Retiree Association Parties hereby submit this consolidated exhibit list of evidence that will or may be used as evidence during the eligibility trial:

<b>Retiree Association Parties' Exhibit No.</b>	<b><u>Exhibit</u></b>	<b><u>Objections</u></b>
301	Declaration of Shirley V. Lightsey (Dkt. 497, Ex. 2)	Hearsay ; Relevance
302	Declaration of Donald Taylor (Dkt. 497, Ex. 3)	Hearsay ; Relevance
303	Bylaws of DRCEA (RetAssnParties000032-000036) <sup>2</sup>	
304	Bylaws of RDPFFA (RetAssnParties000043-000060)	
305	Articles of Incorporation for DRCEA (RetAssnParties000038-000041)	
306	Articles of Incorporation for RDPFFA (RetAssnParties000042)	
307	Notice and Consent forms from DRCEA Members (See CD, Bates No. RetAssnParties000061)	
308	Notice and Consent forms from RDPFFA Members (See CD, Bates No. RetAssnParties000062)	
309	Letter from Shirley V. Lightsey to Kevyn Orr, dated May 4, 2013 (RetAssnParties000181)	
310	Letters from DRCEA members to the DRCEA (RetAssnParties000001-000021)	Hearsay ; Relevance
311	RESERVED	

<sup>2</sup> Bates numbers will be updated.

312	Wieler consent judgment (RetAssnParties000143-000180)	Hearsay ; Relevance
313	U.S. Trustee Retiree Committee Questionnaire completed by Shirley V. Lightsey (RetAssnParties000100- 000104)	Hearsay ; Relevance
314	U.S. Trustee Retiree Committee Questionnaire completed by Donald Taylor (RetAssnParties000121-000125)	Hearsay ; Relevance
315	Pamphlet entitled "All About the DRCEA" (RetAssnParties000022- 000031)	

Each of the Retiree Association Parties reserves the right to rely on any portion of any Exhibit offered into evidence by the City, the State or any other Objector

# ATTACHMENT C

## THE OFFICIAL COMMITTEE OF RETIREES' CONSOLIDATED (1) WITNESS LIST, (2) EXHIBIT LIST AND (3) DEPOSITION DESIGNATIONS

**THE OFFICIAL COMMITTEE OF RETIREES’  
CONSOLIDATED (1) WITNESS LIST,  
(2) EXHIBIT LIST AND (3) DEPOSITION DESIGNATIONS**

The Official Committee of Retirees (the “Committee”), through their counsel, Dentons US LLP, for the Eligibility Hearing scheduled to start October 23, 2013, submit the following Consolidated (1) Witness List, (2) Exhibit List and (3) Deposition Designations:

***I. Witness List***

A. The Committee hereby submits this consolidated witness list of individuals who will be called as witnesses via deposition testimony in the eligibility trial:

1. Emergency Manager Kevyn D. Orr
2. Conway MacKenzie Senior Managing Director Charles Moore
3. Michigan Treasurer Andy Dillon

B. The Committee hereby submits this consolidated witness list of individuals who may be called as witnesses via deposition testimony in the eligibility trial:

1. Milliman Principal and Consulting Actuary Glenn Bowen
2. Michigan Labor Relations Director Lamont Satchel
3. Ernst & Young LLP Principal Guarav Malhotra
4. Kenneth Buckfire

5. Governor Richard D. Snyder

6. Howard Ryan

D. The Committee hereby reserves the right to call as witnesses any witness called by any other party.

## ***II. Exhibit List***

The Committee hereby submits this consolidated exhibit list of evidence that will or may be used as evidence during the eligibility trial:

<b><u>Common Exhibit No.</u></b>	<b><u>Exhibit</u></b>	<b><u>Objections</u></b>
400.	01/30/13 - Orr Dep. Ex. 1, JD-RD-0000113 (email chain)	
401.	01/31/13 - Orr Dep Ex. 2, JD-RD-0000303 (email chain)	
402.	01/31/13 - Orr Dep. Ex. 3, JD-RD-0000300-02 (email chain)	
403.	01/31/13 - Orr Dep. Ex. 4, JD-RD-0000295-96 (email chain)	
404.	Orr Dep. Ex. 5, M.C.L.A. Const. Art. 9, § 24	
405.	02/20/13 - Orr Dep Ex. 6, JD-RD-0000216-18 (email chain)	
406.	02/22/13 - Orr Dep. Ex. 7, JD-RD-0000459-64 (email chain)	
407.	05/12/13 - Orr Dep. Ex. 8, (Financial and Operating Plan)	
408.	06/14/13 - Orr Dep. Ex. 9, Dkt. 438-16 (City of Detroit Proposal for Creditors)	
409.	07/16/13 - Orr Dep. Ex. 10, Dkt. 11-10 (letter Re: Recommendation Pursuant to	

	Section 18(I) of PA 436)	
410.	07/18/13 - Orr Dep. Ex. 11, Dkt. 11-11 (letter Re: Authorization to Commence Chapter 9 Bankruptcy Proceeding)	
411.	07/12/13 - Orr Dep. Ex. 12, Dkt. 512-6 (letter Re: City of Detroit Pension Restructuring)	
412.	07/17/13 - Orr Dep. Ex. 13, Dkt. 512-6 (letter Re: City of Detroit Pension Restructuring)	
413.	09/11/13 - Orr Dep. Ex. 14, (Retiree Legacy Cost Restructuring Presentation)	
414.	07/18/13 - Orr Dep. Ex. 15, Dkt. 11 (Declaration of Kevyn Orr)	
415.	09/13/13 - Orr Dep. Ex. 17, Dkt. 849 (City of Detroit Objections and Responses to Detroit Retirement Systems' First Requests for Admission Directed to the City of Detroit)	
416.	06/27/13 - Orr Dep. Ex. 18, DTMI00082699 (letter Re: City of Detroit Restructuring)	
417.	02/13/13 - Orr Dep. Ex. 20, JD-RD- 0000334-36 (email chain)	
418.	01/29/13 - Orr Dep. Ex. 21, DTMI00128731-805 (Jones Day 1/29/13 Pitchbook)	
419.	03/2013 - Orr Dep. Ex. 22, DTMI00129416 (Restructuring Plan)	
420.	02/15/13 - Orr Dep. Ex. 25, JD-RD- 0000354-55 (email chain)	Authentication; Hearsay
421.	06/21/13 - Satchel Dep. Ex. 18, DTMI00078573 (email attaching 6/20/13 Retiree Legacy Cost Restructuring)	
422.	06/14/13 - Satchel Dep. Ex. 19, Dkt.	



	438-7 (letter Re: Retiree Benefit Restructuring Meeting)	
423.	06/17/13 - Satchel Dep Ex. 20, Dkt. 438-6 (letter Re: Request from EFM for additional information)	
424.	09/24/13 - Bowen Dep. Ex. 4, DTMI00066176-90 (letter Re: PFRS Simple 10-Year Projection of Plan Freeze and No Future COLA)	
425.	11/16/12 - Bowen Dep. Ex. 9, DTMI00066269-74 (letter Re: DGRS Simple Projection)	
426.	05/20/13 - Bowen Dep. Ex. 10 DTMI00066285 (Letter Re: DGRS Simple 10-Year Projection of Plan Freeze and No Future COLA)	
427.	05/21/13 - Bowen Dep Ex. 11, (letter from G. Bowen to E. Miller Re: PFRS Simple 10-Year Projection of Plan Freeze and No Future COLA)	
428.	09/24/13 - Bowen Dep. Ex. 14, (letter Re: One-Year Service Cancellation for DRGS and PFRS)	
429.	07/17/13 - Malhotra Dep. Ex. 8, DTMI00137104 (Ernst & Young - Amendment No. 7 to statement of work)	
430.	07/02/13 - Dkt. 438-9 (letter from S. Kreisberg to B. Easterly Re: Request for Information)	
431.	07/03/13 - Dkt. 438-10 (letter from B. Eastley to S. Kreisberg Re: City of Detroit Restructuring)	
432.	01/16/13 - DTMI00078970 - 79162, (Ernst & Young Professional Service Contract)	
433.	04/04/13 - DTMI00210876 - 78, (Ernst	

	& Young Amendment No. 6 to Professional Services Contract)	
434.	07/17/13 - Snyder Dep. Ex. 6, (City of Detroit Rollout Plan)	Hearsay
435.	06/07/13 - Snyder Dep. Ex. 7, (Tedder email)	Hearsay
436.	07/08/13 - Snyder Dep. Ex. 8, (Dillon email)	Hearsay
437.	07/09/13 - Snyder Dep. Ex. 9, (Dillon email)	Hearsay
438.	07/09/13 - Dillon Dep. Ex. 5 (Dillon email)	Hearsay
439.	09/13/2013 - Dkt. 849 (City's Response to General Retirement Systems Request For Admissions)	
440.	08/23/13 - Dkt. 611 (General Retirement Systems Request For Admissions)	
441.	06/30/2011 - DTMI00225546 - 96, (Gabriel Roeder Smith 73rd Annual Actuarial Valuation)	
442.	06/30/12 - DTMI00225597 - 645, (Gabriel Roeder Smith 74th Annual Actuarial Valuation)	
443.	03/2013 - Bing Dep. Ex. 3 DTMI00129416 - 53 (City of Detroit - Restructuring Plan)	
444.	06/30/12 - Bing Dep. Ex. 4 - (Excerpt of Comprehensive Annual Financial Report - (pages 123-124))	
445.	07/10/13 - Bing Dep. Ex. 5 - DTMI00098861-62, (email correspondence)	
446.	The video as it is linked from the 09/16/13 and 10/4/13 depositions of Kevyn D. Orr	

447.	The video as it is linked from the 10/14/13 Dave Bing Deposition	
448.	The video as it is linked from the 10/9/13 Richard D. Snyder Deposition	
449.	The video as it is linked from 10/10/13 Andrew Dillon Deposition	
450.	Any and all documents, correspondence and/or other materials authored by any witnesses identified in the City's witness list that contain relevant facts and/or information regarding this matter	Non-specific; non-compliant with Local Rule 7016-1(a)(9)
451.	Any and all exhibits identified by any party	
452.	07/08/2013 – Email from Bill Nowling to Governor's staff regarding timeline (SOM20010097-100, plus unnumbered timeline attachment))	Hearsay

**III. Deposition Designations**

**The Committee hereby submits the following deposition designations:**

09/16/13 Kevyn Orr

- p. 10, L. 23 - p. 11, L. 14
- p. 12, L. 1 - p. 13, L. 25
- p. 14, L. 14 - p. 15, L. 17
- p. 17, L. 7 - p. 19, L. 19
- p. 20, L. 19 - 25
- p. 21, L. 3 - 6
- p. 21, L. 21 - 24
- p. 23, L. 13 - 19
- p. 23, L. 24 - 25
- p. 24, L. 4 - p. 25, L. 22
- p. 26, L. 20 - 25
- p. 29, L. 6 - p. 31, L. 5
- p. 32, L. 14 - 23
- p. 33, L. 5 - 13

p. 38, L. 11 - p. 41, L. 17  
p. 43, L. 15 - p. 45, L. 19  
p. 46, L. 7 - p. 47, L. 18  
p. 48, L. 1 - p. 49, L. 8  
p. 50, L. 23 - p. 53, L. 7  
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p. 54, L. 13 - 19  
p. 54, L. 22 - p. 55, L. 5  
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p. 57, L. 11 - p. 60, L. 13  
p. 61, L. 17 - p. 62, L. 24  
p. 63, L. 25 - p. 64, L. 11  
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p. 69, L. 3 - p. 71, L. 2  
p. 71, L. 6 - 8  
p. 71, L. 17 - p. 78, L. 5  
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p. 84, L. 13 - 16  
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p. 85, L. 19 - p. 86, L. 1  
p. 86, L. 16 - p. 95, L. 1  
p. 96, L. 25 - p. 108, L. 7  
p. 110, L. 12 - p. 119, L. 10  
p. 119, L. 20 - p. 120, L. 16  
p. 120, L. 19 - p. 121, L. 12  
p. 122, L. 7 - p. 123, L. 14  
p. 123, L. 17 - p. 125, L. 10  
p. 125, L. 24 - p. 127, L. 4  
p. 127, L. 24 - p. 130, L. 23  
p. 132, L. 12 - p. 133, L. 25  
p. 134, L. 3 - p. 135 L. 4  
p. 136, L. 18 - p. 137, L. 1

p. 137, L. 12 - p. 144, L. 23  
p. 145, L. 25 - p. 146, L. 10  
p. 147, L. 19 - 25  
p. 148, L. 16 - p. 153, L. 8  
p. 166, L. 12 - 24  
p. 168, L. 5 - p. 172, L. 4  
p. 172, L. 19 - p. 176, L. 20  
p. 177, L. 21 - p. 178, L. 1  
p. 179, L. 2 - p. 185, L. 23  
p. 187, L. 3 - p. 190, L. 12  
p. 192, L. 2 - 8  
p. 215, L. 13 - 24  
p. 247, L. 1 - 7  
p. 248, L. 15 - p. 249, L. 5  
p. 251, L. 16 - 18  
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10/04/13 Kevin Orr

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09/18/13 Charles M. Moore Deposition Designations

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p. 151, L. 20 - p. 152, L. 1  
p. 152, L. 8 - 21  
p. 156, L. 18 - 25

10/10/13 Andrew Dillon

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p. 64, L. 10 - 15  
p. 68, L. 23 - p. 69, L. 1  
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09/24/13 Glen David Bowen

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p. 149, L. 6 - 8  
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p. 192, L. 8 - p. 193, L. 11  
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09/19/13 Lamont Satchel

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09/09/13 Guarav Malhotra

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09/09/13 Guarav Malhotra

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p. 60, L. 4 - p. 63, L. 3  
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09/20/13 Kenneth Buckfire

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p. 58, L. 13 - p. 63, L. 3  
p. 66, L. 6 - p. 68, L. 8  
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p. 95, L. 7 - p. 97, L. 22  
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10/09/13 Richard D. Snyder

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p. 124, L. 3 -17  
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10/10/13 Andrew Dillon Deposition Designations

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10/14/13 Howard Ryan Deposition Designations

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p. 30, L. 13 - p. 31, L. 3  
p. 35, L. 25 - p. 37, L. 20  
p. 46, 6 - p. 46, L. 23

10/14/13 Dave Bing Deposition Designations

p. 11, L. 9 - p. 13, L. 7  
p. 50, L. 7 - p. 51, L. 8  
p. 53, L. 15 - p. 58, L. 11  
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p. 66, L. 21 - p. 68, L. 9  
p. 72, L. 13 - p. 75, L. 11  
p. 75, L. 22 - p. 90, L. 3  
p. 91, L. 4 - 24

# ATTACHMENT D

**THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES' CONSOLIDATED  
(1) WITNESS LIST (2) EXHIBIT LIST AND (3) DEPOSITION  
DESIGNATIONS**

**THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES' CONSOLIDATED  
(1) WITNESS LIST (2) EXHIBIT LIST AND (3) DEPOSITION  
DESIGNATIONS**

The Michigan Council 25 of the American Federation of State, County and Municipal Employees ("AFSCME"), through their counsel, Lowenstein Sandler LLP, for the Eligibility Hearing scheduled to start October 23, 2013, submit the following Consolidated (1) Witness List, (2) Exhibit List and (3) Deposition Designations:

***I. Witness List***

A. The AFSCME hereby submits this consolidated witness list of individuals who will be called as live witnesses in the eligibility trial:

1. Steven Kreisberg

B. The AFSCME hereby submits this consolidated witness list of individuals who will be called as witnesses via deposition testimony in the eligibility trial:

1. Governor Richard D. Snyder
2. Emergency Manager Kevyn D. Orr
2. Ernst & Young LLP Principal Guarav Malhotra
3. Conway MacKenzie Senior Managing Director Charles Moore
4. Michigan Treasurer Andy Dillon
5. Richard Baird

6. Mayor David Bing

7. Howard Ryan

C. The AFSCME hereby submits this consolidated witness list of individuals who may be called as witnesses via deposition testimony in the eligibility trial:

1. Edward McNeil

D. The AFSCME hereby reserves the right to call as witnesses any witness called by any other party.

## ***II. Exhibit List***

The AFSCME hereby submits this consolidated exhibit list of evidence that will or may be used as evidence during the eligibility trial:

<b>AFSCME Exhibit No.</b>	<b>Common Exhibit No.</b>	<b>Exhibit</b>	<b>Objections</b>
501.		08/2007 - Dep. Ex. 8, (Office of the Auditor General Audit of the Municipal Parking Department) Deposition of Kenneth A. Buckfire, September 20, 2013	Relevance
502.		12/16/11 - AFSCME000000368 – 373, (City of Detroit Budgetary Savings and Revenue Manifesto – City of Detroit Labor Organizations)	Authentication; Hearsay; Relevance
503.		12/21/11 - Ex. C, (2011 Treasury Report) Declaration of Kevyn Orr in Support of Eligibility	
504.		01/10/12 - Dep. Ex. 10, (City of Detroit Letter Request for Information to Cockrel, Budget, Finance and Audit Standing Committee Chair) Deposition of Kenneth A. Buckfire, September 20, 2013	

505.		02/01/12 - DTMI00086926 – 86983, (Tentative Agreement between City and Coalition of City of Detroit (non-uniform) Unions)	Hearsay; Relevance
506.		03/02/12 - DTMI00234878 – 234880, (Email amongst Jones Day Subject: Consent Agreement)	
507.		03/26/12 - Dep. Ex. 5, (Letter from Lamont Satchel to Edward McNeil Confirming Coalition of Unions representing Detroit City workers has ratified a new contract) Deposition of Lamont Satchel, September 19, 2013	Relevance
508.		04/02/12 - Dep. Ex. 6, (Letter to Lamont Satchel from Edward McNeil providing updated list of coalition unions) Deposition of Lamont Satchel, September 19, 2013	Relevance
509.		03/26/12 - DTMI00204529 - 204543, (2012 Financial Review Team Report, dated March 26, 2012)	
510.		04/05/12 - DTMI00161620 - 161678, (2012 Consent Agreement)	
511.		06/06/12 - Dep. Ex. 9, (City of Detroit Non-filer Collection Summary for years 2006 to 2009) Deposition of Kenneth A. Buckfire, September 20, 2013	Authentication; Hearsay; Relevance
512.		06/11/12 - DMTI00098703- 98704 Email from Kyle Herman of Miller Buckfire to Heather Lennox & others Forwarding article “Bing: Detroit Will Miss Friday Payment if Suit Not Dropped”	Hearsay
513.		07/18/12 - AFSCME000000291-337, (Letter from Satchel attaching City Employment Terms)	Relevance
514.		07/27/12 - AFSCME 000000340 – 343, (Inter-Departmental Communication from Lamont Satchel to City of Detroit Employees regarding employment terms)	Relevance
515.		08/02/12 - Dep Ex. 11, (August 2, 2012 CET Implementation Project Kickoff Meeting) Deposition of Lamont Satchel, September 19, 2013	Relevance; Hearsay
516.		08/20/12 - AFSCME 000000344 - 347, (Cynthia Thomas Memorandum re: Changes in Pension Provisions to Unionized Employees Subject to City Employment Terms)	Hearsay; Relevance

517.		08/29/12 - DTMI00090577 – 90584, (Cynthia Thomas Revised Memorandum re: Changes in Pension Provisions to Unionized Employees Subject to City Employment Terms)	Hearsay; Relevance
518.		11/21/12 - DMTI00103931 - 103932, (Email Exchange with James Doak to Buckfire & others re: furloughs)	Hearsay; Relevance
519.		12/02/12 - Moore Dep. Ex. 6, DTMI00078512 - 8514 (Email from Kriss Andrews to Andy Dillon re: respective roles of E&Y, Conway MacKenzie, and Miller Buckfire in restructuring)	
520.		12/14/12 - DTMI00220457 - 220459, (2012 Treasury Report)	
521.		12/18/12 - Dep. Ex. 12, (Letter from Edward McNeil to Lamont Satchel) Deposition of Lamont Satchel, September 19, 2013	
522.		12/19/12 - Dep. Ex. 13, (Budget Required Furlough) Deposition of Lamont Satchel, September 19, 2013	
523.		12/19/12 - Moore Dep. Ex. 7, DTMI00106319 - 106320, (Email from Van Conway to Moore Re: draft “Exhibit A” concerning proposed scope of services for Conway MacKenzie as part of K with City of Detroit)	
524.		12/19/12 - Moore Dep. Ex. 8, DTMI00079526, (Email from Moore to Kriss Andrews etc Re: draft “Exhibit A” concerning proposed scope of services for Conway MacKenzie as part of K with City of Detroit)	
525.		12/19/12 - Moore Dep. Ex. 9, (Email from Kriss Andrews to Baird Re: scope of work for Conway MacKenzie)	
526.		12/19/12 - Moore dep. Ex. 10, DTMI00079528 - 79530 (Exhibit A Conway MacKenzie Scope of Services for January 9, 2013 through December 31, 2013)	
527.		12/27/12 - Dep. Ex. 17 (Caremark/CVS Letter), Deposition of Lamont Satchel, September 19, 2013	Hearsay; Relevance
528.		01/2013 - Dep Ex. 5, (Water Supply System Capital	Hearsay;



		Improvement Program Fiscal Years 2013 through 2017 (January 2013 Update) Deposition of Kenneth A. Buckfire, September 20, 2013	Relevance
529.		01/2013 - Dep. Ex. 6, (Sewage Disposal System, Capital Improvement Program, Fiscal years 2013 through 2017 (January 2013 Update) Deposition of Kenneth A. Buckfire, September 20, 2013	Hearsay; Relevance
530.		01/03/13 - Dep Ex. 14, (Letter from Lamont Satchel to Ed McNeil in Response to December 28, 2012 Letter) Deposition of Lamont Satchel, September 19, 2013	Relevance
531.		01/14/13 - DMTI00079665 - 79667(email from Kriss Andrews re: Professionals Call on Retiree Health Care Issues)	
532.		01/22/13 - DMTI00079569 - 79574, (Email from Kriss Andrews to Himself attaching Executive Summary of Detroit Restructuring Plan)	
533.		01/23/13 - Dep. Ex. 15, (Letter from Lamont Satchel to Ed McNeil responding to information request submitted December 18, 2012) Deposition of Lamont Satchel, September 19, 2013	
534.		01/25/13 - Dep. Ex. 16, (Letter from Ed McNeil to Lamont Satchel in preparation for meeting January 30, 2013) Deposition of Lamont Satchel, September 19, 2013	
535.		01/16/13 - Moore Dep. Ex. 11, DTMI00078909 - 78969 (Conway MacKenzie Professional Service Contract Transmittal Record approved January 16, 2013)	
536.	418	01/29/13 - DTMI00128731-128805, (Pitch Presentation given to the City by the City's Law Firm)	
537.	400	1/30/13 - JD-RD-0000113, (Email From Richard Baird forwarded by Corinne Ball to Heather Lennox "Bet he asked if Kevyn could be EM!")	
538.		01/31/12 - JD-RD-0000177 -178, (10:52 email between Orr and his colleague)	
539.	403	01/31/13 - JD-RD-0000295 - 296 (3:45:47 PM Email between Kevyn Orr and Corinne Ball Re: Bloomberg	

		involvement as a bad idea & new law as a “redo” of prior rejected law)	
540.	401	01/31/13 - JD-RD-0000303, (5:23:09 PM Email between Kevyn Orr and colleague re conversation with Richard Baird re: consideration of EM job; in response to email from Corinne Ball re: Bloomberg Foundation and financial support for EM & project)	
541.	402	01/31/13 - JD-RD-0000300 - 302, (4:10:58 PM Email exchange between Orr and Daniel Moss Re: prudence of making Detroit a “national issue” to provide “political cover” & best option to go through chapter 9)	
542.		02/11/13 - DMTI00083374 - 83394, (City of Detroit FAB Discussion Document)	
543.	417	02/07/13 - JD-RD-0000334 - 336, (Email String between Richard Baird and Kevyn Orr re: Details of Emergency Manager Employment) February 12-13	
544.		02/12/13 - JD-RD-0000327, ( Email string between Richard Baird, Andy Dillon, Kevyn Orr and Others regarding schedule for Orr Visit on February 11, 2013) February 7, 2013-February 11, 2013	
545.	420	02/13/13 - JD-RD-0000354-355, (Email String Regarding Prospect of Orr accepting position as Emergency Manager) February 13, 2013-February 15, 2013	
546.		02/18/13 - Moore Dep. Ex. 18, DTMI00103661 - 103663, (Email from Moore to Bill Pulte re: Pulte Capital Partners LLC employment to clear blight)	
547.		02/19/13 - DTMI00080488 - 80508, (2013 Financial Review Team Report)	
548.		02/19/13 - DTMI00080488 - 80508, (Supplemental Documentation of the Detroit Financial Review team Report)	
549.	405	02/20/13 - JD-RD-0000216 - 218, (Email attaching summary of partnership – Governor, Mayor & EM)	
550.	406	02/22/13 - JD-RD-0000459 - 464, (Email exchange concerning summary of partnership Exchange with Orr and Baird, forwarding exchange between Baird and Snyder) February 20- 22, 2013	

551.		02/22/13 - DTMI00097150 - 97154, (Letter from Irvin Corley, Director Fiscal Analysis Division and David Whitaker, Director Research & Analysis Division to Councilmembers Providing Comments on the Report of the Detroit Financial Review Team report)	
552.	419	03/2013 - DMTI00078433 - 78470, (City of Detroit Restructuring Plan, Mayor's Implementation Progress Report)	
553.		03/01/13 - DTMI 00124558 - 24562, (Governor's Determination of Financial Emergency)	
554.		03/11/13 - Moore Dep. Ex. 13, DTMI00078028-78046, (FAB Discussion Document)	
555.		03/27/13 - JD-RD-0000524 - 532, (Contract for Emergency Manager Services)	
556.		04/05/13 - Moore Dep. Ex. 14 - DTMI00069987 - 70027, (City Council Review Restructuring Recommendations)	
557.		04/08/13 - Moore Dep. Ex. 14 - DTMI00083414 - 83434 - (FAB Discussion Document)	
558.		04/11/13 - , (Order No. 5, issued by the EM April 11, 2013, requires that the EM approve in writing of any transfers of the City's real property)	
559.		05/02/13 - (Order No. 6, issued by the EM on May 2, 2013, directs the precise amount of deposits from the City to the Public Lighting Authority)	
560.	407	05/12/13 - DTMI00222548 - 222591, (Financial and Operating Plan)	
561.		05/21/13 - Moore Dep. Ex. 4, DTMI00106352 - 6353, (email from Van Conway to Moore)	
562.		05/21/13 - DTMI00106348 - 6349 (email exchange between Moore and Baird re: hiring of "Van" (Conway))	
563.		05/24/13 - Debtor's Omnibus Reply to Objections Ex. C, (Letter from Edward McNeil estimating savings from the Tentative Agreement of Approximately \$50 million)	
564.	435	06/03/13 - Dep. Ex. 5, SOM20001327-1327-28, (Email String re: Financial and Operating Plan	Hearsay

		Powerpoint January 3, 2013 through June 7, 2013) Deposition of Treasurer Andrew Dillon, October 10, 2013	
565.		06/10/13 - DTMI0011511-115432, (June 10 Presentation)	
566.	422	06/14/13 - DTMI00083043 - 83044, (letter from counsel to the City of Detroit to AFSCME)	
567.	408	06/14/13 - DTMI00227728 - 227861, (City of Detroit's "Proposal for Creditors" presented by the City of Detroit on June 14, 2013)	
568.		06/14/13 - DTMI00083741 - 83805, (Executive Summary of City of Detroit's "Proposal for Creditors" presented by the City of Detroit on June 14, 2013)	
569.	423	06/17/13 - AFSCME000000040 - 41 Kreisberg letter to Miller Buckfire & Co., LLC.	
570.		06/20/13 - DTMI00078574 - 78597, (Retiree Legacy Cost Restructuring, Uniform Retirees June 20, 2013 Presentation)	
571.		06/20/13 - DTMI00078598 - 78621, (Retiree Legacy Cost Restructuring, Non-Uniform Retirees June 20, 2013 Presentation)	
572.		06/21/13 - DMTI00099297 - 99298, (Email Sonya Mays to herself Re: refining current responsibilities to align more closely with City's financial restructuring effort)	
573.	421	06/21/13 - DTMI00078573 - 78621, (email from Lamont Satchel to David Bing and others attaching Emergency Manager's current restructuring plan for healthcare benefits and pensions)	
574.		06/27/13 - DTMI00084443, (letter from counsel to the City of Detroit to AFSCME) (Letter to Ed- not letter included in objection)	
575.		06/28/13 - DTMI00135831, (June 28, 2013 email from counsel to the City of Detroit to AFSCME)	
576.		06/30/13 - DTMI00175701 - 175736, (City of Detroit Water Fund Basic Financial Statements)	Authentication; Hearsay; Relevance

577.		06/30/13 - DTMI00175663 - 74700, (City of Detroit Sewage Disposal Fund Basic Financial Statements)	Authentication; Hearsay; Relevance
578.	430	07/02/13 - AFSCME000000036 - 39, (Kreisberg letter to counsel to the City of Detroit)	
579.	431	07/03/13 - DTMI00084320 - 84321, (letter from counsel to the City of Detroit to AFSCME)	
580.		07/04/13 - DTMI00109900 -109901, (Email from Dana Gorman to Bill Nowling attaching Communications Rollout)	Hearsay
581.	436	07/08/13 - Dep. Ex. 7, SOM200003601, (Email re: Detroit and Pension Cuts) Deposition of Richard Baird, October 10, 2013	
582.		07/08/13 - SOM20010097, (Email from Bill Nowling to Governor's Office Attaching July 4, 2013 Spreadsheet entitled "Chapter 9 Communications Rollout")	Hearsay
583.		07/18/13 - (Order No. 10, issued by the EM on July 8, 2013, suspends the Detroit Charter's requirement for filling vacancies on City Council)	
584.		07/09/13 - SOM20010234, (Email from Treasurer Andy Dillon to the Governor and other Individuals in the Governor's Office)	Hearsay
585.	437	07/09/13 - Dep. Ex. 8, SOM200003657, (email re: Detroit and Referencing Meeting Keyvn Orr to have with pensions) Deposition of Richard Baird, October 10, 2013	Hearsay
586.		07/11/13 - DMTI00104215-104217, (Email from Dave Home to Kenneth Buckfire forwarding pre-read for call regarding options for protecting art)	Hearsay
587.	409	07/16/13 - DTMI00099244 - 99255, (Emergency Manager Recommendation of Chapter 9 Filing)	
588.		07/17/13 - DTMI00128729-128730, (Email from Ken Buckfire regarding the deal reached between the City and its swap counterparties)	Hearsay
589.	429	07/17/13 - DTFOTA0000001 - 8, (Ernst & Young Amendment No. 7 to Professional Services Contract with City of Detroit)	
590.	410	07/18/13 - DTMI00116442 - 116445, (Governor's	

		Authorization of Chapter 9 Filing)	
591.		07/18/13 - Decl. Ex. A (Temporary Restraining Order dated July 18, 2013) Kreisberg Declaration, August 19, 2013	
592.		07/19/13 - Ex. B (Order of Declaratory Judgment dated July 19, 2013) Kreisberg Declaration, August 19, 2013	
593.		07/19/13 - DTMI00116442-116445, (email re: High Priority with attached July 18, 2013 Letter re Authorization to Commence Chapter 9 Bankruptcy Proceeding)	
594.		08/06/13 - AFSCME000000050, (Kreisberg letter to counsel to the City of Detroit) (no attachment)	Relevance
595.		08/08/13 - AFSCME000000045 - 46, (letter from counsel to the City of Detroit to AFSCME)	Relevance
596.	413	09/11/13 - Ex. 14, (Retiree Legacy Cost Restructuring Presentation) Deposition of Kevyn Orr, September 16, 2013	Relevance
597.		09/13/13 - DTFOTA1 – 153, (Letter from Jones Day to Caroline Turner attaching documents relied upon in Buckfire and Malhotra Depositions) Deposition of Kenneth A. Buckfire, September 20, 2013	
598.		10/09/13 - Ex. 11, (Email Subject: High Priority) Deposition of Governor Richard Snyder, October 9, 2013	
599.		DTMI00117210 -117215, (Detroit City Council Rationale for Appeal)	Authentication; Relevance
599-0		Ex. 18, (City Government Restructuring Program Hot Items) Deposition of Kenneth A. Buckfire, September 20, 2013	Authentication; Hearsay
599-1		NERD Tax Return	Authentication; Hearsay; Relevance
599-2		6/11/13 – DTMI00234907-908, Dep. Ex. 9, (Email re: Professional Fees) Deposition of Treasurer Andrew Dillon, October 10, 2013	
599-3		09/16/13 - Ex. B, (Deposition Transcript of Emergency Manager Kevyn Orr September 16, 2013)	

		Declaration of Michael Artz.	
599-4		10/04/13 - Ex. E, (Transcript of continued deposition testimony given by Emergency Manager Kevyn Orr) Declaration of Michael Artz.	
599-5		10/09/13 - Ex. A, (Deposition Transcript of Governor Richard Snyder) Declaration of Michael Artz.	
599-6		09/20/13 - Ex. C, (Deposition Transcript of Guarav Malhotra) Declaration of Michael Artz.	Hearsay
599-7		09/18/13 - Ex. D, (Deposition of Charles Moore) Declaration of Michael Artz.	Hearsay
599-8		Any and all documents, correspondence and/or other materials authored by any witnesses identified in City's witness list that contain relevant facts and/or information regarding this matter	
599-9		Any and all exhibits identified by any party.	

### ***III. Deposition Designations***

**The AFSCME hereby submits the following deposition designations**

9/16/13 10/4/13 Kevyn Orr deposition:

p. 18, L. 12 - p. 21, L. 20  
p. 21, L. 3-6  
p. 24, L. 24 – 25  
p. 31, L. 5  
p. 137, L. 25 – p. 138, L. 8  
p. 220, L. 19 - p. 221, L. 10  
p. 237, L. 15 – p. 237, L. 5  
p. 252, L. 25 – p. 253, L. 16  
p. 288, L. 2- 9  
p. 301, L. 19 – p. 302, L. 8  
p. 377, L. 1 – p. 380, L. 13

9/20/13 Gaurav Malhotra deposition:

p. 44, L. 21 – p. 45, L. 17  
p. 86, L. 20 – 23

9/18/13 Charles Moore deposition:

p. 62, L. 2-7  
p. 63, L. 10-12

10/9/13 Governor Richard Snyder deposition:

p. 46, L. 3 - 23  
p. 52, L. 13 - 15  
p. 63, L. 9 – p. 64, L. 18

10/10/13 Treasurer Andrew Dillon deposition

p. 63, L. 5 – p. 66, L. 1  
p. 68, L. 23 – p. 71, L. 12  
p. 119, L. 1 – p. 121, L. 17

10/10/13 Andrew Baird deposition:

p. 13, L. 11- p. 15, L. 10  
p. 16, L. 2 - 18  
p. 19, L. 2 – 20

10/14/13 Mayor Dave Bing deposition:

p. 12, L. 7 – p. 13, L. 24  
p. 14, L. 9 - 21  
p. 20, L. 19 – 24  
p. 45, L. 24 – p. 46, L. 10  
p. 76, L. 2 – p. 68, L. 9  
p. 69, L. 8 – p. 70, L. 25  
p. 100, L. 15 – p. 101, L. 13  
p. 103, L. 15 – p. 106, L. 6  
p. 106, L. 11 – p. 108, L. 9  
p. 107, L. 16 – p. 108, L. 1

In addition to above, AFSCME reserves the right to add the designations of the other Objectors including but not limited to the depositions of Lamont Satchel on September 19, 2013, Kenneth Buckfire on September 20, 2013, and Glenn Bowen on September 24, 2013, to counter-designate portions of depositions that have been designated by the City, and amend these designations at or prior to trial.



# ATTACHMENT E

## **THE UAW'S AND *FLOWERS* PLAINTIFFS' CONSOLIDATED (1) WITNESS LIST, (2) EXHIBIT LIST AND (3) DEPOSITION**

**THE UAW’S AND FLOWERS PLAINTIFFS’ CONSOLIDATED  
(1) WITNESS LIST, (2) EXHIBIT LIST AND (3) DEPOSITION  
DESIGNATIONS**

***I. Witness List***

A. The UAW and Flowers hereby submit this consolidated list of individuals who will be called as witnesses in the eligibility trial:

1. Michael Nicholson - Subject: City’s pre-petition meetings with stakeholders and status of the employees and retirees of the Detroit Public Library
2. Jack Dietrich – history of bargaining between UAW Local 2211 and City
3. Janet Whitson –impact of pension cuts on retirees, including Detroit Public Library Retirees
4. Michigan Governor Rick Snyder – motivation for Chapter 9 filings and dealings between Emergency Manager and state officials
5. Michigan Treasurer Andy Dillon – motivation for Chapter 9 filings and dealings between Emergency Manager and state officials
6. Michigan Transformation Manager Rick Baird – motivation for Chapter 9 filings and dealings between Emergency Manager and state officials

C. The UAW hereby reserves the right to call as witnesses any witness called by any other party.

***II. Exhibit List***

The UAW hereby submits this consolidated exhibit list of evidence that will or may be used as evidence during the eligibility trial:

<b>Exhibit Numbers</b>		<b><u>Exhibit</u></b>	<b><u>Objections</u></b>
<b>UAW</b>	<b>Common</b>		
600	418.	Orr deposition Exh. 21 (Jones Day 1/29/13 pitchbook)	
601	400	Orr deposition Ex. 1, JD-RD-0000113 (email chain)	
602	401.	Orr deposition Ex. 2, JD-RD-000303 (email chain)	
603	402	Orr deposition Ex. 3, JD-RD-0000300-302 (email chain)	
604	405.	Orr deposition Ex. 6, JD-RD-0000216-218 (email chain)	
605	407	Orr deposition Ex. 8, (no Bates stamp) (5/12/13 EM Financial and Operating Plan)	
606	408.	Orr deposition Ex. 9 (6/14/13 Proposal for Creditors)	
607	409.	Orr deposition Ex. 10 (no Bates stamp) (7/16/13 EM letter to Governor)	
608	410.	Orr deposition Ex. 11 (no Bates stamp) (7/18/13 Governor letter to EM)	
609	414.	Orr's 7/18/13 declaration [Docket No. 11]	
610	None.	Orr deposition Ex. 17, City's responses to Retirement System's Admissions Requests [Docket No. 15]	
611	410.	Orr deposition Ex. 18, DTMI00082699 (6/27/13 Jones Day letter to John Cunningham)	
	436.	7/8/13 email from Treasurer Dillon to Governor Snyder, (SOM20003601)	Hearsay

612	None	Buckfire deposition Ex. 13, DTM00103931-932 (Email chain)	Hearsay
613	421.	Lamont Satchel deposition Ex. 18 (June 20, 2013 proposal).	Hearsay
614	None.	Rick Snyder Dep. Ex. 10, City of Detroit Chapter 9 Communications Rollout Plan	Hearsay
615	437.	Rick Snyder Dep. Ex. 9, 7/9/13 email from Dillon to Snyder	Hearsay
616	436.	Rick Snyder Dep. Ex. 8, 7/8/13 email from Dillon to Snyder	Hearsay
617	435.	Rick Snyder Dep. Ex. 7	Hearsay
618	434.	Rick Snyder Dep. Ex. 6	Hearsay
619	None	Rich Baird deposition Ex. 5 2/20/13 email from Baird to Orr	Relevance
620	None	Rich Baird deposition Ex. 6, 2/22/13 email from Baird to Orr	Relevance
621	438	Andy Dillon deposition Ex. 5, 7/19/email	Hearsay
622	None	Andy Dillon deposition Ex. 7, 3/2/12 email	Hearsay; Relevance
623	None	UAW document production bates-stamped 302-303 (Michael Nicholson question cards)	
624	None	7/18/13 Michael Nicholson affidavit, with attachments A and B	Hearsay; Relevance

### ***III. DEPOSITION DESIGNATIONS***

**The UAW hereby submits the following deposition designations:**

9/16/13 Kevyn Orr deposition:

p.17; L.15-18  
p.25, L.23 – p.26, L.18  
p.29, L.6 – 12  
p.40, L.1 – L.14  
p.69, L.16 – p.70, L.2  
p.74, L.6 – 9

p.81, L.22 – p.82, L.11  
p.84, L.13 – p.86, L.1  
p.94, L.8 – 17  
p.95, L.10 – p.96, L.6  
p.99, L.6 – 15  
p.103, L.20 -23  
p.104, L.5-7  
p.105, L.18 – p.108, L.7  
p.110, L.20 – p.111, L.5  
p.113, L.13 – 22  
p.124, L.10 – p.125, L.3  
p.128, L.9 – 11  
p.129, L.14 – 18  
p.136, L.18 – p.137, L.1  
p.155, L.1 – p.156, L.22  
p.155, L.16 – p156, L.22  
p.163, L.8-17  
p.164, L.16-25  
p.168, L.5 – p.170, L.9  
p.173, L.21-23  
p.182, L.9 – 21  
p.183, L.23- p.184, L.2  
p.185, L.10-23  
p.189, L.14-16  
p.220, L.19 – p.221, L.10  
p.222, L.13 – p.223, L.21  
p.225, L.16 – p.226, L.5  
p.239, L.7 – 15  
p.246, L.12 – p.247, L.7  
p.252, L.16 – p.253, L.6  
p.257, L.17 – 20  
p.260, L.8 – 21  
p.261, L.21 – p.262, L.4  
p.262, L.16 – 23  
p.263, L.22 – p.264, L.19  
p.267, L.11 – p.268, L.1  
p.273, L.6 -17  
p.361, L.7-20  
p.374, L.9 – p.375, L.7  
p.376, L.12-21

p.379, L.21 – p.380, L.20  
p.383, L.3 – L.6  
p.385, L.1-7  
p.408, L.6 – p.419, L.7  
p.422, L.17 – p.423, L.7  
p.427, L.11 – p.428, L.11  
p.429, L.16 – 21  
p.446, L.1 – p.447, L.10  
p.478, L.7 – p.479, L.1  
p.479, L.13 – p.479, L.21

9/20/13 Gaurav Malhotra deposition

p.54, L.22 – p.5, L.12  
p.56, L.9 – p.57, L.1

9/18/13 and 10/4/13: Charles Moore deposition

p. 61 L. 18 - p. 62 L.7  
p. 65 L. 12 – 23  
p. 134 L. 23 - p. 135 L 16  
p. 140 L. 16 - p. 141 L. 22  
p. 150 L. 16 - p. 152 L. 21

9/20/13: Kenneth Buckfire

p. 67; L 13 - p. 68 L.11  
p. 191 L.22 - p. 193 L. 9  
p. 194 L. 10 – 24  
p. 195 L.12- 17  
p. 198 L 4- 12.  
p. 211 L. 16 - p. 212 L.3  
p. 225 L. 10 - p. 226 L. 4

9/24/13: Glenn Bowen

p. 34 L. 8 -21  
p. 35 L. 12 - p. 36 l. 4  
p. 43 L. 15 - p. 44 L. 8.

9/19/13 Lamont Satchel

p. 11 L. 11 -p. 14 L. 13  
p. 54 L. 11 – p. 55 L. 20  
p. 58 L. 17 – p. 59 L. 15  
p. 61 L. 2 – p. 63 L. 5  
p. 65 L. 13 – p. 66 L. 1  
p. 68 L. 1 – L. 10  
p. 69 L. 4- 72 p. 7  
p. 72 L. 8 – p. 73 L. 1  
p. 79 L. 2 - 81 L. 16  
p. 82 L. 9 – p 84 L. 22  
p. 86 L. 12- p. 87.2  
p. 88 L. 13-19.

Deposition transcript of Howard Ryan, Treasury Department of Michigan, Director of Office of Legislative Affairs (in its entirety)

#### **IV. RESERVATION OF RIGHTS**

UAW and the *Flowers* Plaintiffs anticipate filing motions challenging certain assertions of privilege made by the City and/or by the State. Should the Court as a result of such motions find that the City and/or State improperly withheld testimony or documents, the UAW and *Flowers* Plaintiffs reserve the right to supplement or modify their exhibit and witness lists and statement of claim.

# ATTACHMENT F

## THE DETROIT PUBLIC SAFETY UNIONS' CONSOLIDATED (1) WITNESS LIST, (2) EXHIBIT LIST AND (3) DEPOSITION DESIGNATIONS



**THE DETROIT PUBLIC SAFETY UNIONS' CONSOLIDATED  
(1) WITNESS LIST, (2) EXHIBIT LIST AND (3) DEPOSITION  
DESIGNATIONS**

The Detroit Public Safety Unions, consisting of the Detroit Fire Fighters Association (the "DFFA"), the Detroit Police Officers Association (the "DPOA"), the Detroit Police Lieutenants & Sergeants Association (the "DPLSA") and the Detroit Police Command Officers Association (the "DPCOA") through their counsel, Erman, Teicher Miller, Zucker & Freedman, P.C., submit the following Consolidated (1) Witness List, (2) Exhibit List and (3) Deposition Designations:

***I. Witness List***

A. The Detroit Public Safety Unions' hereby submit this consolidated witness list of individuals who will be called as witnesses in the eligibility trial:

1. Daniel F. McNamara (see Declaration, Dkt. 512-6)  
c/o Erman, Teicher Miller, Zucker & Freedman, P.C  
400 Galleria Officentre, Suite 444  
Southfield, MI 48034  
Telephone: (248) 827-4100

Mr. McNamara will testify about his duties as president of the DFFA, his responsibilities and the responsibilities of the DFFA on behalf of its members, and his dealings with representatives of the City prior to and after the filing of the chapter 9 petition. In particular, he will testify about correspondence with Lamont Satchel that addressed the termination of 2009 – 2013 Collective Bargaining Agreement effective 11:59 p.m. June 30, 2013; the City's terms and conditions of employment following the expiration of the CBA; and follow up meetings. Mr. McNamara will testify about the City's unilateral imposition of wage cuts, cuts to health care benefits and pension restructuring proposals, and that there were no negotiations between the City and the DFFA, despite the DFFA's willingness to participate at meetings.

2. Mark Diaz (see Declaration, Dkt. 512-1)  
c/o Erman, Teicher Miller, Zucker & Freedman, P.C  
400 Galleria Officentre, Suite 444  
Southfield, MI 48034  
Telephone: (248) 827-4100

Mr. Diaz will testify about his duties as president, his responsibilities and the responsibilities of the DPOA on behalf of its members, and his efforts to negotiate and arbitrate labor matters with the City. In particular, Mr. Diaz will testify about the Act 312 Arbitration and the awards that were issued as a result of same. He will testify that the City's lack of negotiations; the City's announcement of its intention to impose new health care plans on the DPOA and other Public Safety Unions which significantly increase the members' out of pocket medical costs; and about the "informational meetings" in June and July 2013, at which representatives from Jones Day presented very general outlines of the City's restructuring proposal.

3. Mark Young (see Declaration, Dkt. 512-7)  
c/o Erman, Teicher Miller, Zucker & Freedman, P.C  
400 Galleria Officentre, Suite 444  
Southfield, MI 48034  
Telephone: (248) 827-4100

Mr. Young will testify about his duties as president, his responsibilities and the responsibilities of the DPLSA on behalf of its members. Mr. Young will testify about the DPLSA Feb. 4, 2013 Petition for Act 312 arbitration and the subsequent action of the City claiming it was not obligated to engage in bargaining under the Public Employment Relations Act, MCL 423.201 et seq as a result of Section 27(3) of Public Act 436; the decision of the MERC on July 14, 2013 granting the City's motion to dismiss the Act 312 arbitration; and the City's subsequent statements that it had no obligation to bargain with the DPLSA. He will also testify about the City's actions in June and July 2013 relative to the termination of the CBA and the City's intent to impose changes to wages, benefits and working conditions, and correspondence with Lamont Satchel, the City Labor Relations Director. Mr. Young will testify about presentations made by the City in June and July 2013 relative to pension restructuring and health plan changes for DPLSA members, and other meetings with the City/Emergency Manager to talk about employment issues

for DPLSA members, and the City's statement that the meetings should not be categorized as negotiations.

4. Mary Ellen Gurwitz (see Declaration, Dkt. 512-8)  
c/o Erman, Teicher Miller, Zucker & Freedman, P.C  
400 Galleria Officentre, Suite 444  
Southfield, MI 48034  
Telephone: (248) 827-4100

Ms. Gurewitz will testify about the lack of negotiations between the DPCOA and the City and the terms that have been imposed by the City, and, in particular, the lack of negotiations with the City prior to the chapter 9 filing.

B. The Detroit Public Safety Unions' hereby submit this consolidated witness list of individuals who may be called as witnesses in the eligibility trial:

1. Jeffrey M. Pegg, Vice President, DFFA Local 344
2. Teresa Sanderfer, Secretary, DFFA Local 344 Committee Member
3. Robert A. Shinske, Treasurer, DFFA Local 344
4. Linda Broden, Sergeant at Arms, DPOA RDPFFA
5. Rodney Sizemore, Vice President
6. Steve Dolunt, President, DPCOA
7. James Moore, Vice president, DPCOA

Each of the Detroit Public Safety Unions reserves the right to call any witness listed by the City, the State of Michigan or by any objecting party.

C. Witnesses from Deposition testimony:

Each of the Detroit Public Safety Unions reserves the right to offer any portion of any deposition designated by any other objecting party.

## II. Exhibit List

The Detroit Public Safety Unions' hereby submit this consolidated exhibit list of evidence that will or may be used as evidence during the eligibility trial:

<b>Public Safety Unions' Exhibit No.</b>	<b>Exhibit</b>	<b>Objections</b>
704	DFFA letter dated July 12, 2013	
705	Jones Day letter of July 17, 2013	
706	City of Detroit and Detroit Police Officers Association, MERC Case No. D12 D-0354 Panel's Findings, Opinion and Orders	Hearsay; Relevance
707	City of Detroit and Detroit Police Officers Association, MERC Case No. D12 D-0354, Supplemental Award	Hearsay; Relevance
708	City of Detroit v. DPOA MERC Case No.D12 D-0354 Chairman's Partial Award on Health Insurance	Hearsay; Relevance
709	Letter from Jones Day, Brian West Easley, dated June 14, 2013	
710	Letter from Jones Day, Brian West Easley, dated June 27, 2013	
711	DFFA Master Agreement, 2001-2009	
712	DFFA Act 312 Award, dated Oct./Nov. 2011	Hearsay; Relevance
713	DFFA Supplemental Act 312 Award	Hearsay; Relevance
714	DFFA Temporary Agreement	Hearsay; Relevance
715	DPLSA Master Agreement, 2009	
716	DPCOA Master Agreement	
717	DPCOA Temporary Agreement	Hearsay; Relevance
718.	City of Detroit v. DPOA MERC Case No.D09 F-0703 Decision and Order	Hearsay; Relevance

719	City of Detroit v. DPOA, No. C07 E-110	Hearsay; Relevance
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Each of the Detroit Public Safety Unions reserves the right to rely on any portion of any Exhibit offered into evidence by the City, the State or any other objecting party.

# ATTACHMENT G

**THE RETIREMENT SYSTEMS' CONSOLIDATED  
(1) WITNESS LIST,  
(2) EXHIBIT LIST AND (3) DEPOSITION DESIGNATIONS**

**THE RETIREMENT SYSTEMS' CONSOLIDATED  
(1) WITNESS LIST,  
(2) EXHIBIT LIST AND (3) DEPOSITION DESIGNATIONS**

The Police and Fire Retirement System of the City of Detroit (“PFRS”) and the General Retirement System of the City of Detroit (“GRS,” and together with PFRS, the “Retirement Systems”), through their counsel, Clark Hill PLC, hereby submits the following Consolidated (1) Witness List, (2) Exhibit List and (3) Deposition Designations:

***I. Witness List***

A. The Retirement Systems hereby submit this consolidated witness list of individuals who will be called as witnesses via deposition and/or live testimony in the eligibility trial:

1. Kevyn D. Orr, Emergency Manager for the City of Detroit
2. Andrew Dillon, Michigan Treasurer (via deposition or live)
3. Richard Snyder, Michigan Governor (via deposition or live)
4. Kenneth Buckfire, Miller Buckfire (via deposition or live)

B. The Retirement Systems hereby submit this consolidated witness list of individuals who may be called as witnesses in the eligibility trial:

1. Glenn Bowen, Milliman Principal and Consulting Actuary  
Glenn Bowen (via deposition)
2. Lamont Satchel, Michigan Labor Relations Director Lamont  
Satchel (via deposition)
3. Charles Moore, Conway Mackenzie Managing Director (via  
deposition)
4. Bradley A. Robins, Head of Financing Advisory &  
Restructuring for North America at Greenhill & Co., LLC
5. Eric Mendelsohn, Managing Director of Greenhill & Co., LLC
6. David Bing, Mayor for the City of Detroit (via deposition)
7. Howard Ryan, State of Michigan 30(b)(6) Witness (via  
deposition)

C. The Retirement Systems hereby reserves the right to call as a witness any witness identified by any other party, regardless of whether such witness is called to testify.

D. The Retirement Systems hereby reserves the right to call as a witness any rebuttal and/or impeachment and/or foundation witness as necessary.

## ***II. Exhibit List***

The Retirement Systems hereby submits this consolidated exhibit list of evidence that will or may be used as evidence during the eligibility trial:



<u>Exhibit No.</u>		<u>Exhibit</u>	<u>Objections</u>
<u>RSCD</u>	<u>Common</u>		
801	404	OrrDep. Ex. 5, M.C.L.A. Const. Art. 9, § 24	
802	418	01/29/13 – Orr Dep. Ex. 21, DTMI00128731–805 (Jones Day 1/29/13 Pitchbook)	
803	400	01/30/13 – OrrDep. Ex. 1, JD–RD–0000113 (email chain)	
804	403	01/31/13 – OrrDep. Ex. 4, JD–RD–0000295–96 (email chain)	
805	402	01/31/13 – OrrDep. Ex. 3, JD–RD–0000300–02 (email chain)	
806	401	01/31/13 – OrrDep Ex. 2, JD–RD–0000303 (email chain)	
807	417	02/13/13 – OrrDep. Ex. 20, JD–RD–0000334–36 (email chain)	
808	420	02/15/13 – OrrDep. Ex. 25, JD–RD–0000354–55 (email chain)	Authentication ; Hearsay
809	405	02/20/13 – OrrDep. Ex. 6, JD–RD–0000216–18 (email chain)	
810	406	02/22/13 – OrrDep. Ex. 7, JD–RD–0000459–64 (email chain)	
811	419	03/2013 – Orr Dep. Ex. 22, DTMI00129416 (Restructuring Plan)	
812	407	05/12/13 – Orr Dep. Ex. 8, (Financial and Operating Plan)	
813	408	06/14/13 – Orr Dep. Ex. 9, Dkt. 438–16 (City of Detroit Proposal for Creditors)	
814	416	06/27/13 – Orr Dep. Ex. 18, DTMI00082699 (letter Re: City of Detroit Restructuring)	
815	411	07/12/13 – Orr Dep. Ex. 12, Dkt. 512–6 (letter Re: City of Detroit Pension Restructuring)	
816	412	07/17/13 – Orr Dep. Ex. 13, Dkt.	

		512-6 (letter Re: City of Detroit Pension Restructuring)	
817	409	07/16/13 – Orr Dep. Ex. 10, Dkt. 11-10 (letter Re: Recommendation Pursuant to Section 18(I) of PA 436)	
818	410	07/18/13 – Orr Dep. Ex. 11, Dkt. 11-11 (letter Re: Authorization to Commence Chapter 9 Bankruptcy Proceeding)	
819	413	09/11/13 – Orr Dep. Ex. 14, (Retiree Legacy Cost Restructuring Presentation)	
820	415	09/13/13 – Orr Dep. Ex. 17, Dkt. 849 (City of Detroit Objections and Responses to Detroit Retirement Systems' Frist Requests for Admission Directed to the City of Detroit)	
821	425	11/16/12 – Bowen Dep. Ex. 9, DTMI00066269-74 (letter Re: DGRS Simple Projection)	
822	426	05/20/13 – Bowen Dep. Ex. 10 DTMI00066285 (Letter Re: DGRS Simple 10-Year Projection of Plan Freeze and No Future COLA)	
823	427	05/21/13 – Bowen Dep. Ex. 11, (letter from G. Bowen to E. Miller Re: PFRS Simple 10-Year Projection of Plan Freeze and No Future COLA)	
824	424	09/24/13 – Bowen Dep. Ex. 4, DTMI00066176-90 (letter Re: PFRS Simple 10-Year Projection of Plan Freeze and No Future COLA)	
825	428	09/24/13 – Bowen Dep. Ex. 14, (letter Re: One-Year Service	

		Cancellation for DRGS and PFRS)	
826	422	06/14/13 – Satchel Dep. Ex. 19, Dkt. 438–7(letter Re: Retiree Benefit Restructuring Meeting)	
827	423	06/17/13 – Satchel Dep. Ex. 20, Dkt. 438–6 (letter Re: Request from EFMfor additional information)	
828	421	06/21/13 – Satchel Dep. Ex. 18, DTMI00078573 (email attaching 6/20/13 Retiree Legacy Cost Restructuring)	
829	430	07/02/13 – Dkt. 438–9 (letter from S. Kreisberg to B. Easterly Re: Request for Information)	
830	431	07/03/13 – Dkt. 438–10 (letter from B. Eastley to S. Kreisberg Re: City of Detroit Restructuring)	
831		07/08/2013 – Email from Bill Nowling to Governor’s staff regarding timeline (SOM20010097–100, plus unnumbered timeline attachment)	Hearsay
832	434	07/17/2013 – Timeline/City of Detroit Chapter 9 Communications Rollout Plan (Snyder Dep 6, SOM20001331, plus unnumbered attachment)	Hearsay
833		01/29/2013 – Baird Dep. Ex. 1 – Presentation to the City of Detroit, Jones Day (DTMI00128731–805)	
834	438	07/09/2013 – Dillon Dep. Ex. 5 – Email A. Dillon to R. Snyder, D. Muchmore, R. Baird re: Detroit (SOM20010234)	Hearsay
835		04/15/2013 – Email T. Stanton to B. Stibitz re: crains (SOM20009880)	Hearsay
836		03/13/2013 – Email A. Dillon to	Hearsay

		T. Saxton, B. Stibitz, F. Headen re: KO (SOM20009255-56)	
837		02/27/2013 – Email J. Martin to C. Ball (cc: A. Dillon, K. Buckfire) re: Solicitation for Restructuring Legal Counsel (DTMI00234545)	
838		05/12/2013 – Vickie Thomas CBS Detroit report re <i>Detroit EM Releases Financial Plan; City Exceeding Budget By \$100M Annually</i>	Hearsay
839		05/12/2013 – Financial and Operating Plan, City of Detroit, Office of Emergency Manager, Kevyn D. Orr	
840		03/25/2012 – Email L. Marcero to K. Buckfire, etc. re: FW: Comments to draft from the City 3/23 (DTMI00234777-78)	Hearsay
841		03/29/2012 – L. Marcero to K. Buckfire, et al. re: FW: Revised Agreement (DTMI00234774-76)	Hearsay
842		05/20/2012 – H. Sawyer to K. Buckfire, et al. re: Detroit Update (DTMI00234763-64)	Hearsay
843		6/5/2012 K. Herman to K. Buckfire, et al. re: Detroit consent agreement lawsuit to be heard by Ingham County Judge Collette (DTMI00234761-62)	Hearsay
844		6/5/2012 – T. Wilson to H. Lennox re: meeting with Governor and conversation with K. Buckfire and Memos for Andy Dillon (DTMI00233348-49)	
845		3/24/2012 Email to Ken Buckfire from L. Marcero (DTMI00234796-798)	Hearsay
846		3/2/2012 – Email RE: PA 4 and	Hearsay

		Consent Agreement (Dillon Ex. 6, DTMI0023878–80)	
847		12/5/2012—Email K. Buckfire to C. Ball, et al. (DTMI00234741–48)	
848		6/27/2013 Email from Tom Saxton and Terry Stanton (SOM20002871)	Hearsay
849		3/3/2012 Email to Andy Dillon (Dillon Ex. 7, DTMI00234877)	Hearsay
850		3/7/2012 Email to Ken Buckfire (DTMI00234867–234871)	
851		3/24/2012 Email RE: Andy Dillon and Ch. 9 (DTMI00234799–800)	
852		3/24/2012 Email to Ken Buckfire RE: Meeting w/ Dillon RE: PA, PA 72, Ch. 9 filing (DTMI00234796–234798)	Hearsay
853		1/28/2013 Email to Orr RE: RFP (DTMI00235165–66)	Hearsay
854		11/21/2012 Email to Ken Buckfire (Buckfire Dep. Ex. B13, DTMI00103933–34)	Hearsay
855		1/30/2013 Email to K. Orr RE: RFP by MB (DTMI00234685)	Hearsay
856		3/22/2013 Treasury Email RE: Milliman report (Dillon Exhibit 8, SOM20009920–9921)	Hearsay
857		3/5/2012 Email to Andy Dillon (DMTI00231930)	
858	436	7/8/2013 Email from Dillon to Governor (Baird Dep Ex. 7, SOM20003601)	Hearsay
859		3/10/2012 Email to K. Buckfire (DTMI00234852–863)	
860		1/28/2013 Email to K. Orr RE: Detroit Ch. 9 (DTMI00234687)	
861		1/30/2013 Email to K. Orr RE: RFP Process (DTMI00234684–	Hearsay

		86)	
862		3/24/2012 Email to K. Buckfire RE: Update on Meeting with State Today (DTMI00234779–4788)	
863		3/22/2012 Email to Andy Dillon and K. Buckfire (DTMI00234814)	Hearsay
864		3/27/2012 Email to Chuck Moore (DTMI00235061)	Hearsay
865		2/11/2013 Email to K. Orr RE: Ch. 9 filing (DTMI00235163)	
866		1/15/2013 Email to K. Orr (DTM100235218)	

### ***III. Deposition Designations***

The Retirement Systems hereby submits the following deposition designations:

#### 09/16/13 Kevyn Orr

p. 10, L. 23 – p. 11, L. 14  
p. 10, L 17–22  
p. 12, L. 1 – p. 13, L. 25  
p. 14, L. 14 – p. 15, L. 17  
p. 17, L. 7 – p. 19, L. 19  
p. 20, L. 19 – 25  
p. 21, L. 3 – 20  
p. 21, L. 21 – 24  
p. 23, L. 13 – 19  
p. 23, L. 24 – 25  
p. 24, L. 4 – p. 25, L. 22  
p. 26, L. 20 – 25  
p. 29, L. 6 – p. 32, L. 4  
p. 32, L. 14 – 23  
p. 33, L. 5 – 13  
p. 38, L. 11 – p. 41, L. 17  
p. 43, L. 15 – p. 45, L. 19  
p. 46, L. 7 – p. 47, L. 18  
p. 48, L. 1 – p. 49, L. 8

p. 50, L. 23 – p. 53, L. 7  
p. 53, L. 16 – 24  
p. 54, L. 2 – 5  
p. 54, L. 13 – 19  
p. 54, L. 22 – p. 55, L. 5  
p. 55, L. 8 – 17  
p. 55, L. 20 – p. 56, L. 19  
p. 56, L. 21  
p. 57, L. 11 – p. 60, L. 13  
p. 61, L. 17 – p. 62, L. 24  
p. 63, L. 25 – p. 64, L. 11  
p. 65, L. 15 – p. 66, L. 1  
p. 69, L. 3 – p. 71, L. 2  
p. 71, L. 6 – 8  
p. 71, L. 17 – p. 78, L. 5  
p. 78, L. 21  
p. 79, L. 2 – 6  
p. 79, L. 16 – p. 80, L. 8  
p. 80, L. 25 – p. 82, L. 23  
p. 82, L. 25 – p. 83, L. 3  
p. 83, L. 16 – p. 84, L. 2  
p. 84, L. 13 – 16  
p. 84, L. 18 – 24  
p. 85, L. 19 – p. 86, L. 1  
p. 86, L. 16 – p. 95, L. 1  
p. 95, L. 6 – p. 96, L. 6  
p. 96, L. 25 – p. 108, L. 7  
p. 110, L. 12 – p. 119, L. 10  
p. 119, L. 20 – p. 120, L. 16  
p. 120, L. 19 – p. 121, L. 12  
p. 122, L. 7 – p. 123, L. 14  
p. 123, L. 17 – p. 125, L. 10  
p. 125, L. 24 – p. 127, L. 4  
p. 127, L. 24 – p. 130, L. 23  
p. 129:14–18  
p. 132, L. 12 – p. 133, L. 25  
p. 134, L. 3 – p. 135 L. 4  
p. 136, L. 18 – p. 137, L. 1  
p. 137, L. 12 – p. 144, L. 23  
p. 145, L. 25 – p. 146, L. 10

p. 147, L. 19 – 25  
p. 148, L. 16 – p. 153, L. 8  
p. 166, L. 12 – 24  
p. 168, L. 5 – p. 172, L. 4  
p. 172, L. 19 – p. 176, L. 20  
p. 177, L. 21 – p. 178, L. 1  
p. 179, L. 2 – p. 185, L. 23  
p. 187, L. 3 – p. 190, L. 12  
p. 192, L. 2 – 8  
p. 215, L. 13 – 24  
p. 247, L. 1 – 7  
p. 248, L. 15 – p. 249, L. 5  
p. 251, L. 16 – 18  
p. 252, L. 4 – 5  
p. 252, L. 12 – p. 253, L. 6  
p. 260, L. 8 – 21  
p. 261, L. 21 – p. 262, L. 4  
p. 262, L. 13 – 23  
p. 266, L. 18 – 25  
p. 267, L. 11 – p. 268, L. 1  
p. 270, L. 25 – p. 272, L. 6  
p. 271:18–21  
p. 272, L. 20 – p. 273, L. 13  
p. 273, L. 24 – p. 276, L. 8  
p. 277, L. 19 – p. 279, L. 6  
p. 279, L. 23 – p. 280, L. 4  
p. 280, L. 17 – 19  
p. 280, L. 23 – 25  
p. 288, L. 10 – p. 292, L. 11  
p. 293, L. 12 – p. 297, L. 19  
p. 299, L. 22 – p. 303, L. 7

10/04/13 Kevin Orr Deposition Designations

p. 323, L. 22 – p. 324, L.14  
p. 328, L. 4 – p. 329, L. 3  
p. 330, L. 13 – 17  
p. 331, L. 18 – p. 332, L. 1  
p. 332, L. 2  
p. 333, L. 11 – p. 335, L. 9



p. 361, L. 7 – p. 362, L. 22  
p. 364, L. 5 – p. 365, L. 7  
p. 368, L. 10–15  
p. 369, L. 12 – p. 381, L. 2  
p. 409, L. 9 – p. 412, L. 18  
p. 415, L. 7 – p. 417, L. 11  
p. 419, L. 2 – 7  
p. 455, L. 3 – p. 457, L. 1  
p. 477, L. 8 – p. 481, L. 22  
p. 489, L. 8 – 22

09/19/13 Lamont Satchel Deposition Designations

p. 65, L. 7 – p. 66, L. 9  
p. 88, L. 14 – p. 89, L.18  
p. 89, L. 25 – p. 90, L. 1  
p. 90, L. 4 – p. 91, L. 3

09/24/13 Glen David Bowen Deposition Designations

p. 12, L. 7 – 9  
p. 19, L. 12 – 20  
p. 34, L. 8 – 21  
p. 63, L. 21 – p. 64, L. 5  
p. 73, L. 7 – 21  
p. 91, L. 18 – p. 92, L. 13  
p. 93, L. 4 – 14  
p. 98, L. 13 – p. 99, L. 3  
p. 99, L. 9 – 17  
p. 100, L. 18 – 22  
p. 129, L. 14 – 22  
p. 130, L. 8 – p. 132, L. 11  
p. 133, L. 10 – p. 134, L. 18  
p. 141, L. 9 – 17  
p. 142, L. 8 – 10  
p. 142, L. 13 – 19  
p. 142, L. 1 – 6  
p. 142, L. 8 – 19  
p. 146, L. 8 – 19  
p. 147, L. 2 – p. 148, L. 15

p. 148, L. 19 – 22  
p. 149, L. 2 – 3  
p. 149, L. 6 – 8  
p. 150, L. 5 – 15  
p. 177, L. 18 – p. 178, L. 3  
p. 192, L. 8 – p. 193, L. 11  
p. 194, L. 4 – 12  
p. 198, L. 5 – 7  
p. 198, L. 17 – 19  
p. 203, L. 20 – p. 204 L. 9  
p. 204 L. 11 – 14  
p. 204, L. 16 – 19  
p. 205, L. 7 – p. 206, L. 11

09/18/13 Charles M. Moore Deposition Designations

p. 8, L. 4 – 8  
p. 12, L. 3 – 6  
p. 36, L. 9 – 12  
p. 50, L. 2 – p. 51, L. 1  
p. 51, L. 10 – 17  
p. 52, L. 5 – 20  
p. 53, L. 25 – p. 54, L. 11  
p. 61, L. 18 – p. 62, L. 7  
p. 62, L. 25 – p. 63, L. 12  
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p. 64, L. 9 – 14  
p. 64, L. 16 – 20  
p. 65, L. 4 – 11  
p. 70, L. 16 – 18  
p. 91, L. 20 – 23  
p. 110, L. 12 – 22  
p. 126, L. 22 – p. 127, L. 14  
p. 130, L. 25 – p. 131, L. 14  
p. 138, L. 7 – p. 139, L. 9  
p. 140, L. 16 – p. 141, L. 2  
p. 141, L. 8 – 19  
p. 150, L. 24 – p. 151, L. 5  
p. 151, L. 7 – 18  
p. 151, L. 20 – p. 152, L. 1

p. 152, L. 8 – 21  
p. 156, L. 18 – 25

Andrew Dillon Deposition Designations (10/10/2013)

p. 40, L. 14–23  
p.63, L. 17 – p. 66, L. 1  
p. 68, L. 23 – p. 71, L. 12  
p. 84, L. 20 – p. 88, L. 23  
p. 89, L. 15–22 – p. 91, L. 10 – 22  
p. 107, L. 18 – p. 110, L. 4  
p. 110, L. 23 – p. 111, L. 1–18  
p. 112, L. 16 – p. 114, L. 25  
p. 119, L. 1 – p. 120, L. 14  
p. 120, L. 24 – p. 121, L. 17

Governor Snyder Deposition Designations (10/9/2013)

p. 13, L. 24 – p. 14, L. 24  
p. 15, L. 12 – L. 21  
p. 32, L. 18 – p. 33, L. 1  
p. 39, L. 5–16  
p. 40, L. 1–12  
p. 43, L. 22 – p. 44, L. 1 – 5  
p. 45, L. 8–23  
p. 46, L. 24 – p. 47, L. 5  
p. 52, L. 13 – p. 53, L. 15  
p. 55, L. 9 – p. 57, L. 11  
p. 63, L. 12 – p. 64, L. 18  
p. 65, L. 1 – p. 67, L. 8  
p. 76, L. 11 – p. 80, l. 21  
p. 81, L. 21 – p. 82, L. 18  
p. 83, L. 21 – p. 84, L. 1  
p. 87, L. 1 – p. 88, L. 5  
p. 91, L. 18 – p. 93, L. 1  
p. 94, L. 18 – p. 95, L. 22  
p. 122, L. 4 – p. 124, L. 17  
p. 125, L. 21 – p. 126, L. 15  
p. 127, L. 5 – L. 15  
p. 128, L. 18—22

p. 129, L. 4 – L. 13  
p. 132, L. 13 – L. 21  
p. 149, L. 25 – p. 152, L. 3

Howard Ryan, State of Michigan 30(b)(6) Witness:

p. 43, L. 14 – p. 45, L. 5  
p. 46, L. 1 – L. 23

David Bing, Mayor for the City of Detroit:

p. 60, L. 11 – p. 61, L. 8  
p. 67, L. 2–25  
p. 9, L. 17–19  
p. 12, L. 7 – p. 13, L. 7  
p. 20, L. 19–21/ p. 20, L. 23–24  
p. 69, L. 14 – p. 70, L. 4  
p. 112, L. 13–21  
p. 116, L. 17 – p. 117, L. 11

Kenneth A. Buckfire, 9/20/2013

p. 11, L. 20 – p. 12, L. 17  
p. 14, L. 18 – p. 17, L. 5  
p. 24, L. 21 – pg. 26, L. 17  
p. 28, L. 18 – pg. 33, L. 19  
p. 34, L. 3 – L. 16  
p. 35, L. 20 – p. 36, L. 14  
p. 56, L. 8 – p. 57, L. 2.  
p. 59, L. 2 – p. 69, L. 11  
p. 72, L. 3 – 19  
p. 75, L. 4 – p. 77, L. 21  
p. 83, L. 6 – 23  
p. 95, L. 2 – p. 13  
p. 96, L. 19 – p. 97, L. 6  
p. 98, L. 9 – p. 99, L. 2  
p. 101, L. 7 – p. 102, L. 15  
p. 106, L. 21 – p. 100, L. 16  
p. 134, L. 3 – p. 136, L. 5  
p. 148, L. 8 – p. 150, L. 8

p. 151, L. 8 – p. 155, L. 9  
p. 165, L. 9 – p. 167, L. 23  
p. 182, L. 15 – p. 184, L. 4  
p. 191, L. 4 – p. 195, L. 15  
p. 196, L. 15 – p. 198, L. 21  
p. 202, L. 8 – L. 22  
p. 211, L. 16 – p. 212, L. 3

# ATTACHMENT H

**OBJECTORS' OBJECTIONS TO THE CITY OF DETROIT  
DEBTOR'S LIST OF EXHIBITS**

Objectors jointly submit the following objections to The City of

Detroit, Michigan (the "City's"), list of exhibits:

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
1.	Charter – City of Detroit [DTMI00230808-0933]	
2.	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2008 [DTMI00230934-1157]	
3.	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2009 [DTMI00231158-1378]	
4.	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2010 [DTMI00230335-0571]	
5.	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2011 [DTMI00230572-0807]	
6.	Comprehensive Annual Financial Report for the City of Detroit, Michigan for the Fiscal Year Ended June 30, 2012 [DTMI00231379-1623]	
7.	November 13, 2012, Memorandum of Understanding City of Detroit Reform	

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
	Program [DTMI00222996-3010]	
8.	July 18, 2013 Declaration of Gaurav Malhotra in Support of the Debtor's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (the "Malhotra Declaration")	Hearsay; Expert opinion
9.	Cash Flow Forecasts [Malhotra Declaration Ex. A]	Hearsay; Expert opinion; Foundation
10.	Ten-Year Projections [Malhotra Declaration Ex. B]	Hearsay; Expert opinion; Foundation
11.	Legacy Expenditures (Assuming No Restructuring) [Malhotra Declaration Ex. C]	Hearsay; Expert opinion; Foundation
12.	Schedule of the sewage disposal system bonds and related state revolving loans as of June 30, 2012 [Malhotra Declaration Ex. D]	
13.	Schedule of water system bonds and related state revolving loans as of June 30, 2012 [Malhotra Declaration Ex. E]	
14.	Annual Debt Service on Revenue Bonds [Malhotra Declaration Ex. F]	
15.	Schedule of COPs and Swap Contracts as of June 30, 2012 [Malhotra Declaration Ex. G]	
16.	Annual Debt Service on COPs and Swap Contracts [Malhotra Declaration Ex. H]	



<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
17.	Schedule of UTGO Bonds as of June 30, 2012 [Malhotra Declaration Ex. I]	
18.	Schedule of LTGO Bonds as of June 30, 2012 [Malhotra Declaration Ex. J]	
19.	Annual Debt Service on General Obligation Debt & Other Liabilities [Malhotra Declaration Ex. K]	
20.	July 18, 2013 Declaration of Kevyn D. Orr In Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (the "Orr Declaration")	Hearsay; Expert opinion; Foundation
21.	January 13, 2012, City of Detroit, Michigan Notice of Preliminary Financial Review Findings and Appointment of a Financial Review Team [Orr Declaration Ex. C]	
22.	March 26, 2012, Report of the Detroit Financial Review Team [Orr Declaration Ex. D]	
23.	April 9, 2012, Financial Stability Agreement [Orr Declaration Ex. E]	
24.	December 14, 2012, Preliminary Review of the City of Detroit [Orr Declaration Ex. F]	
25.	February 19, 2013, Report of the Detroit Financial Review Team [Orr Declaration Ex. G]	

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
26.	March 1, 2013, letter from Governor Richard Snyder to the City [Orr Declaration Ex. H]	
27.	July 8, 2013, Ambac Comments on Detroit [Orr Declaration Ex. I]	Hearsay; Foundation; Relevance
28.	July 16, 2013, Recommendation Pursuant to Section 18(1) of PA 436 [Orr Declaration Ex. J]	
29.	July 18, 2013, Authorization to Commence Chapter 9 Bankruptcy Proceeding [Orr Declaration Ex. K]	
30.	July 18, 2013, Emergency Manager Order No. 13 Filing of a Petition Under Chapter 9 of Title 11 of the United States Code [Orr Declaration Ex. L]	
31.	Declaration of Charles M. Moore in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (the "Moore Declaration")	Hearsay; Expert opinion; Foundation
32.	Collection of correspondence between Jones Day and representatives of Unions regarding the representation of current retirees [DTMI00084776-4924]	Hearsay; Authentication; Completeness; Foundation
33.	Chart on verbal communications with Unions regarding the representation of current retirees authored by Samantha Woo  [DTMI00231920]	Hearsay; Authentication; Foundation; Legibility; Relevance

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
34.	Memorandum to File about communications with Unions regarding the representation of current retirees authored by Samantha Woo dated October 4, 2013  [DTMI00231927-DTMI00231929]	Hearsay; Authentication; Foundation;
35.	Redacted log of meetings and correspondence between the City and its advisors and various creditors prior to July 18, 2013. [DTMI00231921-1926]	
36.	FRE 1006 chart summarizing efforts to negotiate with union creditors. [DTMI-00235448]	
37.	FRE 1006 chart summarizing efforts to negotiate with other creditors. [DTMI-00235447]	
38.	FRE 1006 chart summarizing the City's projected cash flows. [DTMI00235438]	Hearsay; Foundation; Authentication
39.	February 21, 2013 to June 21, 2013 Calendar of Lamont Satchel [DTMI00125142-5183]	Hearsay; Foundation; Authentication; Relevance
40.	List of Special Conferences for Association held with Members of Police Labor Relations [DTMI00125426]	Hearsay; Foundation; Authentication; Relevance
41.	June 10, 2013, City of Detroit Financial and Operating Plan Slides [DTMI00224211-4231]	Hearsay; Authentication; Foundation; Expert opinion

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
42.	RSVP List for June 14, 2013 Proposal for Creditors Meeting [DTMI00125427]	
43.	June 14, 2013, City of Detroit Proposal for Creditors [DTMI00227144-7277]	
44.	June 14, 2013 Proposal for Creditors – Executive Summary [DTMI00227278-7342]	
45.	List of Invitees to the June 20, 2013 Meetings [DTMI00128659-8661]	
46.	Sign-in sheets from June 20, 2013, 10:00 AM-12:00 PM (Non-Uniform Retiree Benefits Restructuring) [DTMI00235427-5434]	
47.	Sign-in sheets from June 20, 2013 2:00-4:00 PM (Uniform Retiree Benefits Restructuring) [DTMI00235435-5437]	
48.	June 20, 2013 City of Detroit Retiree Legacy Cost Restructuring – Non-Uniform Retirees [DTMI00067906-7928]	
49.	June 20, 2013 City of Detroit Retiree Legacy Cost Restructuring – Uniform Retirees [DTMI00067930-7953]	
50.	Invitee List and Sign-in Sheet for the June 25, 2013 Meeting [DTMI00125428-5431]	
51.	Cash Flow Forecasts provided at June 25, 2013 Meeting [DTMI00231905-1919]	Hearsay: Expert opinion; Authentication; Foundation
52.	Composite of emails attaching 63 letters dated June 27, 2013 to participants of the June 20, 2013	

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
	meetings [DTMI00128274-DTMI0012835; DTMI00239435-DTMI0023446]	
53.	List of Attendees at July 9 and 10, 2013 Creditor Meetings [DTMI00231791]	
54.	Detroit Future City Plan 2012 [DTMI00070031-0213]	
55.	Collection of correspondence regarding invitations to the July 10 Pension Meetings and July 11 Retiree Health Meetings [DTMI00235408-5426]	
56.	July 10, 2013 City of Detroit Sign In Sheet for 1:00 PM Pension and Retiree Meeting [DTMI00229088-9090]	
57.	July 10, 2012 City of Detroit Sign In Sheet for 3:30 PM Police and Fire Meeting [DTMI00229091-9094]	
58.	July 11, 2013 City of Detroit Sign-in Sheet for 10:00 AM Non-Uniformed Meeting. [DTMI00229095-9096]	
59.	July 11, 2013 City of Detroit Sign-in Sheet for the 1:30 PM Uniformed Meeting. [DTMI229102-9103]	
60.	July 11, 2013 City of Detroit Union-Retiree Meeting Draft Medicare Advantage Plan Design Options [DTMI00135663]	
61.	Correspondence between representatives of AFSCME and representatives of the City [Ex. F to the City of Detroit's Consolidated Reply to Objections to the Entry of an Order for Relief, Docket No. 765]	
62.	Michigan Attorney General Opinion No. 7272	Relevance; Foundation; Hearsay; Legal opinion

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
63.	July 31, 2013 Notice of Filing Amended List of Creditors Holding 20 Largest Unsecured Claims	
64.	September 30, 2013 Notice of Filing of Second Amended List of Creditors and Claims, Pursuant to Sections 924 and 925 of The Bankruptcy Code	
65.	June 4, 2013 Letter from Glenn Bowen and Katherine A. Warren to Evan Miller [DTMI00066292-6307]	Hearsay; Expert opinion; Foundation
66.	June 4, 2013 Letter from Glenn Bowen and Katherine A. Warren to Evan Miller [DTMI00066176-6190]	Hearsay; Expert opinion; Foundation
67.	June 14, 2013 Letter from Glenn Bowen and Katherine A. Warren to Evan Miller [DTMI00066206-6210]	Hearsay; Expert opinion; Foundation
68.	June 30, 2011, Gabriel Roeder Smith & Company, 73 <sup>rd</sup> Annual Actuarial Valuation of the General Retirement System of the City of Detroit [DTMI00225546-5596]	Hearsay; Expert opinion; Foundation
69.	April 2013, Gabriel Roeder Smith & Company, Draft 74 <sup>th</sup> Annual Actuarial Valuation of the General Retirement System of the City of Detroit as of June 30, 2012 [DTMI00225597-5645]	Hearsay; Expert opinion; Foundation
70.	June 30, 2012, Gabriel Roeder Smith & Co., 71 <sup>st</sup> Annual Actuarial Valuation of the Police and Fire Retirement System of the City of Detroit [DTMI	Hearsay; Expert opinion; Foundation

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
	00202414-2461]	
71.	November 8, 2012 Letter from Kenneth G. Alberts to The Retirement Board Police and Fire Retirement System for the City of Detroit [DTMI00202462-2491]	Hearsay; Expert opinion; Foundation
72.	November 21, 2011 Memorandum from Irvin Corley Jr., to Council Members of the City of Detroit City Council [DTMI00202511-2523]	Hearsay; Expert opinion; Foundation
73.	July 17, 2013 Letter from Evan Miller to representatives of the City of Detroit Police and Firefighters Unions	
74.	July 15, 2013 Quarterly Report with Respect to the Financial Condition of the City of Detroit (period April 1st - June 30th)	
75.	May 12, 2013 City of Detroit, Office of the Emergency Manager, Financial and Operating Plan	
76.	Responses of International Union, UAW to Debtor's First Set of Interrogatories	
77.	UAW Privilege Log	Relevance
78.	Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees Responses and Objections to Debtor's First Set of Interrogatories	

<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
79.	The Detroit Retirement Systems' Responses and Objections to the Debtor's First Interrogatories	
80.	Amended (Signed) Response of Detroit Police Command Officers Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions	
81.	Response of Detroit Police Lieutenants & Sergeants Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions	
82.	Response of Detroit Police Officers Association to Debtor's First Set of Interrogatories to the Detroit Public Safety Unions	
83.	Answers to Debtor's First Interrogatories to Retiree Association Parties	
84.	Retired Detroit Police Members Association's Answers to Debtor's First Set of Interrogatories	
85.	Responses of the Official Committee of Retirees to Debtor's First Set of Interrogatories	
86.	Objection and Responses of International Union, UAW to Debtor's First Request for Production of Documents	
87.	Michigan Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO, and Sub-Chapter 98, City of Detroit Retirees Responses and Objections to Debtor's First Set of Requests for Production of Documents	



<b>City's Exhibit No.</b>	<b>Exhibit Description</b>	<b>Objections</b>
88.	The Detroit Retirement Systems' Responses and Objections to the Debtor's First Set of Request for Production of Documents	
89.	Amended (Signed) Response of Detroit Police Command Officers Association to Debtor's First Requests for Production of Documents to the Detroit Public Safety Unions	
90.	The Detroit Fire Fighters Associations' (DFFA) Response to Debtor's First Request for Production of Documents	
91.	Response of Retiree Association Parties to Debtor's First Requests for Production of Documents	
92.	Retired Detroit Police Members Association Response to Debtor's First Requests for Production	
93.	June 14, 2013 Index Card #1 from Nicholson	
94.	June 14, 2013 Index Card #2 from Nicholson	
95.	June 20, 2013 Typewritten Notes from June 20, 2013 Presentation	Foundation; Hearsay
96.	July 16, 2013 Nicholson Affidavit in Flowers	
97.	August 19, 2013 UAW Eligibility Objection	
98.	Nicholson Letter To Irwin re UAW Discovery Responses	
99.	FRE 1006 Chart summarizing the approximate number of documents uploaded to the data room before July 18, 2013	
100.	FRE 1006 Chart summarizing the approximate number of pages in	



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
7.	453	8/19/2013	Notice of Constitutional Challenge to Statute Pursuant to Rule 9005.1 of the Federal Rules of Bankruptcy Procedure filed by creditor Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:  
CITY OF DETROIT, MICHIGAN  
AND EMERGENCY MANAGER  
KEVYN D. ORR

Chapter 9  
Case No. 13-53846  
Hon: Steven W. Rhodes

Debtor

\_\_\_\_\_ /

ADDENDUM TO OBJECTIONS

Now comes the creditors and persons of interest in Propria  
persona Carl Williams and Hassan Akeem

We are residents of the city of Detroit and taxpayers and citizens in  
the State of Michigan and of the United States.

The Bankruptcy court hearing for eligibility on September 19, 2013  
the judge stated we could file additional information and it was also report-  
ed in the news, therefore, we submit the following objections:

The creditors and parties of interest in this action the moving parties  
move to add objections to pending decision in this case show the following:

- 1) The city of Detroit never legally approved, agreed or consented to

U.S. BANKRUPTCY COURT  
E.D. MICHIGAN-DETROIT  
2013 OCT 28 P 3:00

FILED



Kevyn Orr filing for bankruptcy and Kevyn Orr contravened 11 U.S.C. 903 (1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition. 11 U.S.C. 903, thus has failed to meet the requirement of title 11 U.S.C. 903 (c) and there is no binding agreement or contract added to previous cited objections and/or a correction and should be dismissed.

During the bankruptcy procedure in Pontiac the emergency manager had to get approval from the Local emergency financial assistance loan board before filing bankruptcy, however, here Kevny Orr didn't receive approval from the Local emergency financial assistance board which included the State Treasury. Nowhere in the Emergency Municipal Loan Act 243 of 1980 does it give the Local emergency financial assistance loan board this authority. Kevyn Orr is not an elected official buy only an agent of the State. The petition for bankruptcy is invalid because the party that signed it failed to receive legal authorization and lacks the proper authority. See Bankruptcy City of Harrisburg Pennsylvania, 465 B.R. 744 (Bankr. M.D.Pa 2011), In this case the court determined that this case should be dismissed because the City Council did

not have the authority under the chapter law and third class city code to commence a bankruptcy case on the behalf of the city of Harrisburg and (2) the city of Harrisburg was not specifically authorized under state law to be a debtor under chapter 9 of the Bankruptcy code as required by 11 USC sect 109 (c) (2). In this case the circumstances are the same both officials are not authorized to file for Bankruptcy and Detroit have no legal state authority to be a debtor therefore, the court lack jurisdiction over the person which is Kevyn Orr and the subject matter being Bankruptcy and violated 11 U.S.C. 109 (c). "Only a municipal may file for relief under chapter 9 for bankruptcy." and Fed.R.Civ.Proc Rule 12 b (1), (2) and (h3) and the case should be dismissed.

Whenever it appears by suggestion of the parties or otherwise that the court lack jurisdiction of the subject matter, the court shall dismiss the action. Fed R. Civ Proc. 12 (h) (3).

3) The Official Committee of Retirees (the Committee) objection asserted that the Emergency Manager was not duly authorized, as a matter of law, to have filed a Chapter 9 petition on behalf of the city. We agree, however, we disagree with the withdrawal of the reference of the Eligibility.

4) The Emergency Manager Kevyn Orr violated the Administrative Procedure Act 24.201 et seq, by not publishing his orders for sixty 60 days and a hearing before it can become effective. The Supreme Court would sua sponte vacate order of state tax commission in equalization case for failure

of the commission to proceed in accordance with the Administrative Procedure Act. *Saginaw County v. State Tax Commission* (1974) 224 N.W.2d 283, 933 Mich 779, affirmed 244 N.W. 2d 909, 397 Mich. 550.

5) We must emphasize that the state through Kevyn Orr didn't file the Bankruptcy in "Good Faith:" (1) The state through their appointed representative, agent, or point man has failed to even attempt to provide a financial and operational plan within 45 days after his appointment, nor has there been an attempt since then or until this day to present a financial and operational plan, therefore is a violation of P.A. 436 Section 11 (2).

The purpose of a chapter 9 is to provide a means to restructure and adjust debt through a plan. Liquidation is not allowed under 11 U.S.C. 926 (a) and is not an alternative to municipal chapter 9 Bankruptcy there is no provision in the law for liquidation of assets of the municipality and distribution of the proceeds to creditors. Such a liquidation or dissolution would undoubtedly violate the Tenth (10th) Amendment to the Constitution and the reservation to the state sovereignty over their internal affairs and they have not shown or presented a financial plan to avoid Bankruptcy.

The State through Governor Richard Snyder, Andy Dillon the state Treasury and the Emergency Manager Kevyn Orr showed material prejudice" and "unclean hands" and a continue failure to conduct business in good faith such as: When the

state withheld and refused to pay \$224,000,000.00 for January 2012 and \$139,000,000.00 still owed for January 2013 plus interest of unrestricted revenue sharing funds, thus a violation of the Michigan State Revenue Sharing Act 140 of 1971. The State through Emergency Manager Kevyn Orr has a peculiar way of bargaining in good faith when they deliberately refused to pay the unrestricted revenue sharing money they owed to the city of Detroit and other expenses owed by the state revealed by the formal corporation council Krystal A. Crittendon reported that the state was in default to the city for the following debts such as:

The State of Michigan Department of Natural Resources past due invoices for electrical service for \$39,730.58.

The State of Michigan Department of Transportation for delinquent parking violations \$1,225.00.

The State of Michigan Department of Transportation for past due invoices past due totaling \$1,395,377.10.

The Michigan State Highway owes \$267,946.76

The state owes this money and the governor Rick Snyder has openly stated he was not going to pay; and this is what the state called good faith and then turned around and filed for Bankruptcy. What a show of arrogance and disrespect and no sense of good faith what so ever. The state through Governor Snyder who stated he was not going to pay and Andy Dillon the state treasurer legally authorized to receive, care for and disbursement of public revenue or corporation,



upon lawful order; along with Kevyn Orr all agents or officers of the state has assisted and help cause the financial problems and contributory negligence on the State of Michigan.

The state action is contrary to and just the opposite of what "bargaining in good faith" means. Bankruptcy Court may dismiss a chapter 9 petition, after notice and hearing, if it concludes the debtor did not file a petition in good faith or if the person does not meet the requirements of chapter 9 title 11 U.S.C. Section 921 (c).

In this case we have both failed to bargain in good faith and did not meet the requirements of title 11 of Section 921. We demand's this case be dismissed in according to the code and rule of the Bankruptcy procedures in the interest of justice.

6) The Bankruptcy Court have failed to enter an order designating who is to give and receive notice by mail and identifying the newspaper in which the additional notice is to be published according to Fed. R. Bankr. P. 9007, 9008, therefore, failed to meet the requirement of title 11 U.S.C. 921(c) and should be dismissed.

7) To clarify the record the Creditors, people of interest, Hassan Aleem and Carl Williams and others **were not notified at all, not personally or publicly.** In our Reconsideration of Objections to chapter 9 Bankruptcy we stated: "most creditors and anyone of interest never received a notice that violated. 11 U.S.C.

923 of the Bankruptcy code. The Bankruptcy rule provides that the clerk, or such other person as the court may direct is to give notice Fed. R. Bankr. P 2002 (f). The notice must also be published" at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case commenced and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates," in title 11 U.S.C. sect 923 of the Bankruptcy code. This simply was not done and continues to show the lack of conducting business in good faith. They also did not meet the requirements of title 11 of chapter 9 bankruptcy procedures, which are a failure to comply with the bankruptcy rule and code that is grounds for dismissal for just one noncompliance or violations and we have them both, thus denial of due process and equal protection of the law of the 5th and 14th Amendments of the Constitution of the United States. See page 3 of Reconsideration of Objection to chapter 9 Bankruptcy this case should be dismissed.

In the present context these principles require that a person have timely and adequate notice detailing the reasons for the notice and an effective opportunity to defend. Goldberg v. Kelly 397 U.S. 254 (1970) citing Armstrong v. Manzo, U.S. 545, 552 (1965). Goldberg also states that the parties are entitled to an impartial decision maker. The decision maker Judge Steven W. Rhodes has not been impartial as a result of his decisions to the creditors and other parties of interest in

this case and placed them at a disadvantage to lose this case against debtors, first stating their objections were ineligible for various reasons as a consequence of the court failure to have met their requirements to the Bankruptcy code title 11 U.S.C. Section 923, therefore, should be dismissed as provided by the bankruptcy code.

a) The court have yet to explained how a creditor or any person not being notified at all could be classified as being untimely in his orders is an essential objection?

b) How a person could be untimely if not notified in according to 11 U.S.C. Section 923 of the Bankruptcy Code, which the court failed to comply with?

6) The city position was and still is that they was not going to bargain and did not have to because P.A. 436. Three Police Officer Unions challenged the city position not to negotiate for collective bargaining:

As such, the Employer has no obligation to participate in Act 312 arbitration and is not required to do so. Accordingly, the arbitrations in the cases before us must be dismissed. **Case No.- D09 F-0703, D11 J-1169 and D13 A-0005.**

These Labor Relation cases show irrefutably and show prime facie evidence that the city failed and **refused to bargain in good faith and not at all in these cases cited above**, therefore, continue refusal to comply and meet the requirements of title 11 and these violations demand's this case to be dismissed. See exhibit A attached.

7) The court through Judge Steven W. Rhodes is setting the creditors up to fail by giving creditors and other people of interest an informal hearing without sworn testimony and their creditability verses a formal hearing without sworn testimony place them at disadvantage and their testimony is consider nothing more than hearsay. In Goldberg v Kelly supra, citing Armstrong v Manzo supra, the court stated an effective notice and hearing and three (3) minutes was hardly sufficient or adequate and just a show trial.

The court didn't explain to the creditors and the people of interest the difference and how it affects them, especially the informal hearing proceeding. The Court has shown prejudice toward the creditors and they have been denied due process of the law and equal protection of the law, thus violation of the 14th Amendment of the Constitution of the United States.

8) The Bankruptcy Court is a non Article III Constitutional court and is without constitutional authority to hear and determine the issue raised in the Eligibility Objections or regular Municipal Bankruptcy hearing. The retirees, pensioners and any person of interest and those who are affected by the Bankruptcy are Constitutionally entitled to have an Article III court determine basic redressable Constitutional issues affecting their livelihood as citizens of the state of Michigan is a due process and equal protection of the of law violation Article 1 section 2 of the State of Michigan Constitution and the 14th Amendment of the United State

Constitution.

The Bankruptcy Court had no authority over our Constitutional rights and denied the creditors due process of law and equal protection of the law and lacks Jurisdiction to hear case raising constitutional issues and demands a dismissal.

9) Judge Steven W. Rhodes stated he was going to place the Bankruptcy on the fast track proceeding as a result he showed material prejudice against the creditors and denied them due process and fair treatment (1) most creditors didn't receive notices, (2) Creditors did not receive ample and adequate time to respond during the oral hearing only three minutes but the attorneys had more time, (3) most creditors was given a informal hearing that placed them at a disadvantage regarding their testimony as hearsay with no creditability to the Bankruptcy proceeding vs. those with formal hearing of the Debtors, (4) The judge showed bias from the beginning when he fail to dismissed this case for failure to notice the creditors and then classified most of their objections ineligible for being untimely (5) most or practically all of the creditors didn't have an attorneys or any legal assistant to prepare and represent themselves and denied due process of law and equal protection of the law and we demand this case to be dismissed.

10) Hypothetically speaking, if Public act 436 was valid the emergency manager still wouldn't have the authority because under P.A. 436 the mayor or local governing body can legally declare or apply for Bankruptcy, not an unelected

official Kevyn Orr, The Public Act 436, nor the Bankruptcy Code provided for Kevyn Orr to file for Bankruptcy. Although they both provides for the municipality only, therefore, the Bankruptcy Court lack jurisdiction over the person and the subject matter in this instance. This is a violation of Federal Rule of Civil Procedure Rule 12(b) (1) and (2) and should be dismissed.

11) We like reiterate our objection 3 in supplemental reconsideration with an affidavit in support this time and the city continue to not to bargain in good faith. It has been reported that through Ed McNeil special assistant to the president of AFSCME Council 25 that the union was trying to get Kevyn Orr to come to the table to negotiate. He refused and this is clearly an example of worst than bargaining in “bad faith.” In bad faith you still come to the table even if you don’t come to an agreement but at least try, thus failed to meet the requirement of title 11 U.S.C. section 109 (c) (5). The best solution is for the union to file unfair labor practice against Kevyn Orr.

12) In relation to objection number five in our original or initial objection we like to reiterate: In a statement “Kevyn Orr recommended the chapter 9 filing having determined that no feasible financial plan could be adopted that could satisfactorily rectify Detroit’s financial emergency in a timely manner” The assistant attorney general Steven Flancher stated in a court document that Orr could not adopt a plan in a timely manner. Kevyn Orr action demonstrates for itself he was incompetent and negligent in his own words and action that he could not adopt a plan in a timely manner and his action was substantiated by failing to comply

within 45 days. Kevyn Orr could have file for an extension of time under the circumstance and failed to do so.

Kevyn Orr was not the lead attorney in the Chrysler Bankruptcy case and Bankruptcy for Auto Plant is different from a municipality. He has not been a lead attorney in a Jones Day Law Firm. In an e-mail that was discovered by Robert Davis, pursuant to a Freedom of Information (FOIA).

Mike Duggan in a discussion with governor Snyder stated that Kevyn Orr should be appointed emergency manager because he was Black, not because he had skill, experience, or intelligence to perform the job. In the P A 436 approximately, \$700,000 was appropriated for the salary. It was reported Kevyn Orr only received \$250,000 in salary and also was reported that he owed the state of Maryland approximately \$12,000 in taxes before being appointed as emergency manager. This illustrate that Mr. Orr was only political window dressing and Mr. Orr does not have the financial acumens to lead a bankruptcy and the court cannot make up the deficient of Kevyn Orr lack of legal talent and the case should be dismiss.

13) The city attorney was disingenuous and misrepresented the facts when they made a deliberate, conscious, tactical decision to cite part of Article 2 section 9 of the Constitution that really didn't apply when they hijack or displaced a referendum or initiative of the people. Reed v Allen, 268 U.S. 191, 193 (1913).

The union attorneys failed to submit the union unfair labor practice charge in the court cases **No. D09 F-0703, D11 J-1169, and D13 A-005.**

The attorney for the city intentionally omitted part of Article 2 section 9 par 5 that requires 3/4 votes to become a law. This will adversely affected his client the city and therefore, a violation of ABA model of Professional Responsibility DR 1-102(A) (E) states:

A lawyer shall not engage in conduct involving dishonesty, Fraud, deceit, or misrepresentation.

It is customary and a long standard principle that once an agency or a court has issued rules and regulations to govern its activity, The court's ruled that any time an agency promulgate rules they must scrupulously follow those rules or the decision cannot stand and may not violate them. In this case we are referring to Bankruptcy rules and codes and to bargain in good faith, regardless who makes the rule they must be followed in a civilized society of rules and law making procedures. Security & Exchange Comm v. Chenery 318 U.S. 80 87, 88 (1943), Service v Dulles, 354 U.S. 363 77 S. Ct 1152, p1 L.ED2nd 1403 (1957) Pacific Molasses Co. v FTC, Tex (356 F2d 386 (1966).



Wherefore, and the above facts and laws we demand that this honorable court grant relief declaring the Bankruptcy invalid, null and void and dismiss this case.

Sincerely submitted

Carl Williams

Name interest party/creditor

Address: 10112 Somerset

City and state Detroit Michigan

Hassan Khan

Name interest party/creditor

2440 Taylor

Detroit Mich 48206

Dated October 28, 2013



the city in good faith. That the state through Kevyn Orr also failed to comply and does not meet the requirements of title 11 of the Bankruptcy code and rule.

That the law and facts herein this affidavit are in support of the objections of the Bankruptcy. We have read and understand the facts to be true.

That we the affiant, if sworn as a witness, can testify competently to the facts stated in the objection and is true and correct to the best of our knowledge and belief.

Signed Carl Williams Hassan Reem

Subscribed and sworn to before me,

This 28<sup>th</sup> day of October, 2013

Gloria Ann Surles

Notary  
GLORIA ANN SURLLES  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Sep 15, 2017  
ACTING IN COUNTY OF Wayne

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:  
CITY OF DETROIT, MICHIGAN  
AND EMERGENCY MANAGER  
KEVYN D. ORR

Chapter 9  
Case No. 13-53846  
Hon: Steven W. Rhodes

Debtor

\_\_\_\_\_ /

PROOF OF SERVICE

FILED  
2013 OCT 28 P 3:00  
U.S. BANKRUPTCY COURT  
E.D. MICHIGAN-DETROIT

Carl Williams, being first duly sworn deposes and

Say that on October 28 2013. I sent a copy of Addendum Objection and affidavit Upon the concern parties by certified mail at the following address:

City of Detroit  
Corporation Council  
First National Building  
600 Woodward Ave  
Detroit, Michigan 48226

Emergency Manager  
Kenyn Orr  
Coleman A Young Municipal Center  
2 Woodward 11th floor  
Detroit, Michigan 48226

Sign Carl Williams

Subscribed and sworn to before me, This 28<sup>th</sup> day  
of October 2013

Gloria Ann Surles

Notary  
GLORIA ANN SURLES  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Sep 15, 2017  
ACTING IN COUNTY OF Wayne

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
8.	484	8/19/2013	Joinder of Local 324, International Union of Operating Engineers as interested party to Objections to Detroit's Eligibility for Relief Under Section 109(c) and 921(c) of the Bankruptcy Code

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

In re:  
CITY OF DETROIT, MICHIGAN  
AND EMERGENCY MANAGER  
KEVYN D. ORR

Chapter 9  
Case No. 13-53846  
Hon: Steven W. Rhodes

Debtor

2013 OCT 31 P 2:18  
U.S. BANKRUPTCY COURT  
E.D. MICHIGAN-DETROIT

**FILED**

**ADMENDMENT TO OBJECTIONS**

NOW comes the creditors Hassan Aleem and Carl Williams to Amend objections docket No. 1428 in this case in the above caption and persons of interest in Propria persona and states the following: The Judge Steven W Rhodes during a hearing held September 19, 2013, stated that the creditors and people of interest could add information to this case. We have filed Objections and amending additional objections includes:

The creditors and parties of interest in this action the moving parties move to add objections to pending decision in this case show the following:

- 1) The city of Detroit never legally approved, agreed or consented to



Kevyn Orr filing for bankruptcy and Kevyn Orr contravened 11 U.S.C. 903 (1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition. 11 U.S.C. 903, thus has failed to meet the requirement of title 11 U.S.C. 903 (c) and there is no binding agreement or contract added to previous cited objections and/or a correction and should be dismissed.

During the bankruptcy procedure in Pontiac the emergency manager had to get approval from the Local emergency financial assistance loan board before filing bankruptcy, however, here Kevny Orr didn't receive approval from the Local emergency financial assistance board which included the State Treasury. Nowhere in the Emergency Municipal Loan Act 243 of 1980 does it give the Local emergency financial assistance loan board this authority. Kevyn Orr is not an elected official but only an agent of the State. The petition for bankruptcy is invalid because the party that signed it failed to receive legal authorization and lacks the proper authority. See Bankruptcy City of Harrisburg Pennsylvania, 465 B.R. 744 (Bankr. M.D.Pa 2011), In this case the court determined that this case should be dismissed because the City Council did



not have the authority under the chapter law and third class city code to commence a bankruptcy case on the behalf of the city of Harrisburg and (2) the city of Harrisburg was not specifically authorized under state law to be a debtor under chapter 9 of the Bankruptcy code as required by 11 USC sect 109 (c) (2). In this case the circumstances are the same both officials are not authorized to file for Bankruptcy and Detroit have no legal state authority to be a debtor therefore, the court lack jurisdiction over the person which is Kevyn Orr and the subject matter being Bankruptcy and violated 11 U.S.C. 109 (c). "Only a municipal may file for relief under chapter 9 for bankruptcy." and Fed. R. Civ. Proc Rule 12 b (1), (2) and (h3) and the case should be dismissed.

Whenever it appears by suggestion of the parties or otherwise that the court lack jurisdiction of the subject matter, the court shall dismiss the action. Fed R. Civ Proc. 12 (h) (3).

3) The Official Committee of Retirees (the Committee) objection asserted that the Emergency Manager was not duly authorized, as a matter of law, to have filed a Chapter 9 petition on behalf of the city. We agree, however, we disagree with the withdrawal of the reference of the Eligibility.

4) The Emergency Manager Kevyn Orr violated the Administrative Procedure Act 24.201 et seq, by not publishing his orders for sixty 60 days and a hearing before it can become effective. The Supreme Court would sua sponte vacate order of state tax commission in equalization case for failure

of the commission to proceed in accordance with the Administrative Procedure Act. *Saginaw County v. State Tax Commission* (1974) 224 N.W.2d 283, 933 Mich 779, affirmed 244 N.W. 2d 909, 397 Mich. 550.

5) We must emphasize that the state through Kevyn Orr didn't file the Bankruptcy in "Good Faith:" (1) The state through their appointed representative, agent, or point man has failed to even attempt to provide a financial and operational plan within 45 days after his appointment, nor has there been an attempt since then or until this day to present a financial and operational plan, therefore is a violation of P.A. 436 Section 11 (2).

The purpose of a chapter 9 is to provide a means to restructure and adjust debt through a plan. Liquidation is not allowed under 11 U.S.C. 926 (a) and is not an alternative to municipal chapter 9 Bankruptcy there is no provision in the law for liquidation of assets of the municipality and distribution of the proceeds to creditors. Such a liquidation or dissolution would undoubtedly violate the Tenth (10th) Amendment to the Constitution and the reservation to the state sovereignty over their internal affairs and they have not shown or presented a financial plan to avoid Bankruptcy.

The State through Governor Richard Snyder, Andy Dillon the state Treasury and the Emergency Manager Kevyn Orr showed material prejudice" and "unclean hands" and a continue failure to conduct business in good faith such as: When the

state withheld and refused to pay \$224,000,000.00 for January 2012 and \$139,000,000.00 still owed for January 2013 plus interest of unrestricted revenue sharing funds, thus a violation of the Michigan State Revenue Sharing Act 140 of 1971. The State through Emergency Manager Kevyn Orr has a peculiar way of bargaining in good faith when they deliberately refused to pay the unrestricted revenue sharing money they owed to the city of Detroit and other expenses owed by the state revealed by the formal corporation council Krystal A. Crittendon reported that the state was in default to the city for the following debts such as:

The State of Michigan Department of Natural Resources past due invoices for electrical service for \$39,730.58.

The State of Michigan Department of Transportation for delinquent parking violations \$1,225.00.

The State of Michigan Department of Transportation for past due invoices past due totaling \$1,395,377.10.

The Michigan State Highway owes \$267,946.76

The state owes this money and the governor Rick Snyder has openly stated he was not going to pay; and this is what the state called conducting business good faith and then turned around and filed for Bankruptcy. What a show of arrogance and disrespect and no sense of good faith what so ever. The state through Governor Snyder who stated he was not going to pay and Andy Dillon the state treasurer legally authorized to receive, care for and disbursement of public revenue or

corporation, upon lawful order; along with Kevyn Orr all agents or officers of the state has assisted and help cause the financial problems and contributory negligence on the State of Michigan.

The state action is contrary to and just the opposite of what “bargaining in good faith” means. Bankruptcy Court may dismiss a chapter 9 petition, after notice and hearing, if it concludes the debtor did not file a petition in good faith or if the person does not meet the requirements of chapter 9 title 11 U.S.C. Section 921 (c).

In this case we have both failed to bargain in good faith and did not meet the requirements of title 11 of Section 921. We demand’s this case be dismissed in according to the code and rule of the Bankruptcy procedures in the interest of justice.

6) The Bankruptcy Court have failed to enter an order designating who is to give and receive notice by mail and identifying the newspaper in which the additional notice is to be published according to Fed. R. Bankr. P. 9007, 9008, therefore, failed to meet the requirement of title 11 U.S.C. 921(c) and should be dismissed.

7) To clarify the record the Creditors, people of interest, Hassan Aleem and Carl Williams and others **were not notified at all, not personally or publicly.** In our Reconsideration of Objections to chapter 9 Bankruptcy we stated: "most creditors and anyone of interest never received a notice that violated. 11 U.S.C.

923 of the Bankruptcy code. The Bankruptcy rule provides that the clerk, or such other person as the court may direct is to give notice Fed. R. Bankr. P 2002 (f). The notice must also be published" at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case commenced and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates," in title 11 U.S.C. sect 923 of the Bankruptcy code. This simply was not done and continues to show the lack of conducting business in good faith. They also did not meet the requirements of title 11 of chapter 9 bankruptcy procedures, which are a failure to comply with the bankruptcy rule and code that is grounds for dismissal for just one non-compliance or violations and we have them both, thus denial of due process and equal protection of the law of the 5th and 14th Amendments of the Constitution of the United States. See page 3 of Reconsideration of Objection to chapter 9 Bankruptcy this case should be dismissed.

In the present context these principles require that a person have timely and adequate notice detailing the reasons for the notice and an effective opportunity to defend. Goldberg v. Kelly 397 U.S. 254 (1970) citing Armstrong v. Manzo, U.S. 545, 552 (1965). Goldberg also states that the parties are entitled to an impartial decision maker. The decision maker Judge Steven W. Rhodes has not been impartial as a result of his decisions to the creditors and other parties of interest in

this case and placed them at a disadvantage to lose this case against debtors, first stating their objections were ineligible for various reasons as a consequence of the court failure to have met their requirements to the Bankruptcy code title 11 U.S.C. Section 923, therefore, should be dismissed as provided by the bankruptcy code.

a) The court have yet to explained how a creditor or any person not being notified at all could be classified as being untimely in his orders is an essential objection?

b) How a person could be untimely if not notified in according to 11 U.S.C. Section 923 of the Bankruptcy Code, which the court failed to comply with?

6) The city position was and still is that they was not going to bargain and did not have to because P.A. 436. Three Police Officer Unions challenged the city position not to negotiate for collective bargaining:

As such, the Employer has no obligation to participate in Act 312 arbitration and is not required to do so. Accordingly, the arbitrations in the cases before us must be dismissed. **Case No.- D09 F-0703, D11 J-1169 and D13 A-0005.**

These Labor Relation cases show prime facie irrefutable evidence that the city failed and **refused to bargain in good faith and not at all in these cases cited above**, therefore, continue refusal to comply and meet the requirements of title 11 and these violations demand's this case to be dismissed. See exhibit A attached.

7) The court through Judge Steven W. Rhodes is setting the creditors up to fail by giving creditors and other people of interest an informal hearing without sworn testimony. The creditors creditability verses a formal hearing without sworn testimony place them at disadvantage and their testimony is consider nothing more than hearsay. In Goldberg v Kelly supra, citing Armstrong v Manzo supra, the court stated an effective notice and hearing and three (3) minutes was hardly sufficient or adequate and just a show trial.

The court didn't explain to the creditors and the people of interest the difference and how it affects them, especially the informal hearing proceeding. The Court has shown prejudice toward the creditors and they have been denied due process of the law and equal protection of the law, thus violation of the 14th Amendment of the Constitution of the United States.

8) The Bankruptcy Court is a non Article III Constitutional court and is without constitutional authority to hear and determine the issue raised in the Eligibility Objections or regular Municipal Bankruptcy hearing. The retirees, pensioners and any person of interest and those who are affected by the Bankruptcy are Constitutionally entitled to have an Article III court determine basic redressable Constitutional issues affecting their livelihood as citizens of the state of Michigan is a due process and equal protection of the law violation of Article 1 section 2 of the State of Michigan Constitution and the 14th Amendment of the United State

Constitution.

The Bankruptcy Court had no authority over our Constitutional rights and denied the creditors due process of law and equal protection of the law and lacks Jurisdiction to hear case raising constitutional issues and demands a dismissal.

9) Judge Steven W. Rhodes stated he was going to place the Bankruptcy on the fast track proceeding as a result he showed material prejudice against the creditors and denied them due process and fair treatment (1) most creditors didn't receive notices, (2) Creditors did not receive ample and adequate time to respond during the oral hearing only three minutes but the attorneys had more time, (3) most creditors was given a informal hearing and inadequate time that placed them at a disadvantage regarding their testimony as hearsay with no creditability to the Bankruptcy proceeding vs. those with formal hearing of the Debtors, (4) The judge showed bias from the beginning when he fail to dismissed this case for failure to notice the creditors and then classified most of their objections ineligible for being untimely (5) most or practically all of the creditors didn't have an attorneys or any legal assistant to prepare and represent themselves and denied due process of law and equal protection of the law and we demand this case to be dismissed.

10) Hypothetically speaking, if Public act 436 was valid the emergency manager still wouldn't have the authority because under P.A. 436 the mayor or local governing body can legally declare or apply for Bankruptcy, not an unelected



official Kevyn Orr, The Public Act 436, nor the Bankruptcy Code provided for Kevyn Orr to file for Bankruptcy. Although they both provides for the municipality only, therefore, the Bankruptcy Court lack jurisdiction over the person and the subject matter in this instance. This is a violation of Federal Rule of Civil Procedure Rule 12(b) (1) and (2) and should be dismissed.

11) We like reiterate our objection 3 in supplemental reconsideration with an affidavit in support this time and the city continue to not to bargain in good faith. It has been reported that through Ed McNeil special assistant to the president of AFSCME Council 25 that the union was trying to get Kevyn Orr to come to the table to negotiate. He refused and this is clearly an example of worst than bargaining in “bad faith.” In bad faith you still come to the table even if you don’t come to an agreement but at least try, thus failed to meet the requirement of title 11 U.S.C. section 109 (c) (5). The best solution is for the union to file unfair labor practice against Kevyn Orr.

12) In relation to objection number five in our original or initial objection we like to reiterate: In a statement “Kevyn Orr recommended the chapter 9 filing having determined that no feasible financial plan could be adopted that could satisfactorily rectify Detroit’s financial emergency in a timely manner” The assistant attorney general Steven Flancher stated in a court document that Orr could not adopt a plan in a timely manner. Kevyn Orr action demonstrates for itself he was incompetent and negligent in his own words and action that he could not adopt a plan in a timely manner and his action was substantiated by failing to comply

within 45 days. Kevyn Orr could have file for an extension of time under the circumstance and failed to do so. He also could have requested a postponement.

Kevyn Orr was not the lead attorney in the Chrysler Bankruptcy case and Bankruptcy for Auto Plant is different from a municipality. He has not been a lead attorney in a Jones Day Law Firm. In an e-mail that was discovered by Robert Davis, pursuant to a Freedom of Information (FOIA).

Mike Duggan in a discussion with governor Snyder stated that Kevyn Orr should be appointed emergency manager because he was Black, not because he had skill, experience, or intelligence to perform the job. In the P A 436 approximately, \$700,000 was appropriated for the salary. It was reported Kevyn Orr only received \$250,000 in salary and also was reported that he owed the state of Maryland approximately \$12,000 in taxes before being appointed as emergency manager. This illustrate that Mr. Orr was only political window dressing and Mr. Orr does not have the financial acumens to lead a bankruptcy and the court cannot make up the deficieny of Kevyn Orr lack of legal talent and the case should be dismiss.

13) The city attorney was disingenuous and misrepresented the facts when they made a deliberate, conscious, tactical, decision, to cite part of Article 2 section 9 of the Constitution that really didn't apply when they hijack or displaced a referendum or initiative of the people. Reed v Allen, 268 U.S. 191, 193 (1913).

The union attorneys failed to submit the union unfair labor practice charge in the court cases **No. D09 F-0703, D11 J-1169, and D13 A-005.**

The attorney for the city intentionally omitted part of Article 2 section 9 paragraph 5 that requires 3/4 votes to become a law. This will adversely affect his client the city and therefore, a violation of ABA model of Professional Responsibility DR 1-102(A) (E) states:

A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

It is customary and a long standard principle that once an agency or a court has issued rules and regulations to govern its activity, the court's ruled that any time an agency promulgates rules they must scrupulously follow those rules or the decision cannot stand and may not violate them. In this case we are referring to Bankruptcy rules and codes and to bargain in good faith, regardless who makes the rule they must be followed in a civilized society of rules and law making procedures. *Security & Exchange Comm v. Chenery* 318 U.S. 80 87, 88 (1943), *Service v Dulles*, 354 U.S. 363 77 S. Ct 1152, p1 L.ED2nd 1403 (1957) *Pacific Molasses Co. v FTC*, Tex (356 F2d 386 (1966)).

Wherefore, and the above facts and laws we demand that this honorable court grant relief declaring the Bankruptcy invalid, null and void and dismiss this case.

Sincerely submitted

Carl Williams

Name interest party/creditor

Address: 10112 Somerset

City and state Detroit Michigan 48224

Hassan Khan

Name interest party/creditor

2440 Taylor

DETROIT, MICH 48206

Dated October 28, 2013

Exhibit A

1428 Docket No.  
1428

**STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT,  
Public Employer-Respondent,

Case No. D09 F-0703

-and-

POLICE OFFICERS ASSOCIATION OF MICHIGAN  
(EMERGENCY MEDICAL TECHNICIAN UNIT),  
Labor Organization-Petitioner.

CITY OF DETROIT,  
Public Employer-Respondent,

Case No. D11 J-1169

-and-

DETROIT POLICE COMMAND OFFICERS ASSOCIATION,  
Labor Organization-Petitioner.

CITY OF DETROIT,  
Public Employer-Respondent,

Case No. D13 A-0005

-and-

DETROIT POLICE LIEUTENANTS & SERGEANTS ASSOCIATION,  
Labor Organization-Petitioner.

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**APPEARANCES:**

Butzel Long, P.C. by Malcolm D Brown, and Miller, Canfield, Paddock and Stone, P.L.C., by John H. Willems, for Respondent

Frank A. Guido, General Counsel, for Petitioner Police Officers Association of Michigan

Sachs Waldman, P.C., by Mary Ellen Gurewitz, Marshall J. Widick, and James A. Britton for Petitioner Detroit Police Command Officers Association

Miller Cohen P.L.C., by Richard G Mack, Jr., and Keith D. Flynn, for Petitioner Detroit Police Lieutenants & Sergeants Association

Legghio & Israel P.C., Christopher P. Legghio for Amicus Curiae Detroit Fire Fighters Association

### **DECISION AND ORDER**

This matter is before the Commission on the motions of the Employer, the City of Detroit. On April 18, 2013, the Employer filed its Emergency Motion for Determination of Arbitral Jurisdiction and Dismissal of Act 312 Petitions and Motion for Stay Pending Ruling and its supporting brief. In its motion to the Commission, the Employer states that in each of the three Act 312 arbitration proceedings, the Employer filed a motion with the arbitrator seeking dismissal of the petition on the grounds that the arbitrator had no jurisdiction over this matter based on the suspension of the Employer's duty to bargain set forth in § 27(3) of the Local Financial Stability and Choice Act, 2012 PA 436 (PA 436), MCL 141.1541 – 141.1575. The Employer also filed a motion with each arbitrator seeking a stay of proceedings pending the outcome of the arbitrator's ruling. According to the Employer's motion to the Commission, two of the arbitrators denied the Employer's motion to dismiss and the third had failed to rule at the time the Employer filed the instant motion with the Commission.

Each of the Unions involved in the three arbitrations, Police Officers Association of Michigan (POAM), Detroit Police Command Officers Association (DPCOA), and Detroit Police Lieutenants & Sergeants Association (DPLSA) have filed responses to the Employer's motions to the Commission. At our meeting on May 14, 2013, we stayed the Act 312 proceedings pending our decision in this matter, granted leave to the Detroit Fire Fighters Association to file an amicus curiae brief in response to the City's motions, and heard oral argument from the Employer, POAM, DPCOA, and DPLSA.

The Employer claims that each of the three Act 312 arbitration cases should be dismissed based on the suspension of its duty to bargain pursuant to PA 436. Each of the involved Unions and the amicus curiae contend that there is no basis for dismissal of the Act 312 arbitrations and have raised several arguments in an effort to rebut the Employer's contention that the arbitrations should be dismissed. The Unions question the Commission's jurisdiction to dismiss a pending Act 312 arbitration. The three involved Unions contend that the suspension of the Employer's duty to bargain under PA 436 does not impact the parties' rights and obligations to proceed with Act 312 arbitrations on petitions filed prior to March 28, 2013, the effective date of Act 436.

#### **Procedural History**

In *City of Detroit and Police Officers Association of Michigan*, Case No. D09 F-0703, the Commission received notice on June 1, 2009, that the parties were in negotiations for a new collective bargaining agreement pursuant to §7(2) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.207(2). On June 15, 2010, the POAM filed a petition for Act 312 arbitration. The arbitrator currently assigned to the case, William E. Long, was appointed on October 2, 2012. On or about April 15, 2013, the Employer filed two motions with Arbitrator Long, a motion for an Award of Dismissal Due to Lack of Arbitral Jurisdiction,

and a motion for a Stay of Proceedings Pending Determination of Jurisdiction by MERC. On April 17, 2013, Long denied the motion to dismiss but granted the stay after learning that the Employer had brought similar motions before this Commission and based on his belief that this Commission was the appropriate body to resolve this issue.

At the time of Long's April 17 ruling, hearing dates had already been scheduled for April 22, April 29, and May 2, 2013. He notified the parties that the hearing scheduled for April 22 would proceed, but directed the parties to meet on the remaining two dates for the purpose of reviewing, clarifying, and possibly resolving some of the issues in advance of any subsequent hearing dates. He concluded that if "MERC rules that Section 27(3) of Act 436 does preclude MERC from retaining jurisdiction of this case, proceeding with the April 22, 2013 hearing and scheduling others, if needed, following a ruling by MERC, is not a significant financial burden on the parties and the information obtained from the April 22, 2013 hearing, and the April 29, 2013 and May 2, 2013 meetings of the representatives for the parties, may assist the parties in ultimate resolution of many matters in dispute through further collective bargaining." The April 22, 2013 hearing was conducted and is the only hearing that has been held in this case.

In *City of Detroit and Detroit Police Command Officers Association*, Case No. D11 J-1169, the Employer filed a petition for Act 312 arbitration on October 5, 2011. On September 11, 2012, the Employer withdrew its petition over the objection of the DPCOA. In response, the director of the Bureau of Employment Relations, notified the parties by letter dated September 13, 2012, that the Commission had reviewed the parties' filings at its September 11, 2012 meeting and concluded that nothing in the Act 312 statute and/or rules requires or allows the Commission to approve or deny a party's request to withdraw its petition. The letter went on to explain that the "obvious remedy for a Union that objects to the withdrawal is to file its own Act 312 petition." The DPCOA filed its petition for Act 312 arbitration on September 20, 2012. Arbitrator Gregory M. Saltzman was appointed on October 5, 2012 and held a prehearing conference on March 1, 2013. In an e-mail to the parties dated April 19, 2013, Arbitrator Saltzman acknowledged receipt of the two motions from the Employer and deferred the issue to the Commission.

In *City of Detroit and Detroit Police Lieutenants & Sergeants Association*, Case No. D13 A-0005, a petition for Act 312 arbitration was filed on February 4, 2013 by the DPLSA. Arbitrator Francis L Hill was appointed on February 19, 2013, and held a prehearing conference on February 26, 2013. In an e-mail to the parties on April 28, 2013, Arbitrator Hill notified the parties of hearing dates scheduled for May 15, 16, and 21, and June 11 and 13, 2013. She informed the parties that the Employer's motion to dismiss was pending before the Commission and that she would advise them if MERC's decision had an impact on the scheduled hearing dates.

#### Discussion and Conclusions of Law:

##### I. COMMISSION JURISDICTION

The Employer argues that the Commission should rule on its motion to dismiss because the arbitrators are deferring the question of jurisdiction to MERC. The Employer seeks a global

ruling on the legal issues presented by the impact of PA 436 on pending Act 312 arbitrations and wants the Commission to provide guidance on the question of whether the arbitrators may exercise jurisdiction in these matters. Whether the Commission has jurisdiction to rule on the questions presented by the Employer's motion to dismiss depends on the authority granted by the Legislature to MERC in the Labor Relations and Mediation Act (LRMA), Act 176 of 1939; the Public Employment Relations Act (PERA), Act 336 of 1947; and the act that provides for compulsory arbitration of labor disputes in police and fire departments, Act 312 of 1969 (Act 312).

#### A. Act 312 Provisions with Respect to MERC's Authority

Matters proceed to Act 312 arbitration following mediation initiated pursuant to §7 of PERA, MCL 423.207<sup>1</sup>. After a matter has been submitted to mediation for at least 30 days, either of the parties may request binding arbitration pursuant to § 3 of Act 312, MCL 423.233. In *City of Manistee v Employment Relations Comm & Manistee Fire Fighters Ass'n*, 168 Mich App 422, 428 (1988), the Court commented: "The only prerequisites [to Act 312 arbitration] are those expressly stated in § 3 of Act 312." Section 3 of Act 312, MCL 423.233, sets the prerequisites for proceeding to Act 312 arbitration as follows:

Whenever in the course of mediation of a public police or fire department employee's dispute, except a dispute concerning the interpretation or application of an existing agreement (a "grievance" dispute), the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings by prompt request therefor, in writing, to the other, with copy to the employment relations commission.

Only §§ 3, 4, 5, 6 and 7a of Act 312, as amended, mention or refer to the Commission. Section 4, MCL 423.234, provides the process for the parties to select their delegates to the arbitration panel and notify each other and the "mediation board" of their selections. Section 5, MCL 423.235, establishes the procedure to be used in selecting the chair of the arbitration panel

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<sup>1</sup> Section 7 of PERA provides as follows:

- (1) Upon the request of the collective bargaining representative defined in section 11 or, if a representative has not been designated or selected, upon the request of a majority of any given group of public employees evidenced by a petition signed by the majority and delivered to the commission, or upon request of any public employer of the employees, the commission forthwith shall mediate the grievances set forth in the petition or notice, and for the purposes of mediating the grievances, the commission shall exercise the powers and authority conferred upon the commission by sections 10 and 11 of Act No. 176 of the Public Acts of 1939, as amended, being sections 423.10 and 423.11 of the Michigan Compiled Laws.
- (2) At least 60 days before the expiration date of a collective bargaining agreement, the parties shall notify the commission of the status of negotiations. If the dispute remains unresolved 30 days after the notification on the status of negotiations and a request for mediation is not received, the commission shall appoint a mediator.



from MERC's panel of arbitrators, authorizes MERC to establish and appoint members of the panel of arbitrators, and requires MERC to establish qualifications and training for panel members. Section 6, MCL 423.236, sets time periods for the arbitration and establishes procedures that the arbitration panel members are to follow. It also provides that the fee to be paid to the panel's chair is to be established in advance by the Commission. Section 7a, MCL 423.237a, authorizes the chair of the arbitration panel to remand the matter for further bargaining and requires the chair to notify the Commission of any such remand.

#### B. Prior MERC Actions in Act 312 Cases

The Employer contends that the Commission is empowered to determine jurisdictional limits for Act 312 panels, citing *City of Detroit*, 1990 MERC Lab Op 561, 565. In the *City of Detroit* case, after noting that the Commission has jurisdiction to determine what is a mandatory subject of bargaining and whether employees are eligible for Act 312 arbitration, the Commission denied the employer's motion to instruct the Act 312 arbitrator to refrain from deciding those issues. The Commission stated, *id.* at 565:

The jurisdiction of an Act 312 arbitration panel to make findings on these issues in the absence of, or concurrent with, our rulings has now been firmly established. We see no reason to grant the employer's request that we direct the Act 312 panel's actions in this case. Under Section 12 of Act 312, the employer may seek review by the Circuit Court of findings by the arbitration panel on the grounds that the panel exceeded its jurisdiction.

While it may be noted that the Commission refused to dismiss the Act 312 proceeding in this case, MERC did not find that it lacks the authority to do so.

In support of its contention that the Commission should decide this issue, the Employer also argues that Act 312 panels function under the auspices of the Commission and are bound by the Commission's decisions, citing *Jackson Fire Fighters Ass'n v City of Jackson*, 227 Mich App 520, 523 (1998). In the *Jackson Fire Fighters Ass'n* case, the Act 312 arbitrator held that a matter was a mandatory subject of bargaining. The circuit court affirmed the arbitration award on appeal. In a concurrent unfair labor practice charge case involving the same parties, *City of Jackson*, 1996 MERC Lab Op 125; 9 MPER 27050, the Commission found the disputed matter to be a permissive subject of bargaining. Upon subsequent review of the circuit court ruling and MERC's decision, the Court of Appeals held that MERC had primary jurisdiction to determine whether the matter was a mandatory subject of bargaining, and therefore, the decision of the arbitrator did not bar MERC from adjudicating the issue based on collateral estoppel. In the two cases cited above, it is clear that the Commission has jurisdiction to determine, in an unfair labor practice charge case, whether subjects of bargaining brought before an Act 312 arbitrator are mandatory or permissive.

This Commission also has jurisdiction to determine whether an Act 312 arbitration should proceed by ascertaining whether the employees in the bargaining unit are eligible for Act 312 arbitration. *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)*, 89 Mich App 564 (1979) rev'd on other grounds, 409 Mich 299 (1980); *Kalamazoo Co*, 23

MPER 22 (2010); *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *City of Grand Rapids*, 1981 MERC Lab Op 327. Typically, such determinations are made in the context of a unit clarification or other representation proceeding.

In a representation proceeding, *Oakland Co Sheriff's Dep't*, 1977 MERC Lab Op 843, the Commission was called upon to determine whether a pending Act 312 arbitration was appropriate. The union, Metropolitan Council 23 of AFSCME, and the employer, Oakland County Sheriff's Department, had reached an impasse in negotiations and in mediation. The union initiated arbitration under Act 312. The employer objected, contending that the arbitration included the issue of wages for "nonpolice" classifications that were not eligible for Act 312 arbitration. The employer moved to dismiss the representation hearing, which was scheduled before a MERC ALJ, contending the matter was within the sole discretion of the Act 312 arbitrator. The Commission denied the employer's motion and concluded, *id.* at 846-848, that it did indeed have jurisdiction to resolve the issue. The MERC noted that § 14 of Act 312 specifically makes the Act supplementary to PERA and observed that § 7 of PERA MCL 423.207, and §§ 10 and 11 of the LRMA, MCL 423.10 and 423.11, conferred broad powers upon it. The Commission explained, *id.* at 847,

We find that the responsibility for implementing Act 312 necessarily includes the power to determine who is covered by the Act. This is simply an extension of the Commission's function in representation matters. The resolution of questions involving employer and employee status, exclusions under PERA and the LRMA, community of interest and appropriate bargaining units, is an integral part of the work of the Commission. Clearly, the Commission's expertise in determining such issues is significant in determining the question raised in these proceedings. In addition, a determination by the Commission ensures the necessary uniformity and consistency in this important area.

. . . . [A] determination of who is covered by the Act is a condition precedent to the arbitration proceeding itself, and is not properly before the arbitrator since it is not an "issue in dispute" as asserted by the Employer.

In a separate, unrelated matter, *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)*, 89 Mich App 564 (1979) rev'd on other grounds, 409 Mich 299 (1980), the Court of Appeals considered an appeal of MERC's decision in *Oakland Co (Prosecutor's Investigators)*, 1978 MERC Lab Op 328, and adopted the Commission's reasoning *Oakland Co Sheriff's Dep't*. There, the Court of Appeals found, at 89 Mich App 567, that the Legislature intended to provide public employees eligible for Act 312 arbitration with an "expeditious, effective and binding procedure for the resolution of disputes." Noting that the Legislature's purpose of establishing an expeditious dispute resolution procedure would be impeded by the lengthy delays inherent in court procedures, the Court reasoned, *id.* at 567-568, that MERC "has the necessary implied authority and expertise in labor relations to initially determine the eligibility of public employees for compulsory arbitration" and cited *Oakland Co Sheriff's Dep't*, 1977 MERC Lab Op 843. The Court of Appeals affirmed MERC's finding, in *Oakland Co (Prosecutor's Investigators)*, 1978 MERC Lab Op 328, that the Oakland County prosecutor's investigators were eligible for Act 312 arbitration.

Subsequently, the Michigan Supreme Court granted the employer's motion for leave to appeal and both MERC and the Court of Appeals were reversed on the issue of the investigators' eligibility for Act 312 arbitration. *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)*, 409 Mich 299 (1980). The Supreme Court found the employees were not subject to Act 312 coverage. Although the Supreme Court did not address the issue of whether MERC has the authority to determine Act 312 eligibility, it has been widely accepted that MERC's authority extends to determining the eligibility of employees for Act 312 arbitration. Since that time, MERC has reviewed the Act 312 eligibility of numerous bargaining units in which the union and employer disputed the eligibility of all or part of the unit's members. *Macomb Co (Sheriff's Dep't)*, 1991 MERC Lab Op 542, 547. See, e.g. *Michigan State Univ (Police Dep't)*, 26 MPER 44 (2013); *Kalamazoo Co*, 23 MPER 22 (2010); *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007); *Kent Co & Kent Co Sheriff*, 1991 MERC Lab Op 549; 4 MPER 22071; *Washtenaw Co (Sheriff's Dep't)*, 1990 MERC Lab Op 768; *City of Detroit (Police Detention Facility)*, 1990 MERC Lab Op 598; *Midland Co*, 1989 MERC Lab Op 923; *Mecosta Co*, 1989 MERC Lab Op 607.

We agree with the prior Commission in *Oakland Co Sheriff's Dep't*, and with the Court of Appeals in *Metropolitan Council 23, AFSCME v Oakland Co (Prosecutor's Investigators)* that by enacting § 7 of PERA and §§ 10 and 11 of the LRMA, the Legislature conferred broad powers upon the Commission for the purpose of resolving labor disputes. We also agree with the previous Commission that it is our responsibility to exercise these powers "as are necessary to carry out the purposes of PERA and the supplementary Act 312." As with the Commission in *Oakland Co Sheriff's Dep't*, 1977 MERC Lab Op 843, 847, "We find that the responsibility for implementing Act 312 necessarily includes the power to determine who is covered by the Act." Therefore, given the importance of this issue and the number of parties affected, including those beyond the instant cases, we find it is necessary to provide the parties and our panel of arbitrators with our decision on the question of whether the suspension of the duty to bargain pursuant to § 27(3) of the Local Financial Stability and Choice Act, Public Act 436 of 2012, MCL 141.1567(3), also suspends the authority of the Act 312 arbitrator in a pending arbitration.

C. Does This Matter Raise a Constitutional Question That Must Be Resolved by the Courts?

DPCOA argues that the question of whether PA 436 deprives an Act 312 arbitrator of jurisdiction must be determined by the courts, citing *Kent Co Sheriffs Ass'n v Kent Co*, 463 Mich 353, 359-362 (2000).<sup>2</sup> DPCOA argues at length that the Legislature's failure to amend §15(8) of PERA, to replace the reference to 2011 PA 4 with a reference to PA 436, makes the language of that provision invalid and creates a conflict with § 27(3) of PA 436 in violation of the Michigan Constitution. Section 15(8) of PERA states:

Collective bargaining agreements under this act may be rejected, modified, or terminated pursuant to the local government and school district fiscal

<sup>2</sup> In the *Kent Co Sheriffs Ass'n* case, the State Supreme Court held that the circuit court correctly ruled on a Freedom of Information Act issue even though the matter impacted a labor dispute over which MERC would have had jurisdiction if it had involved an unfair labor practice charge. Since the case did not involve an unfair labor practice charge, the circuit court was not required to defer to MERC.

accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. This act does not confer a right to bargain that would infringe on the exercise of powers under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.

The Commission has no jurisdiction to resolve questions of the constitutionality of legislative enactments. *Michigan State Univ*, 17 MPER 75 (2004). The Commission must decide matters before it based on the language of PERA and its amendments. *Waverly Cmty Sch*, 26 MPER 34 (2012). Thus, any constitutional issues that the parties wish to raise must be raised elsewhere.

## II. THE IMPACT OF PA 436 ON RIGHTS AND OBLIGATIONS UNDER ACT 312

The Employer argues that the arbitration panels have no jurisdiction over the parties, the petitions, or the matters in dispute where the City's duty to bargain has been suspended by the operation of § 27(3) of PA 436. According to the Employer, Act 312 is a procedural statute and acts as an extension of, or supplement to, PERA, while PERA is the substantive enabling statute that defines the contents and parameters of the duty to bargain. The Employer contends: "Where the duty to bargain under PERA is suspended, there can be no compulsory arbitration over mandatory subjects of bargaining because no subjects remain 'mandatory' and therefore, [there is] no dispute to resolve."

### A. The Relationship between 1969 PA 312, As Amended, and 2012 PA 436

This Commission's interpretation of these two statutes is constrained by rules of statutory construction established by the courts. The rules of statutory construction tell us that, much like any literary composition, a statute is enacted and is meant to be read as a whole. *Metropolitan Council 23, AFSCME v Oakland Co Prosecutor*, 409 Mich 299, 317-318 (1980). As such, any provision that is in dispute must be read in the light of the general purpose of the act. *Romeo Homes, Inc v Comm'r of Revenue*, 361 Mich 128, 135 (1960).

While both statutes deal with local government administration there is no express conflict in their purposes or in their wording. Act 312 of 1969 was recently amended by 2011 PA 116 which became effective July 20, 2011. Less than two years later, 2012 PA 436 took effect on March 28, 2013. Indeed, PA 436 makes no reference to Act 312 or to its recent amendment in 2011 PA 116. PA 436 does not exclude bargaining units eligible for Act 312 arbitration from its coverage.<sup>3</sup>

Under well-established principles of statutory construction, the legislature is presumed to be aware of and to have considered the effect on all existing statutes when enacting new ones. *Walen v Dep't of Corrections*, 443 Mich 240, 248 (1993). Moreover, rules of statutory construction hold that the legislature is presumed to be aware of statutory interpretations by the

<sup>3</sup> We note that the Legislature expressly excluded employees eligible for Act 312 arbitration from the changes under the "Freedom-to-Work" amendment to PERA, 2012 PA 349, which became effective on the same day as 2012 PA 436.

courts and by the administrative bodies charged with statutory enforcement. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 505-506 (1991); *Melia v Appeal Bd of Michigan Employment Sec Comm*, 346 Mich 544, 565-566 (1956); *Parker v Bd of Ed of Byron Center Pub Sch*, 229 Mich App 565, 570-5712 (1998).

The Commission has found that the failure to honor terms and conditions of employment established by an Act 312 award is a violation of § 10(1)(e) of PERA. *City of Jackson*, 1979 MERC Lab Op 1146, 1151-1154. See also, *City of Hamtramck*, 1984 MERC Lab Op 520, 524.

In *City of Jackson*, at 1151, the Commission explained:

A refusal to execute a completed collective bargaining agreement is an unfair labor practice whether negotiated through voluntary collective bargaining or by submission of unresolved issues to Act 312 arbitration.

The Commission went on to say, *id.* at 1153-1154:

The legislative policy of providing an "expeditious," "effective," and "binding" procedure for resolving labor disputes would be severely undermined if the parties could short circuit the Act by refusing to execute the contract.

\* \* \*

The term "resolution of disputes" in § 1 of the Act [312] means that the product of compulsory arbitration is a completed collective bargaining agreement. The refusal to execute that agreement is a refusal to bargain in good faith

Section 10(1)(e) of PERA prohibits public employers that have a duty to bargain from refusing to bargain collectively with the representatives of their employees. However, if their duty to bargain has been suspended, their refusal to bargain does not violate § 10(1)(e). Quite simply, there can be no breach of duty if there is no duty. Thus, when a public employer's duty to bargain has been suspended, their failure to comply with the terms and conditions of an Act 312 award would not violate § 10(1)(e) of PERA and the Act 312 award cannot be enforced under PERA.

As we stated in *Oakland Co & Oakland Co Sheriff*, 20 MPER 63 (2007):

Act 312 functions primarily as an extraordinary restriction on the ordinary rights of certain public employers to unilaterally impose changes in conditions of employment when good faith negotiations have failed to result in agreement.

Nevertheless, without reference to Act 312, § 12(1)(j) of PA 436 in conjunction with § 15(8) of PERA gives the Emergency Manager the right to reject, modify, or terminate terms of an existing collective bargaining agreement. Section 15(8) of PERA states:

Collective bargaining agreements under this act may be rejected, modified, or terminated pursuant to the local government and school district fiscal

accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. This act does not confer a right to bargain that would infringe on the exercise of powers under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.<sup>4</sup>

Section 12(1)(j) of PA 436 states:

(1) An emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary:

\* \* \*

(j) Reject, modify, or terminate 1 or more terms and conditions of an existing contract.

---

<sup>4</sup> We recognize the arguments made by the Petitioners challenging the constitutionality of PA 436 and the substitution of its provisions for the provisions of 2011 PA 4. However, as indicated above in our discussion of Petitioners' constitutional challenge, we must administer the law as it is enacted and must give effect to the provisions of PA 436, as well as its enacting § 2 which provides as follows:

2012 PA 436, enacting § 2, provides:

It is the intent of the Legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following:

- (a) The Charter Township Act, 1947 PA 359, MCL 42.1 to 42.34.
- (b) 1966 PA 293, MCL 45.501 to 45.521.
- (c) 1851 PA 156, MCL 46.1 to 46.32.
- (d) The General Law Village Act, 1895 PA 3, MCL 61.1 to 74.25.
- (e) The Home Rule Village Act, 1909 PA 278, MCL 78.1 to 78.28.
- (f) The Fourth Class City Act, 1895 PA 215, MCL 81.1 to 113.20.
- (g) The Home Rule City Act, 1909 PA 279, MCL 117.1 to 117.38.
- (h) The Metropolitan Transportation Authorities Act of 1967, 1967 PA 204, MCL 124.401 to 124.426.
- (i) 1947 PA 336, MCL 423.201 to 423.217.

In the light of the language of PA 436, we cannot find that the Legislature intended to impose the aforesaid "extraordinary restrictions" of Act 312 on an emergency manager. Inasmuch as an Act 312 award serves as the parties' collective bargaining agreement, it appears that pursuant to § 15(8) of PERA and § 12(1)(j) of PA 436 that the Emergency Manager could reject, modify, or terminate terms of an Act 312 award. If that is the case, it seems doubtful that the Legislature would have intended an employer in receivership, with no duty to bargain and with an emergency manager in place, to be subject to Act 312 arbitration proceedings.

Petitioners have argued that the amendment to § 9 of Act 312 by 2011 PA 116 indicates that an employer in receivership remains subject to the operation of Act 312. Section 9 of Act 312, as amended, provides in relevant part:

(1) If the parties have no collective bargaining agreement or the parties have an agreement and have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions, and order upon the following factors:

(a) The financial ability of the unit of government to pay. All of the following shall apply to the arbitration panel's determination of the ability of the unit of government to pay:

\* \* \*

(iv) Any law of this state or any directive issued under the local government and school district fiscal accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, that places limitations on a unit of government's expenditures or revenue collection.<sup>5</sup>

The Employer contends that the amendment to § 9 of Act 312 by 2011 PA 116 does not show that an employer in receivership remains subject to the operation of Act 312. The Employer asserts, that the amended § 9 of Act 312 applies to those municipalities where the duty to bargain has not been suspended. We agree.

#### B. Is Act 312 Arbitration Dependent on the Presence of a Duty to Bargain?

In *Metropolitan Council 23, AFSCME v Center Line*, 414 Mich 642 (1982), the Court inferred from PERA that the distinction drawn between mandatory and permissive subjects of bargaining determines the scope of the Act 312 arbitration panel's authority. Given the fact that Act 312 supplements PERA and that under § 15 of PERA the duty to bargain only extends to mandatory subjects, the Court concluded that the arbitration panel can only compel agreement as to mandatory subjects. The Court noted further that it would be inconsistent to conclude that the arbitration panel can issue an award on a permissive subject when the parties do not even have a

<sup>5</sup> See previous footnote regarding Enacting § 2 of PA 436

duty to bargain over such a subject. Based on that, we might infer that the arbitration panel has no authority over matters for which there is no duty to bargain.

The mediation process is a condition precedent to initiation of Act 312 arbitration. A public employer that has no duty to bargain has no duty to participate in mediation. Only a public employer not in receivership under PA 436 or a labor organization may be required by this Commission under § 10 of PERA to participate in mediation. Therefore, the duty to bargain must be present before a party can be compelled to involuntarily participate in mediation. If parties have no duty to participate in mediation, they cannot be required to participate in Act 312 arbitration.

Moreover, § 7a of Act 312 gives the arbitration panel chair the authority to remand the matter to mediation. Mediation is a function of bargaining pursuant to PERA. If there is no duty to bargain, there is also no duty to engage in mediation. Therefore, § 7a of Act 312 presupposes the presence of a duty to bargain. In the absence of a duty to bargain, there is no obligation to participate in Act 312 arbitration.

C. Does Suspension of the Duty to Bargain Pursuant to 2012 PA 436 Convert Mandatory Subjects of Bargaining to Non-Mandatory Subjects of Bargaining?

The Employer contends: "Where there is no duty to bargain, there are no mandatory subjects in dispute regarding which an Act 312 panel has jurisdiction to fashion an Award." It asserts that "by operation of Act 436, there are no subjects regarding which there is a duty to bargain and therefore none can be the subject of an Award." (Emphasis in original.)

As previously noted, an Act 312 arbitration panel can only issue an award regarding mandatory subjects of bargaining. *Metropolitan Council 23, AFSCME v Center Line*, 414 Mich 642, 654-655 (1982). Moreover, as indicated above, both this Commission's past enforcement of an Act 312 award as a violation of the duty to bargain and the arbitration panel chair's authority under § 7a of Act 312 to remand a matter to mediation indicates an assumption that the duty to bargain is a condition precedent to participation in Act 312. However, we reject the Employer's premise that the suspension of the duty to bargain automatically converts the nature of subjects of bargaining from mandatory to non-mandatory. The existence of a duty to bargain is a separate and distinct issue from the question of whether a particular subject of bargaining is mandatory or permissive.

Whether a matter is a mandatory subject of bargaining depends on whether it has a significant or material impact on wages, hours, and other terms and conditions of employment or settles an aspect of the employer-employee relationship. *Detroit v Michigan Council 25, AFSCME*, 118 Mich App 211, 215 (1982); *Houghton Lake Ed Ass'n v Houghton Lake Cmty Sch, Bd of Ed*, 109 Mich App 1, 6 (1981). Once a subject has been determined to be a mandatory subject of bargaining, parties bound by the duty to bargain under PERA, must bargain concerning the subject. Neither party may take unilateral action on that subject unless the parties arrive at an impasse in their negotiations or there is a clear and unmistakable waiver. *Wayne Co Gov't Bar Ass'n v Wayne Co*, 169 Mich App 480, 486 (1988); 1 MPER 19105, aff'g 1987 MERC Lab Op 230; *Central Michigan Univ Faculty Ass'n v Central Michigan Univ*, 404 Mich 268, 277



(1978). See also *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44, 54-55 (1974). The Commission and the courts have adopted an expansive interpretation of "wages, hours, and other terms and conditions of employment" under § 15 of PERA. *Local 1383, Int'l Ass'n of Fire Fighters v Warren*, 411 Mich 642, 652 (1981).

A matter that is a mandatory subject of bargaining remains so, even if a party's duty to bargain is suspended. The nature of the subject does not change just because the duty ceases. Wages, hours, and other terms and conditions of employment continue to be mandatory subjects for the purpose of determining what must be bargained by those parties who have a duty to bargain.

Where a public employer's duty to bargain is statutorily suspended, the employer has no *obligation* to bargain. However, nothing in PERA denies a public employer the *right* to bargain, even when the duty to bargain under § 15(1) has been suspended. Indeed, the suspension of a public employer's duty to bargain does not suspend the bargaining obligation of the labor organization representing that employer's employees. Therefore, if an emergency manager of a public employer in receivership determines that the employer should bargain with the labor organization, the employer has the right to bargain with that labor organization. The labor organization, in that situation, still has a duty to bargain in good faith pursuant to §§ 10(3)(c) and 15(1) of PERA. Similarly, if an emergency manager of a public employer in receivership determines that the employer should petition for Act 312 arbitration in an effort to resolve a labor dispute with a bargaining unit of police or fire fighters, that employer may petition for Act 312 arbitration. In that case, unless the parties agree otherwise, the arbitration would be limited to mandatory subjects of bargaining, that is, matters that have a material impact on wages, hours, and other terms and conditions of employment or settle an aspect of the employer-employee relationship.

The finding urged by the Employer on this issue, could result in the denial of an employer's right to settle a pending labor dispute through Act 312 proceedings. Even though we agree with the Employer that the suspension of its duty to bargain under PA 436 also suspends its obligation to participate in Act 312 proceedings, we cannot agree that such suspension denies the Employer the opportunity to participate in Act 312 arbitration should it so choose. Accordingly, we find the suspension of the duty to bargain does not convert mandatory subjects of bargaining to non-mandatory subjects. The underlying nature of subjects of bargaining, whether they are mandatory or permissive, does not change upon the suspension of an employer's duty to bargain. Indeed, nothing in PA 436 declares a change in the nature of subjects of bargaining. It merely suspends the duty to bargain of an employer in receivership. That employer still retains the right to bargain and the right to proceed to Act 312 arbitration if it determines that to be appropriate under the circumstances. However, where an employer in receivership chooses not to participate in Act 312 arbitration they have no obligation to do so. For the foregoing reasons, we conclude that where an employer has no duty to bargain under PERA and has not voluntarily consented to Act 312 arbitration, the arbitration panel has no authority to issue an award binding that employer.

III. CONCLUSION

The Employer in this matter is in receivership and has no duty to bargain under PA 436. It has expressed an unwillingness to bargain or participate in Act 312 arbitration in light of PA 436. As such, the Employer has no obligation to participate in Act 312 arbitration and is not required to do so. Accordingly, the arbitrations in the cases before us must be dismissed.

We have considered all other arguments submitted by the parties and conclude that they would not change the result in this case.

**ORDER**

The Employer's motion to dismiss the Act 312 arbitrations pending in these three cases is granted. The Act 312 arbitrations in *City of Detroit and Police Officers Association of Michigan*, Case No. D09 F-0703, *City of Detroit and Detroit Police Command Officers Association*, Case No. D11 J-1169, and *City of Detroit and Detroit Police Lieutenants & Sergeants Association*, Case No. D13 A-0005, are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

\_\_\_\_\_  
Edward D. Callaghan, Commission Chair

\_\_\_\_\_  
Robert S. LaBrant, Commission Member

Dated: \_\_\_\_\_

COMMISSIONER GREEN, CONCURRING IN PART; DISSENTING IN PART:

Although I agree with the Majority's rejection of the Employer's argument that the suspension of the duty to bargain converts mandatory subjects of bargaining to permissive subjects, I disagree with the Majority's conclusion that the three Act 312 arbitration cases should be dismissed.

In numerous representation cases, we have been called upon to determine whether Act 312 petitions met the requirements of § 3 of Act 312 to initiate binding arbitration proceedings. In those cases, we were required to decide whether bargaining unit members met the definition of "public police or fire department employee" contained in § 2 of Act 312. Where the bargaining unit members were not public police or fire department employees, the requirements for initiating an Act 312 proceeding under § 3 were not met and, we dismissed the proceeding. For this Commission to initially determine the eligibility of public employees for compulsory arbitration in the context of representation proceedings is simply an extension of the Commission's function in representation matters.

However, in the three cases before us, there is no assertion by the Employer that the requirements for initiating Act 312 proceedings were not met. The Employer has not filed any representation proceeding claiming that the members of the three involved bargaining units are not public police or fire department employees as defined by § 2 of Act 312 nor has the Employer made any assertion that a creditable claim could be filed on that basis.

In these cases, the requirements for submitting the matters to mediation were met before PA 436 took effect and nothing in PA 436 indicates that the suspension of the duty to bargain is retroactive. When the parties were in mediation, the employer had a duty to bargain. In each case, the labor dispute was not resolved to the agreement of both parties and a petition for Act 312 arbitration was filed. All three petitions were filed and arbitrators were appointed in each case before PA 436 became effective.

I find nothing in PERA or Act 312 that authorizes this Commission to dismiss an Act 312 petition when the conditions in § 3 of Act 312 have been fully met. The Employer contends that the suspension of its duty to bargain, by PA 436, also suspends its obligations under Act 312. However, PA 436 contains no explicit prohibition barring Act 312 arbitration. Whether there is an implicit bar of binding arbitration by virtue of Act 436 is a matter for the courts to decide.

Although an emergency manager's authority to reject, modify, or terminate the provisions of a labor contract raises doubt as to whether a compulsory arbitration award is enforceable against an emergency manager, I conclude that the Commission lacks authority to dismiss an Act 312 arbitration where the requirements of Act 312 have been met. Consequently, I would deny the Employer's motion to dismiss the three Act 312 petitions.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

\_\_\_\_\_  
Nino E. Green, Commissioner

Dated: \_\_\_\_\_



the city in good faith. That the state through Kevyn Orr also failed to comply and does not meet the requirements of title 11 of the Bankruptcy code and rule.

That the law and facts herein this affidavit are in support of the objections of the Bankruptcy. We have read and understand the facts to be true.

That we the affiant, if sworn as a witness, can testify competently to the facts stated in the objections and is true and correct to the best of our knowledge and belief.

Signed Carl Williams Kassan Reem

Subscribed and sworn to before me,

This 30<sup>th</sup> day of October, 2013

Gloria Ann Surlis

Notary  
GLORIA ANN SURLIS  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Sep 16, 2017  
ACTING IN COUNTY OF Wayne

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

In re:  
CITY OF DETROIT, MICHIGAN  
AND EMERGENCY MANAGER  
KEVYN D. ORR

Chapter 9  
Case No. 13-53846  
Hon: Steven W. Rhodes

Debtor

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**PROOF OF SERVICE**

U.S. BANKRUPTCY COURT  
E.D. MICHIGAN-DETROIT

2013 OCT 31 P 2:18

FILED

Curt Williams, being first duly sworn deposes and

Say that on October 30<sup>th</sup> 2013. I sent a copy of Addendum Objection and affidavit docket No. 1428 Upon the concern parties by certified mail at the following address:

City of Detroit  
Corporation Council  
First National Building  
600 Woodward Ave  
Detroit, Michigan 48226

Emergency Manager  
Kenyn Orr  
Coleman A Young Municipal Center  
2 Woodward 11th floor  
Detroit, Michigan 48226

Sign Carl Williams

Subscribed and sworn to before me, This 30<sup>th</sup> day  
of October 2013

Gloria Ann Surles  
Notary

GLORIA ANN SURLES  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES Sep 15, 2017  
ACTING IN COUNTY OF Wayne

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
9.	486	8/19/2013	Joinder of Local 517M, Service Employees International Union as interested party to Objections to Detroit's Eligibility for Relief Under Sections 109(c) and 921(c) of the Bankruptcy Code



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

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

**AFSCME'S SUPPLEMENTAL BRIEF ON GOOD FAITH NEGOTIATIONS**



Pursuant to this Court’s Notice Regarding Briefing on “Good Faith Negotiations” (Docket No. 1353), AFSCME submits that case law addressing good faith negotiations under the National Labor Relations Act (“**NLRA**”), 29 U.S.C. § 151 *et seq.*, applies to whether the City complied with its prepetition duty to negotiate with its creditors in good faith over a plan of adjustment under Bankruptcy Code § 109(c). However, because this pure question of law is unsettled (as shown by the need for further briefing); because the City’s eligibility for chapter 9 turns on this and other pure and unsettled questions of law; and because the City’s eligibility undeniably is a matter of the utmost public importance, the Court should include in its order on eligibility a certification for direct appeal to the Sixth Circuit under 28 U.S.C. § 158(d)(2), regardless of whether the Court rules for or against eligibility in whole or in part.<sup>1</sup>

**I. NLRA CASE LAW CONFIRMS THAT THE CITY FAILED TO SATISFY ITS DUTY TO NEGOTIATE IN GOOD FAITH UNDER 11 U.S.C. § 109(c)**

**a. The NLRA Is The Touchstone Of Good Faith Negotiations**

Section 109(c) requires that the City negotiate in good faith with its creditors over a plan of adjustment before filing a chapter 9 petition. The structure of § 109(c)(5) enforces that duty by denying relief to any municipality that could have negotiated over a plan with its creditors, yet failed either to (1) reach agreement with a majority of creditors in each class regarding its treatment in the plan before filing the petition, 11 U.S.C. § 109(c)(5)(A), or (2) negotiate in good faith to impasse over the terms of a plan, 11 U.S.C. § 109(c)(5)(B). *See In re City of Vallejo*, 408 B.R. 280, 296-97 (9th Cir. BAP 2009). Section 109(c)(5)(C), in turn, exempts a municipality in the limited circumstances where negotiations are impracticable, and § 109(c)(5)(D) provides a discrete exemption for one such circumstance – namely, where negotiation would have led to a prepetition transaction prohibited by § 547.

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<sup>1</sup> By briefing the meaning of good faith in chapter 9, AFSCME does not concede chapter 9 is constitutional and reserves all arguments made previously in this case, including but not limited to in Docket Nos. 1156 and 1467.

Neither § 109(c) nor §§ 1113 and 1114 – which require that a chapter 11 debtor negotiate in good faith before rejecting a CBA or retiree benefit – explicitly defines “good faith” or “negotiation.” Nor does the Code’s definitional provision. *See* 11 U.S.C. § 101.

Congress did not need to define the term of art “good faith negotiation” in the Code because “Congress was not writing on a clean slate,” rather it was using a “universally understood” term with a long history of case law under the NLRA. *See ATU v. Donovan*, 767 F.2d 939, 949 (D.C. Cir. 1985) (Congress’s “generic” use of the phrase “collective bargaining” in Transportation Code did not explicitly reference NLRA but nevertheless employed a “term of art” invoking “bedrock precepts” from the Act). When the duty to negotiate in good faith first appeared in the Code in 1976, *see* Pub. L. 94-260 § 84(2), Congress had the benefit of a generation of cases crystallizing the meaning of good faith negotiations, and it knew judges did too. *See Morrison v. United States*, 342 U.S. 246, 250 (1952) (“[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.”).

For this reason, courts interpreting the duty to negotiate in good faith under the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701-2721, “look[] for guidance to case law interpreting the National Labor Relations Act.” *In re Indian Gaming Related Cases*, 147 F. Supp. 2d 1011, 1020-21 (N.D. Cal. 2001), *aff’d*, 331 F.3d 1094 (9th Cir. 2003). The IGRA is not a labor statute at all and, like the Bankruptcy Code, does not expressly define “good faith” or “negotiation.” To fill this gap, courts use case law from the NLRA as the interpretive guide for

“the meaning of good faith negotiations under the IGRA” because the “meaning of good faith negotiations in the area of labor law has been well-developed over the course of many years.” *Flandreau Santee Sioux Tribe v. South Dakota*, 2011 WL 2551379, at \*3 (D.S.D. 2011). See also *Big Lagoon Rancheria v. California*, 700 F. Supp. 2d 1169, 1178-80 (N.D. Cal. 2010). The approach of these courts under the IGRA is of equal application to § 109(c).

**b. The City’s “Surface Bargaining” Was Bad Faith Negotiation**

Applying NLRA case law, courts analyzing the IGRA have recognized that “what is known as ‘surface bargaining’—going through the motions of negotiating, without any real intent to reach an agreement—does not constitute good faith bargaining.” *Flandreau*, 2011 WL 2551379, at \*3 (quoting *K-Mart Corp. v. NLRB*, 626 F.2d 704, 706 (9th Cir.1980)). Under the IGRA as illuminated by the NLRA, “[g]ood faith ‘presupposes a desire to reach ultimate agreement’ and not simply ‘an attitude of take it or leave it.’” *Id.* (quoting *NLRB v. Ins. Agents’ Int’l Union*, 361 U.S. 477, 485 (1960)). Thus, to smoke out surface bargaining in violation of the statutory duty to negotiate in good faith, courts must look beyond “the record of negotiations between the parties” and further “inquir[e] into the parties’ state of mind and all of the facts and circumstances.” *Big Lagoon Rancheria*, 700 F. Supp. at 1178.

Here, because the City engaged in surface bargaining, it never “failed to obtain the agreement” of its creditors, including AFSCME, as required by § 109(c)(5)(B). “That parties bargain in good faith is a prerequisite for a finding that the parties had reached a valid impasse.” *U.S. Ecology Corp. v. NLRB*, 26 Fed. App’x 435, 439 (6th Cir. 2001) (citing *NLRB v. Plainville Ready Mix Concrete Co.*, 44 F.3d 1320, 1326 (6th Cir.1995)) (enforcing NLRB order on surface bargaining). As AFSCME’s Director of Collective Bargaining testified at trial, AFSCME previously negotiated concessionary agreements affecting retiree benefits with the City of

Detroit. Yet other trial testimony demonstrated not only that the City never engaged AFSCME in “negotiations” over retiree benefits at all, but also that it conducted its so-called “discussions” with creditors “as a kind of charade or sham, all the while intending to avoid reaching an agreement.” *NLRB v. Hardesty Co., Inc.*, 308 F.3d 859, 865 (8th Cir. 2002) (quotation omitted). Like the employer who exchanges views with the union on the surface, but whose “away from the table” actions demonstrate its true intent “to wait . . . and seek decertification” of the union later, *id.* at 866-67, the City engaged in surface bargaining when it scheduled meetings with its unions *after* the City had already resolved to file its petition.

Employing the meaning of “good faith” under the NLRA, Judge Graves held that the duty to bargain in good faith under § 1113 also demands “conduct indicating an honest purpose to arrive at an agreement through the bargaining process.” *Matter of Walway Co.*, 69 B.R. 967, 973 (Bankr. E.D. Mich. 1987) (citing *Cap Santa Vue Inc. v. NLRB*, 424 F.2d 883 (D.C. Cir. 1970)). Accordingly, courts recognize that a “non-negotiable, take-it-or-leave-it proposal” by a debtor fails to comply with the duty to negotiate in good faith required by §§ 1113 and 1114. *In re Delta Air Lines*, 342 B.R. 685, 697 (Bankr. S.D.N.Y. 2006). To the extent that cases decided under §§ 1113 and 1114 apply the duty to bargain in good faith under the NLRA, they may inform this Court’s analysis. But to the extent they allow the debtor more flexibility, they are inapposite because §§ 1113 and 1114 govern bargaining during, as opposed to before, bankruptcy, and accordingly delineate a detailed procedure “designed to encourage such a negotiated voluntary modification.” *In re Maxwell Newspapers, Inc.*, 981 F.2d 85, 90 (2d Cir. 1992) (citation omitted). In contrast, as one court analyzing the legislative history of § 109(c) explained, “Congress consciously sought to limit accessibility to the bankruptcy court by municipalities” by insuring “that the creditors have an opportunity to negotiate concerning a plan

on a level playing field with the debtor before their rights are further impaired” by the automatic stay and the resultant weakening of the creditors’ “negotiating posture” during bankruptcy. *In re Cottonwood Water & Sanitation Dist.*, 138 B.R. 973, 979 (Bankr. D. Colo. 1992).

**c. *Bildisco* And Pre-*Bildisco* Legislative History Further Confirm That Vested Pension Benefits Are Sacrosanct**

A more robust duty of good faith applies under § 109(c) than that announced in *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984). The *Bildisco* Court harmonized the duty of good faith bargaining from the NLRA, a non-bankruptcy statute, with the countervailing “goal of Chapter 11” to achieve a successful reorganization via, in part, the rejection of executory contracts. 465 U.S. at 527. Section 109(c), in contrast, contains an explicit duty of good faith. Moreover, § 109(c) serves a gatekeeping function immune from the pressures of the rest of the Code. Unless § 109(c) is satisfied, successful municipal reorganization is not a goal to be balanced against good faith negotiation in the first place.

When, prior to *Bildisco*, Congress first inserted the duty to negotiate in good faith into the chapter 9 eligibility requirements, the Senate Conference Report focused on the provision, now codified at 11 U.S.C. § 903, preserving the authority of state law to control municipal powers, including expenditures. While the report suggested on the one hand that state labor law, like the NLRA as interpreted by *Bildisco*, would not prevent the rejection of all CBAs in bankruptcy, it also confirmed that state law nevertheless continues to protect pension rights from discharge under the Bankruptcy Code as AFSCME has argued. See **Exhibit A** attached hereto (Senate Conference Report on H.R. 10624); AFSCME Supp. Br. On Elig. at 1-4 (Docket No. 1467).

In the report, Senator Javits (R-NY) sought and obtained from Senator Burdick (D-ND) confirmation that “the right of an individual pensioner drawing his pension . . . will not be subjected to the Bankruptcy Act and one whose pension is vested” by a state constitution will not

be “affected by the bankruptcy” of a city. Exhibit A at S4376-77. Under the New York constitutional provision at issue, like the Pensions Clause in the Michigan Constitution, pension benefits “shall not be diminished or impaired.” *Id.* at S4377. Consistent with AFSCME’s argument that such constitutional pension rights receive absolute protection akin to state property rights in bankruptcy, *see* Docket No. 1467 at 2-3, Senator Burdick’s reply left no doubt that due process “preserves the *rights* of a person which have become vested in his pension plan” despite a municipal bankruptcy, and a state constitutional right to vested pension benefits “would be, at the very least, a paramount claim on any assets of the bankruptcy.” Exhibit A at S4377.

These were not theoretical questions for Senator Javits, a former bankruptcy lawyer, and his constituents. “The magnitude” of New York City’s “severe economic problems” in 1976 “prompted Congress to expedite the consideration of” the amended municipal bankruptcy statute in 1976, *Cottonwood*, 138 B.R. at 977-78 – less than a year after President Ford infamously refused New York federal financial assistance. Senator Javits was nevertheless confident that the report would “give great assurance to many employees who have served faithfully and thought they had something until they ran into the present financial problems.” Exhibit A at S4377. That same assurance should extend to AFSCME Retirees who have served Detroit faithfully.

## II. THE COURT SHOULD INCLUDE IN WHATEVER ORDER IT ISSUES ON ELIBILITY A CERTIFICATION FOR DIRECT APPEAL

This Court should follow the lead of the BAP in the *Vallejo* case and certify its order on eligibility to the court of appeals in the text of the order itself. *See* 408 B.R. at 285 n.3.

The statute governing appeals of bankruptcy court orders provides that a bankruptcy court “shall” certify an order for direct appeal to the court of appeals if the bankruptcy court determines that the order meets any one of the following conditions: (1) it “involves a matter of public importance”; (2) it involves a question of law for which there is no “controlling decision”

of the court of appeals or the Supreme Court; (3) it involves “a question of law requiring resolution of conflicting decisions”; or (4) an immediate appeal “may materially advance the progress of the case or the proceeding in which the appeal is taken.” 28 U.S.C. § 158(d)(2). The statute’s use of “[t]he mandatory ‘shall’ . . . normally creates an obligation impervious to judicial discretion.” *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998).

Whatever decision this Court reaches on eligibility, at least two independently sufficient conditions for certification will be satisfied. First, whether Detroit, by far the largest and most economically significant city ever to file for chapter 9 bankruptcy, is eligible to proceed under chapter 9 undeniably is a matter of the utmost “public importance.” Indeed, no matter how large and economically significant a municipality may be, a bankruptcy court’s resolution of eligibility in a chapter 9 case is by its very nature a watershed event in that case which—in fairness to all parties involved—cries out for the most expeditious appellate review possible. The large number of bankruptcy court decisions addressing the issue of chapter 9 eligibility further evidences its importance. *See In re Ransom*, 380 B.R. 809, 812 (9th Cir. BAP 2007).

Second, there is no Sixth Circuit or Supreme Court decision that even addresses, much less “control[s]” the disposition of, the many pure questions of law that have been raised by the objectors to the City’s eligibility, including but not limited to the constitutionality of chapter 9 under either the Contracts Clause of the Federal Constitution or under federalism in the wake of *Asbury Park* and *New York* and as amended to prohibit state municipal debt adjustment schemes since 1946; the constitutionality of PA 436 under the Pensions Clause and/or home rule provisions of the Michigan Constitution; and the meaning of the statutory eligibility factors from § 109 of the Code, including the “good faith” negotiations issue addressed in Part I above. *See Weber v. U.S. Trustee*, 484 F.3d 154, 158 (2d Cir. 2007) (Congress’ intent in providing for direct



appeals under 28 U.S.C. § 158(d)(2) was to “facilitate” the “provision of guidance” by the courts of appeals “on pure questions of law” in order to combat “widespread unhappiness at the paucity of settled bankruptcy-law precedent”).

No matter how this Court rules on the eligibility issue, AFSCME is hard-pressed to conceive of any valid objection that the City might have to certification of the Court’s eligibility order. If the Court rules in favor of eligibility, chapter 9 stands in the way of a stay of that ruling pending appeal, *see* 11 U.S.C. § 921(e), and the City will no doubt endeavor to make good on its publicly stated intention of submitting a plan for this Court’s approval by the end of the year even if the Sixth Circuit were to authorize a direct appeal upon this Court’s certification (as the Sixth Circuit would be required to do under 28 U.S.C. § 158(d)(2) for such a direct appeal to proceed). Conversely, if this Court’s ruling is against eligibility, the City presumably would have an affirmative interest in expediting the appellate process to the greatest extent possible.

**III. CONCLUSION**

For the foregoing reasons, this Court should apply NLRA law on the meaning of good faith negotiations to hold that the City is not eligible for relief under § 109(c), and should include in whatever order it issues on eligibility a certification for direct appeal to the Sixth Circuit.

Dated: November 13, 2013

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*Counsel to AFSCME Michigan Council 25 and Sub-Chapter 98, City of Detroit Retirees*

# EXHIBIT A

BILL	DATE	PAGE(S)
H. R. 10624	March 25, 1976	S4376-4378

ACTION:

**Bankruptcy:** Senate agreed to the conference report (in disagreement) on H.R. 10624, adding a new chapter to the Bankruptcy Act to provide for the adjustment of debts of major municipalities. Senate then agreed to the House amendment to the Senate amendment to the bill, thus clearing the measure for the White House.

Pages 54376-54378

**AMENDMENT OF THE BANKRUPTCY  
ACT—CONFERENCE REPORT**

**Mr. BURDICK.** Mr. President, I submit a report of the committee of conference on H.R. 10624, and ask for its immediate consideration.

The **PRESIDING OFFICER** (Mr. Ford). The report will be stated by title.

The second assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House of Representatives to the bill (H.R. 10624) to revise chapter IX of the Bankruptcy Act, having met, after full and free conference, have been unable to agree.

The **PRESIDING OFFICER.** Without objection, the Senate will proceed to the consideration of the conference report.

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the RECORD of House of Representatives of March 25, 1976.)

**Mr. BURDICK.** Mr. President, I move that the Senate agree to the conference report in disagreement.

The **PRESIDING OFFICER.** The question is on the motion.

**Mr. JAVITS.** Mr. President, I wish to be recognized.

Mr. President, I am not in opposition to this report at all. But there is a critically important question which the Senator and I have straightened out between us, and it should occur in the record before the report is acted on, as it is a question of interpretation of the report.

Mr. President, one of the major questions raised in this report is what happens to the governmental powers of States and municipalities in a bankruptcy. The doctrine of preemption and exclusivity in bankruptcy is very clear, but the doctrine also runs into the other doctrine of the tenth amendment to the Constitution respecting the integrity of the States and the sovereignty of the States in the way in which our Government is organized.

Therefore, specifically, I ask my colleague, the manager of the conference report, respecting the interpretation of section 83 which seeks to reserve State power to control governmental functions of political subdivisions. That is its title. This question may relate to other functions of the State.

But I am going to confine it to one function which will be illustrative and also make the legislative history for the particular function I have in mind. The question is this:

Assume that this bankruptcy provision, which we are adopting tonight, is availed of. Then what happens to the individual pensioner of the subdivision of a State or of a State itself, or the one whose rights have been vested for a pension under State law or appropriate local law? May that pension or the vested right to a pension be dealt with in this bankruptcy proceeding in such a way as to change or modify it substantively?

In my State, for example, the constitution in article V, section 7 states as follows:

After July 1, 1940, membership in my pension or retirement system of the State or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

That is the State constitution.

The section in question seeks, I believe—of course, the Senator from North Dakota will give us the answer—to preserve that right by its language which reads as follows:

Nothing contained in this chapter shall be construed to limit or impair the power of any State to control by legislation or otherwise any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures thereof, provided, however, that no State law prescribing a method of compensation of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition and no judgment shall be ordered under such State law which will bind the creditor to such composition without his consent.

The meaning, it seems to me, clearly, then, of that section—and that is what I would like the confirmation of the Senator about—will preserve the right of an individual pensioner drawing his pension so that it will not be subjected to the Bankruptcy Act and one whose pension is vested in terms of the State law or State Constitution not being affected by the bankruptcy of that particular governmental entity.

Mr. BURDICK. The due process clause of the U.S. Constitution, of course, preserves the rights of a person which have become vested in his pension plan, if the pension plan is fully executed. Under New York law it would be, at the very least, a paramount claim on any assets of the bankruptcy.

Mr. JAVITS. I thank my colleague very much. His answer will give great assurance to many employees who have served faithfully and thought they had something until they ran into the present financial problems.

I thank him further.

Mr. BURDICK. Mr. President, I move that the Senate agree to the conference report in disagreement.

The PRESIDING OFFICER. The question is on the motion of the Senator from North Dakota.

The motion was agreed to.

Mr. CURTIS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. JAVITS. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. HRUSKA. Will the distinguished Senator from North Dakota yield for a question about the intent of a portion of the legislation?

Mr. BURDICK. I will yield to the question from the distinguished Senator from Nebraska.

Mr. HRUSKA. The conference report and statement of managers are silent on the rejection of a collective bargaining agreement by a municipality. Could you explain the intent of the legislation in that regard?

Mr. BURDICK. Yes. The Senate report in its version of the bill, S. 2597, makes this clear on page 15. The House

report has similar language on pages 8-9. The bill provides in section 82(b) (1) that the court shall have the power to permit the rejection of executory contracts by the petitioner. It is contemplated that all continuing obligations of the petitioner including collective bargaining agreements will be considered executory contracts.

Mr. HRUSKA. But, does not the House report imply that local laws, such as those governing the negotiation and renegotiation of collective bargaining laws, might apply in such a case?

Mr. BURDICK. I am familiar with the language to which you refer. To use an example, it is my understanding that some States have laws which require the negotiation or renegotiation in good faith of all collective bargaining agreements and that during the period of negotiation and renegotiation the employees must remain on their jobs at the same salaries, conditions and terms. It is the intent of this legislation that any such laws should not be allowed to frustrate the purposes of the bankruptcy proceedings.

Mr. HRUSKA. Would these statutes be given no weight because of the bankruptcy and supremacy clauses of the Constitution?

Mr. BURDICK. I think that is certainly the case but it should be made clear that notwithstanding the constitutional considerations it is the intent of the legislation that if a State has such laws they would not apply to the petitioner negotiating or renegotiating any collective bargaining agreement during the bankruptcy proceedings.

Mr. HRUSKA. Does the distinguished Senator read section 83 of the chapter to limit section 82(b) (1)? Section 83 is the section which states that no provision of this chapter shall limit a State in the exercise of its political or governmental powers. Could a State labor law passed before the enactment of this bill and which prohibits the rejection of a collective bargaining agreement of a municipality as an unfair labor practice be deemed to supersede the power of rejection in section 82(b) (1)?

Mr. BURDICK. Definitely not. The power to reject executory contracts in section 82(b) (1) is an integral part of the legislation and is not in any way limited by section 83. The latter section is merely being carried over in this bill in deference to the Supreme Court's decisions in *Ashton v. Cameron Water Improvement District No. 1*, 298 U.S. 513 (1936) and *Bekins v. United States*, 304 U.S. 27 (1938) and is intended to have no new application because of this bill and to be construed as narrowly as possible.

Mr. HRUSKA. It is my understanding that there are some recent cases which hold that in chapter XI cases a debtor in possession may reject collective bargaining agreements on the grounds that there is no conflict in the bankruptcy and labor laws because the debtor in possession is a new entity and not a party to the collective bargaining agreement. Would the holdings of those cases limit the power of the petitioner in chapter IX to reject any contract or collective bargaining

Mr. BURDICK. No. In the context of chapter IX the petitioner is as much a new entity as the debtor in possession in chapter XI. The bill recognizes this in section 85(h) where the avoiding powers are given to the petitioner to set aside its own previous transactions. In any case where the labor laws conflict with the powers of the petitioner under this Act, it is the intent of the legislation that the Federal, State, and local labor laws should be overridden.

Mr. HRUSKA. As a practical matter do you not expect that the petitioning municipality will renegotiate most rejected collective bargaining agreements much in the same manner of its pre-bankruptcy experience?

Mr. BURDICK. Yes, but I want to make it clear that it will not be obligated to follow State or local law in that regard.

Mr. HRUSKA. Thank you for clarifying this matter.

Mr. BURDICK. Will the distinguished Senator from Nebraska answer a question about the intent of another portion of the legislation?

Mr. HRUSKA. Yes, I would be pleased to do so.

Mr. BURDICK. The Senate version of the legislation, S. 2597, required the court to find as a condition to confirmation that "it appears from petitioner's current and projected revenues and expenditures that the budget of the petitioner will be in balance within a reasonable time after adoption of the plan." What is the intent of the legislation in this regard?

Mr. HRUSKA. The balanced budget requirement as an enumerated requirement was deleted in conference between the House and Senate on the bill. This was done upon the premise that the fair, equitable and feasible requirement which is enumerated requirement section 94(b) (1) will encompass the balanced budget requirement. The court will be required to consider whether the petitioner's plan will balance its budget within a reasonable time after adoption of the plan as an essential part of its finding that the plan is fair, equitable, and feasible.

Mr. BURDICK. The House bill did not contain such a requirement and the House report at pages 32-33 contained citations to cases interpreting the "fair, equitable and feasible requirement." Is it the intent of the legislation to limit the court to those cases in applying the balanced budget requirement of the legislation?

Mr. HRUSKA. No. The intent is that the court should make the determination on a case-by-case basis and not be limited by any prior case law. The court probably will be required to have the benefit of expert testimony as to the projected balance or imbalance of petitioner's budget, based upon generally accepted accounting principles.

Mr. BURDICK. The distinguished Senator will remember that the Senate receded from its position which would have permitted the court to enforce the conditions attached to certificates of indebtedness as in section 805(g) of the Senate bill. What is the intent of the legislation with respect to enforcement

of conditions attached to certificates of indebtedness?

Mr. HRUSKA. It is contemplated that in the usual case the court as a condition to the issuance of certificates of indebtedness under section 82(b)(2) will require that the petitioner give consent pursuant to section 82(c) to the enforcement of all conditions attached to the certificate of indebtedness. The consent of the petitioner as provided in section 82(c) may be given prospectively.

Mr. BURDICK. I thank the Senator from Nebraska for clarifying these portions of the legislation.

Mr. President, I move that the Senate concur in the House amendments to the Senate amendments to the bill H.R. 10624.

The PRESIDING OFFICER. The question is on the motion of the Senator from North Dakota.

The motion was agreed to.

Mr. BURDICK. That is all.

#### PROGRAM

Mr. LONG. Mr. President, on behalf of our colleague, the Senator from West Virginia (Mr. ROBERT C. BYRD), I wish to remind Senators that the Senate will meet at 9 a.m. and will first take up the toxic substances bill, S. 3149, under a time limit. Then the Senate will take up H.R. 9721, the Inter-American Development Bank bill, under a time limit. There will be rollcall votes during the day.

#### S. 3065—AUTHORIZATION FOR TECHNICAL AND CLERICAL CORRECTIONS

Mr. LONG. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 3065, the Federal Election Campaign Act amendment of 1976, and that the bill as passed be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADJOURNMENT TO 9 A.M. TOMORROW

Mr. LONG. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9 a.m. tomorrow.

The motion was agreed to; and at 6:47 p.m. the Senate adjourned until tomorrow, Friday, March 26, 1976, at 9 a.m.

#### WITHDRAWAL

Executive nomination withdrawn from the Senate March 25, 1976:

Albert C. Hall, of Maryland, to be an Assistant Secretary of the Air Force, vice Walter B. LaBerge, resigned, which was sent to the Senate on March 3, 1976.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

<b>Design- ation</b>	<b>Docket #</b>	<b>Filing Date</b>	<b>Description</b>
10.	495	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by creditor David Sole (Attachments: Index of Exhibits; Exhibit 1; Exhibit 2)

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

**STATE OF MICHIGAN'S  
BRIEF REGARDING "GOOD FAITH NEGOTIATIONS"**

The State of Michigan, through its undersigned counsel, submits this brief pursuant to the Court's Notice Regarding Briefing on "Good Faith Negotiations." [Dkt. #1353].

**INTRODUCTION**

The Court invited parties to file briefs on: (1) whether the case law that addresses good faith negotiations under 11 U.S.C. §§ 1113 and 1114, and in labor law, should apply when determining eligibility under 11 U.S.C. § 109(c), and (2) if so, how that case law suggests that the issue should be resolved in this case.

As discussed more fully below: The "good faith negotiations" standards developed by case law under §§ 1113 and 1114 and labor law do not apply in determining whether a debtor has complied with § 109(c)(5)(B) for several reasons. First, although it has had numerous opportunities to do so, Congress elected not to make § 1113 and 1114 applicable to Chapter 9 cases. Second, §§ 1113 and 1114 set out requirements for a Chapter 11 corporate debtor's postpetition rejection or modification of collective bargaining agreements and retiree health benefits, while § 109(c)(5)(B) is one of four alternative prepetition methods by which a



municipality may qualify for Chapter 9<sup>1</sup>. Standards and procedures developed for postpetition rejection of collective bargaining agreements and modification of retiree benefits – which relate only to *certain* types of creditors – should not be applied to a prepetition method for negotiating claims of *all* types of creditors. Third, even if § 109(c)(5)(B) could be treated as tantamount to a rejection of a collective bargaining agreement, the appropriate standard to apply would be the standard set out in *National Labor Relations Board v. Bildisco & Bildisco*, 465 U.S. 513 (1983), not the procedures set out in § 1113. Finally, compliance with § 109(c)(5)(B) is determined in accordance with federal law and thus, collective bargaining standards under state labor law should not be applied to the evaluation of compliance with § 109(c)(5)(B). None of the courts that have considered the issue have applied labor laws to § 109(c)(5)(B) but rather, have all applied more general standards of “good faith.”

Applying the good faith standards that have been developed under case law specifically addressing § 109(c)(5)(B), the City has fully complied with the “good faith negotiation” requirement of § 109(c)(5)(B).

## ARGUMENT

### **I. Standards developed by case law under §§ 1113 and 1114 and labor law do not apply in determining whether a debtor has complied with § 109(c)(5)(b).**

#### **A. Sections 1113 and 1114 are inapplicable to Chapter 9.**

Section 901 designates those sections of other chapters of the Bankruptcy Code that are applicable in a Chapter 9 case. Sections 1113 and 1114 are not designated in Section 901 and

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<sup>1</sup> Section 109(c)(5) is written in the disjunctive, meaning that a debtor proves its eligibility by demonstrating that it complied with just one of the four alternatives set out in § 109(c)(5). *See, In re Valley Health System*, 383 B.R. 156, 162 (Bankr. C.D. Cal. 2008). Thus, a debtor is not necessarily required to comply with the “good faith negotiations” provisions of § 109(c)(5)(B) provided that it demonstrates compliance with an alternative provision, e.g., that “negotiation is impracticable” under § 109(c)(5)(C). Further, a debtor may qualify under § 109(c)(5)(C) by showing that negotiations were impracticable without first having engaged in prepetition good faith negotiations with its creditors. *Valley Health System*, 383 B.R. at 163.



thus, under the plain language of §901(a), §§ 1113 and 1114 are not applicable in a Chapter 9 case in any context. 11 U.S.C. § 901(a).

Moreover, it is clear from the legislative history of §§ 1113 and 1114 that Congress did not intend these sections to apply in a Chapter 9 case. In *Bildisco*, the Supreme Court held that a Chapter 11 debtor could modify or reject collective bargaining agreements pursuant to § 365, that collective bargaining agreements were not enforceable in bankruptcy prior to rejection, and because collective bargaining agreements are unenforceable, a debtor is not required to comply with the collective bargaining provisions of § 8(d) of the National Labor Relations Act (NLRA) prior to rejection. *Bildisco*, 465 U.S. at 522, 533. In response to the *Bildisco* holding, in 1984, Congress enacted § 1113 pursuant to the Bankruptcy Amendments and Federal Judgeship Act of 1984. *See, In re County of Orange*, 179 B.R. 177, n. 14 (Bankr. C.D. Cal. 1995); Pub. L. No. 98-353 § 541(a) (1984). Section 1114 was added to the Bankruptcy Code by the Retiree Benefits Bankruptcy Protection Act of 1988. Pub. L. No. 100-334, § 2 (1988). Congress did not, however, make either § 1113 or § 1114 applicable to Chapter 9 at the times that these sections were respectively added to the Bankruptcy Code, nor subsequently, even though it had opportunities to do so. *See, County of Orange*, 179 B.R. at 183 (“The legislative history of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 103d Cong., 2d Sess., 108 Stat. 4106, indicates that Congress contemplated enacting a ‘§ 1113-like’ statute for Chapter 9... This section would have forced a Chapter 9 debtor to comply with its collective bargaining agreement; however, it was never enacted into law.”); *see also* the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No 109-8 (2005) (revised § 901(a) to make §§ 555, 556, 559, 560, 561, 562 and 1123(d) applicable in Chapter 9, yet did not add §§ 1113 and 1114).

This legislative history evidences Congress' intention not to make §§ 1113 and 1114 applicable to any power granted to, or action taken by, a Chapter 9 debtor in any context.

**B. Standards and procedures developed for postpetition rejection of collective bargaining agreements and modification of retiree benefits by a Chapter 11 corporate debtor should not be applied to eligibility standards in a Chapter 9 case.**

Before a Chapter 11 debtor can seek postpetition rejection or modification of a collective bargaining agreement or retiree benefits, the procedures set out in §§ 1113 and 1114 require a Chapter 11 corporate debtor to, among other things, make a proposal to the authorized representative of the effected employees or retirees and to provide the representative with such information as is necessary for the representative to evaluate the proposal 11 U.S.C. § 1113(b)(1)(A) and (B); 11 U.S.C. § 1114(f)(1)(A) and (B), and “meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications” 11 U.S.C. § 1113(b)(2); 11 U.S.C. § 1114(f)(2). The authorized representative may refuse to accept the proposal only upon a showing of “good cause.” 11 U.S.C. § 1113(c)(2); 11 U.S.C. § 1114(g)(2). However, in recognition of a municipality’s unique character as a creation of a state, Congress chose not to impose these strict procedural requirements on a Chapter 9 debtor before the debtor may seek postpetition rejection or modification. *In re City of Stockton*, 478 B.R. 8, 23 (Bankr. E.D. Cal. 2012) (in omitting §§ 1113 and 1114 from § 901(a), Congress “[took] care not to overstep the Tenth Amendment constraint”); *In re City of Desert Hot Springs*, 399 F.3d 782, 789 (9th Cir. 2003) (“Congress, in an effort to avoid possible constitutional problems, designed Chapter 9 of the bankruptcy code in a manner much different from the other chapters. Many of the protections afforded to creditors in the other chapters are missing in chapter 9.”).

Because the negotiation procedures of §§ 1113 and 1114 cannot be imposed on a Chapter 9 debtor even when the debtor seeks postpetition rejection or modification, it is axiomatic that these negotiation procedures cannot be imposed on a Chapter 9 debtor's prepetition negotiations with its creditors under § 109(c)(5)(B). In fact, no court has ever applied the specific §§ 1113 and 1114 procedures to its evaluation of a Chapter 9 debtor's compliance with the good faith negotiations requirements of § 109(c)(5)(B) but instead, apply more general standards of good faith. *See, In re City of Vallejo*, 408 B.R. 280 (9th Cir. BAP 2009); *In re Pierce County Housing Authority*, 414 B.R. 702 (Bankr. W.D. Wash. 2009); *In re Ellicott School Building Authority*, 150 B.R. 261 (Bankr. D. Colo. 1992); *In re Cottonwood Water and Sanitation District*, 138 B.R. 973 (Bankr. D. Colo. 1992); *In re Sullivan County Regional Refuse Disposal District*, 165 B.R. 60 (Bankr. D. N.H. 1994); *In re City of Stockton*, 493 B.R. 772 (Bankr. E.D. Cal. 2013).

Further, even in Chapter 11 cases, §§ 1113 and 1114, by their express terms, apply only to collective bargaining agreements and retiree benefits. Since § 109(c)(5)(B) requires the Chapter 9 debtor to negotiate with all of its creditors – of all types, not just represented employees and retirees – regarding impairment of their claims, it would be illogical to impose the collective bargaining – type procedures of §§ 1113 and 1114 on § 109(c)(5)(B).

**C. If § 109(c)(5)(b) is treated as tantamount to a rejection of a collective bargaining agreement, *Bildisco* is the appropriate standard to apply.**

In *Bildisco*, the Supreme Court held that collective bargaining agreements are subject to rejection under § 365. Congress enacted § 1113 to overturn application of *Bildisco* to Chapter 11 cases and provide specific procedures for the rejection of collective bargaining agreements in Chapter 11 cases. However, because § 1113 is inapplicable in a Chapter 9 case, *Bildisco* still applies to rejection of collective bargaining agreements in Chapter 9. *County of Orange*, 179

B.R. at 183; *Stockton*, 478 B.R. at 23; *In re City of Vallejo*, 432 B.R. 262, 270-272 (E.D. Cal. 2010) affirming *In re City of Vallejo*, 403 B.R. 72, 77-78 (Bankr. E.D. Cal. 2009).

Under *Bildisco*, a Chapter 9 debtor may reject a collective bargaining agreement “if the debtor can show that the collective-bargaining agreement burdens the estate, and that after careful scrutiny, the equities balance in favor of rejecting the labor contract.” *Bildisco*, 465 U.S. at 526. *Bildisco* further requires that before authorizing rejection of a collective bargaining agreement “the Bankruptcy Court should be persuaded that reasonable efforts to negotiate a voluntary modification have been made and are not likely to produce a prompt and satisfactory solution.” The Court further held that once a bankruptcy petition is filed, “a collective bargaining agreement is no longer immediately enforceable, and may never be enforceable again,” and therefore, a debtor “need not comply with the [collective bargaining] provisions of § 8(d) [of the NLRA, 29 U.S.C. § 158(d)]<sup>2</sup> prior to seeking the Bankruptcy Court’s permission to reject the agreement.”

Thus, if § 109(c)(5)(B) is treated as tantamount to the rejection of a collective bargaining agreement, the standards set out in *Bildisco* apply. Under *Bildisco*, a Chapter 9 debtor is required only to make “reasonable efforts to negotiate a voluntary modification” but is not required to engage in specific collective bargaining procedures developed under §§ 1113 and 1114 or labor laws.

**D. Compliance with § 109(c)(5)(b) is determined in accordance with federal law.**

Although § 109(c)(2) requires application of state law, “[a]ll other eligibility questions under § 109(c) -- ... [including] § 109(c)(5) creditor negotiation – and the good faith question under § 921(c) are federal questions based on, and created by, the federal Bankruptcy Code and

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<sup>2</sup> The procedures of § 1113 and 1114 closely resemble the provisions of § 8(d) of the NLRA.

subject to a federal rule of decision ...” *In re City of Stockton*, 475 B.R. 720, 729 (Bankr. E.D. Cal. 2012). Thus, rather than applying standards developed under labor laws<sup>3</sup>, the Court should apply more general standards of good faith as other courts addressing the issue have done. *See, Vallejo, e.g.*, 408 B.R. 280; *Pierce County Housing Authority*, 414 B.R. 702; *Ellicott School Building Authority*, 150 B.R. 261; *City of Stockton*, 493 B.R. 772. None of these cases discussed, nor applied, labor law to determining whether the debtor engaged in good faith negotiations.

**II. The City has fully complied with the “good faith negotiation” requirement of § 109(c)(5)(b).**

Applying the appropriate good faith standards that have been developed under case law specifically addressing § 109(c)(5)(B), as fully discussed in the City’s *Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Dkt. #14] (the “Memorandum”), the City has fully complied with the “good faith negotiation” requirement of § 109(c)(5)(B).

“Prior to the commencement of this Chapter 9 proceeding, the City engaged in extensive good faith negotiations with various of its creditor constituencies.” Memorandum, p. 54. The City convened a meeting on June 14, 2013 (the “June 14 Meeting”) “which was attended by approximately 150 representatives of the City’s bondholders, Bond Insurers, unions, pensioners and others.” *Id.*, p. 54. The City presented a proposal (the “June 14 Creditor Proposal”) “for the purpose of engaging its creditors with respect to a consensual restructuring of the City’s various classes of debt.” *Id.*, p. 54. Subsequent to the June 14 Meeting, the City held several separate meetings with various of its creditor constituencies. *Id.*, pp. 55-59.

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<sup>3</sup> The NLRA applies only to private employers, not public employers. *Associated Builders and Contractors, Inc. v. City of Seward*, 966 F.2d 492, 497 (9th Cir. 1992); *Crilly v. Southeastern Pennsylvania Transportation Authority*, 529 F.2d 1355, 1357 (3rd Cir. 1976).



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re  CITY OF DETROIT, MICHIGAN,  Debtor.	No. 13-53846  Chapter 9  HON. STEVEN W. RHODES
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**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
11.	497	8/19/2013	Objection filed by interested party Detroit Retired City Employees Association, Shirley V. Lightsey, Retired Detroit Police and Fire Fighters Association, Donald Taylor, Creditors Shirley V. Lightsey, Donald Taylor (Attachments: Index of Exhibits; Exhibit A – Declaration of Shirley V. Lightsey in Support of Consolidated Objection of the Retiree Association Parties to Eligibility; Exhibit B – Declaration of Donald Taylor in Support of Consolidated Objection of the Retiree Association Parties to Eligibility)

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION (DETROIT)

In re:

CITY OF DETROIT, MICHIGAN

Debtor.

Chapter 9

Case No. 13-53846-swr

Hon. Stephen W. Rhodes

**BRIEF OF THE RETIREE ASSOCIATION PARTIES  
ON GOOD FAITH ISSUES**

The Retired Detroit Police & Fire Fighters Association (“RDPFFA”), Donald Taylor, individually, and as President of the RDPFFA, and the Detroit Retired City Employees Association (“DRCEA”) and Shirley V. Lightsey, individually, and as President of the DRCEA (collectively “Retiree Association Parties”), through their counsel, Lippitt O’Keefe, PLLC and Silverman & Morris, P.L.L.C., file this brief on good-faith issues in connection with eligibility issues pursuant to 11 U.S.C. § 109(c).

1. The Retiree Association Parties agree with briefs already filed by objecting parties and anticipate that they will agree with the arguments made by other parties who disputed the City's eligibility under § 109(c). In an effort to conserve resources, and because they anticipate that other objecting parties will file persuasive briefs, the Retiree Association Parties have not prepared their own comprehensive brief on this topic.





2. The evidence showed, as the Retiree Association Parties discussed in their summation, that the City failed to negotiate with significant classes or groups of creditors, including in particular the City's retired employees. Those retirees were represented by the DRCEA (as to general retirees) and the RDPFFA (as to police and fire retirees). Negotiations with the DRCEA and RDPFFA were possible.

3. Section 109(c) of the Bankruptcy Code requires such negotiations for important reasons. Those reasons include a respect for local democracy and a desire that chapter 9 be a last resort. Chapter 9 should not be used, as the City is attempting to use it, as a complete substitute for the resolution of the City's financial challenges under state law when negotiations outside of chapter 9 are not first attempted in good faith.

4. The constitutionality of chapter 9 has been called into question. Whatever the resolution of that constitutional challenge, chapter 9 is nevertheless controversial for subjecting a subdivision of a state to a degree of federal control. This case is controversial for the additional reason that the positions taken by the Emergency Manager conflict with the Pensions Clause of the Michigan Constitution. Congress, in its wisdom, imposed upon a municipality the eligibility requirements of § 109(c). The controversy generated by this case heightens the need for compliance with those requirements.

5. The City's rush to chapter 9, under the Emergency Manager whose appointment displaced local democracy, bypassed the process of negotiation mandated under § 109(c). Although the City has argued that it would be disruptive for the case to

be dismissed, § 109(c) mandates that the case be dismissed. The requirement that the City first negotiate with its creditors is too important to be sacrificed to expediency. The requirement of good-faith negotiation was not met in this case no matter what definition of “good faith” is applied.

**WHEREFORE**, the Retiree Association Parties request that the Court dismiss the case so that the City will be required to engage in good-faith negotiations should it desire to seek relief under chapter 9.

Respectfully submitted,

**SILVERMAN & MORRIS, P.L.L.C.**

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UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF MICHIGAN  
 SOUTHERN DIVISION

In re  CITY OF DETROIT, MICHIGAN,  Debtor.	No. 13-53846  Chapter 9  HON. STEVEN W. RHODES
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12.	502	8/19/2013	Objection to Eligibility to Chapter 9 Petition filed by interested parties Detroit Retired City Employees Associations, Shirley V. Lightsey, Retired Detroit Police and Fire Fighters Association, Donald Taylor, Creditors Shirley V. Lightsey, Donald Taylor (Attachments: Index of Exhibits; Exhibit A – Declaration of Shirley V. Lightsey; Exhibit B – Declaration of Donald Taylor)

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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In re : Chapter 9
  
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CITY OF DETROIT, MICHIGAN, : Case No. 13-53846
  
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Debtor. : Hon. Steven W. Rhodes
  
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**DEBTOR’S MEMORANDUM REGARDING GOOD FAITH UNDER 11 U.S.C. § 109(c)(5)(B), LABOR LAW, AND 11 U.S.C. §§ 1113, 1114**

Under one of 11 U.S.C. § 109(c)’s options, the City of Detroit (the “City”) is eligible for chapter 9 if it “negotiated in good faith with creditors” but “failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that [the City] intends to impair under a [chapter 9] plan.”

11 U.S.C. § 109(c)(5)(B).<sup>1</sup> The objectors claim that prepetition negotiations should mirror those that precede the modification of labor agreements or retiree benefits under 11 U.S.C. §§ 1113 and 1114. See, e.g., 10/23 Tr. 141:22–25. This claim fails. As explained below, there is no indication that Congress ever meant for courts to consider labor law or sections 1113 and 1114 when evaluating good faith under chapter 9, nor would it have made sense for Congress to do so given the

<sup>1</sup> As the City’s other briefs explain, it is also eligible because negotiations were “impracticable.” 11 U.S.C. § 109(c)(5)(C).



significant differences between these bargaining contexts. See In re City of Stockton, 493 B.R. 772, 784 (Bankr. E.D. Cal. 2013) (“As these various versions of good faith . . . arise in different contexts, they may have different meanings.”). Moreover, even if chapter 11 cases applied, the City’s efforts suffice.

**I. Collective Bargaining Differs Dramatically from, and Provides No Guidance for, Prepetition Negotiations Under Chapter 9.**

“Collective bargaining . . . lies at the core of our national labor policy.” Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 79 (1977). As a result, courts scrutinize employers’ negotiating efforts in labor bargaining carefully. See, e.g., Pleasantview Nursing Home, Inc. v. NLRB, 351 F.3d 747, 757–59 (6th Cir. 2003) (finding good faith after evaluating the negotiation process).

Cases interpreting good faith in labor law do not apply here. Prepetition negotiations are a far cry from the heavily-stylized two-party negotiations that occur in a labor bargaining context. Collective bargaining generally involves a small number of known, represented parties and a considerable amount of time. See Pleasantview, 351 F.3d at 750–51, 755–56. Section 109(c)(5)(B) negotiations, on the other hand, encompass negotiations with *all* of a municipality’s creditors, many of whom have no experience with or capacity for labor-style bargaining (such as bondholders) or no group-wide representative outside of the bankruptcy context (such as retirees), see, e.g., 11/5 Tr. 11:12–20. In addition, given the municipality’s financial situation, the negotiations often must take place quickly,

as was the case here. See, e.g., 10/28 Tr. 32:18–34:6. These differences require a flexibility foreign to formal labor bargaining. Indeed, even in the limited, two-party, chapter 11 labor bargaining context, Congress “did not intend bankruptcy courts to interpret” the “‘good faith’ element of § 1113(b)(2)” (discussed further below) under “labor law precedent” given the exigencies of bankruptcy. In re Kentucky Truck Sales, 52 B.R. 797, 801 (Bankr. W.D. Ky. 1985).

Section 109(c)(5)(B) also serves a different purpose than collective bargaining. Finding eligibility does not *resolve* disputes—it merely opens the door to further proceedings. Chapter 9 also does not necessarily favor prepetition dispute resolution; potential municipal debtors need not even engage in negotiations if negotiating would be “impracticable.” 11 U.S.C. § 109(c)(5)(C). Indeed, chapter 9 exists to grant municipalities relief from problems they cannot fix themselves and often cannot fix with others. Thus, eligibility conditions must be “construed broadly to provide access to relief,” In re Hamilton Creek Metro. Dist., 143 F.3d 1381, 1384 (10th Cir. 1998), and good faith may be found even if labor bargaining rigors have not been scrupulously followed.<sup>2</sup>

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<sup>2</sup> Indeed, it would be particularly inappropriate to impose labor bargaining concepts on non-union creditors in this case given that state law has relieved the City of any duty to bargain collectively even with its unions. See Mich. Comp. Laws § 141.1567(3).

## II. Sections 1113 and 1114 Do Not Apply in Chapter 9.

The objectors analogize to the good faith negotiations required under 11 U.S.C. §§ 1113 and 1114, see, e.g., 10/23 Tr. 141:22–25, which establish requirements for the modification of collective-bargaining agreements or retiree benefits. See 11 U.S.C. § 1113(b)(2) (the debtor must “meet . . . to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement”); 11 U.S.C. § 1114(e)–(f) (retiree benefits).

These sections and cases interpreting them do not apply here. Congress enacted section 1113 in response to NLRB v. Bildisco & Bildisco, 465 U.S. 513, 526 (1984), which held that a chapter 11 debtor could reject a collective bargaining agreement by showing only that “reasonable efforts to negotiate a voluntary modification have been made” and that “the equities . . . favor . . . rejecting the labor contract.” Yet, in amending the Code to include more stringent requirements for debtors seeking to reject collective bargaining agreements, Congress refused to apply those requirements to chapter 9. See 11 U.S.C. § 901(a). Thus, “the judicial consensus is that Bildisco controls rejection of collective bargaining agreements [or modification of retiree benefits] in chapter 9 cases[;]” sections 1113 and 1114 have no application. In re City of Stockton, 478 B.R. 8, 23 (Bankr. E.D. Cal. 2012). Since sections 1113 and 1114 have no application in chapter 9, cases evaluating good faith under those provisions also have no application here.

Moreover, the good faith analysis in these cases is bound up with section 1113's and 1114's other mechanisms for fostering voluntary, *postpetition* resolution of labor disputes.<sup>3</sup> Congress did not extend these provisions, including their good faith standard, to prepetition chapter 9 negotiations for good reason. While chapter 9 shares chapter 11's goal of encouraging voluntary agreements, the kind of "expedited . . . collective bargaining" envisioned by sections 1113 and 1114, In re Fulton Bellows & Components, Inc., 307 B.R. 896, 900 (Bankr. E.D. Tenn. 2004) (internal quotation marks and citation omitted), often cannot take place before filing. Sections 1113 and 1114 establish frameworks for addressing labor and retiree disputes *during* bankruptcy—when all issues are before one court, and retirees have clear and statutorily authorized bargaining representatives. See, e.g., 11 U.S.C. § 1113(d)–(e) (setting out quick timeframe and process for emergency relief); 11 U.S.C. § 1114(c) (mechanism for determining retirees' representative). Pre-filing, however, a chapter 9 debtor must seek to deal with *all*

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<sup>3</sup> The "rigid requirement[s]" of sections 1113 and 1114, In re Pinnacle Airlines Corp., 483 B.R. 381, 387 (Bankr. S.D.N.Y. 2012), are designed "to ensure that well-informed and good faith negotiations occur in the market place, not as part of the judicial process," In re Maxwell Newspapers, Inc., 981 F.2d 85, 90 (2d Cir. 1992). Courts evaluating good faith under these sections emphasize their negotiation-forcing provisions when assessing good faith. See id. at 89 (a debtor may avoid an agreement only when the union rejects a proposal "without good cause"); Wheeling-Pittsburgh Steel Corp. v. United Steelworkers, 791 F.2d 1074, 1094 (3d Cir. 1986) (negotiations not long enough where debtor could have applied for temporary emergency relief).



of its creditors—including individuals that cannot be bound as a group, such as retirees and bondholders. It must also negotiate without the protections of the automatic stay or the availability of emergency relief. Given these significant differences, municipalities negotiating before filing simply cannot be held to the same good faith standard as those negotiating within the structured, bilateral confines of sections 1113 and 1114.

### **III. Even If the Chapter 11 Cases Were To Apply, the City Negotiated in Good Faith.**

Even if the chapter 11 cases did apply here, the City has met the standard for good faith. At the June 14, 2013 meeting, it provided creditors with a detailed proposal for modifying its obligations based on the most complete and reliable information the City had at the time. Through the thousands of documents in its Data Room, see Ex. 100, the City also provided creditors with the information needed to evaluate the proposal. Cf. 11 U.S.C. §§ 1113(b)(1)(B), 1114(f)(1)(B) (requiring disclosure of reasonable information, not every stitch of information a creditor may demand).

The June 14 proposal was not presented on a “take it or leave it” basis. 10/24 Tr. 196:14–16. Rather, the City solicited counterproposals and was willing to consider any “that came over the transom.” 10/28 Tr. 70:2–8; see In re Allied Delivery Sys. Co., 49 B.R. 700, 703 (Bankr. N.D. Ohio 1985) (good faith under § 1113 where debtor modified proposal during negotiations). Moreover, given that

the City “was operating on a razor’s edge,” 10/24/13 Tr. 185:10–186:23, the month it gave creditors to offer counterproposals was also reasonable: courts recognize the tight deadlines necessary in section 1113 and 1114 cases. See, e.g., In re Maxwell Newspapers, Inc., 981 F.2d 85, 91 (2d Cir. 1992) (“[T]en hours is ample time to consider . . . a [final] proposal” in the § 1113 context); Allied Sys., 49 B.R. at 703 (good faith under section 1113 where the parties negotiated over a month). The City also conducted a host of meetings with various creditor groups, including the objectors. See, e.g., In the Matter of Walway Co., 69 B.R. 967, 973 (Bankr. E.D. Mich 1987) (good faith where debtor met “numerous times with the Union to engage in discussions”); Allied Sys., 49 B.R. at 703 (a few meetings sufficed).

To be sure, the parties did not reach an agreement. Failure to agree, however, does not prove bad faith, especially where it resulted largely from the objectors’ intransigence. UAW and AFSCME were not “willing to negotiate with the emergency manager over reduction in accrued pension benefits.” 11/5 Tr. 49:15–18; see also 11/5 Tr. 19:8–25. UAW also sponsored litigation against the City immediately after the June 14 meeting, 11/5 Tr. 70:3–16, and AFSCME refused to share a counterproposal it had already prepared, 11/5 Tr. 17:9–18:23. Similarly, the Retirement Systems did not submit a proposal, 11/7 Tr. 156:2–23, and the Retiree Associations would only advocate for “enhancements” to benefits, not reductions, 11/4 Tr. 120:4–15. “It is not possible to negotiate with a stone

wall,” City of Stockton, 493 B.R. at 793, and parties that refuse to make concessions or counterproposals cannot challenge the debtor’s good faith, see, e.g., In re Hoffman Bros. Packing Co., 173 B.R. 177, 188 (B.A.P. 9th Cir. 1994) (§ 1113); In re Ormet Corp., 324 B.R. 655, 660 (Bankr. S.D. Ohio 2005) (same). Nor can creditors who insist on running to court rather than negotiating. See In re Pleasant View Util. Dist., 24 B.R. 632, 639 (Bankr. M.D. Tenn. 1982). The City did its best to seek an agreement in the limited time that its dwindling resources permitted. It therefore negotiated in good faith even if one were to import the standard of sections 1113 and 1114 into section 109(c)(5)(B).

Dated: November 13, 2013  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

<p>In re</p> <p>CITY OF DETROIT, MICHIGAN,</p> <p style="text-align: center;">Debtor.</p>	<p>No. 13-53846</p> <p>Chapter 9</p> <p>HON. STEVEN W. RHODES</p>
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**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
13.	505	8/19/2013	Corrected Objection to Eligibility to Chapter 9 Petition filed by creditor Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (Attachments: Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 12; Exhibit A; Exhibit B; Exhibit C)

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION – DETROIT

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In re:	: Chapter 9
	: :
CITY OF DETROIT, MICHIGAN,	: Case No.: 13-53846
	: :
Debtor.	: Hon. Steven W. Rhodes
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**SUPPLEMENTAL BRIEF OF INTERNATIONAL UNION, UAW  
REGARDING GOOD FAITH BARGAINING**

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) submits this supplemental brief regarding (1) whether the case law that addresses good faith negotiation under 11 U.S.C. §§ 1113 and 1114 and in labor law, should apply when determining eligibility under 11 U.S.C. §109(c), and (2) if so, how that case law suggests that the issue should be resolved in this case.

**Argument**

**I. “Good faith” Under Section 1113 and 1114 and Non-bankruptcy Labor Law is Instructive in Determining Eligibility Under 11 U.S.C. § 109(c)**

The obligation to conduct good faith bargaining is a cornerstone of federal labor law and fundamental to collective bargaining. A debtor’s good faith bargaining is also integral to the substantive requirements of Sections 1113 and 1114 of the Bankruptcy Code, which were enacted to address, respectively, the rejection of collective bargaining agreements (“CBAs”) and the modification of retiree health and life insurance benefits in chapter 11. Under the National Labor Relations Act, collective bargaining is defined to include “the mutual obligation of the employer and



the representative of the employees to meet at reasonable time and confer in good faith with respect to” terms and conditions of employment or the negotiation of an agreement. *See* 29 U.S.C. § 158(d).

Drawing upon federal policies promoting collective bargaining, Congress enacted Section 1113 in order restore collective bargaining as the primary means of resolving the debtor’s CBA issues. *See In re Maxwell Newspapers, Inc.*, 981 F.2d 85, 90 (2d Cir. 1992) (statute’s “entire thrust” is to “ensure that well-informed and good faith negotiations occur in the market place, not as part of the judicial process.”). *See also In re Century Brass Prods., Inc.*, 795 F.2d 265, 273 (2d Cir. 1986) (citing legislative history that Section 1113 “places the primary focus on the private collective-bargaining process and not in the courts.”).<sup>1</sup> Thus, Section 1113 interposed the requirement that a debtor undertake good faith negotiations *before* commencing litigation to reject a CBA. Specifically, the statute requires that the debtor meet, at reasonable times, with the labor organization “to confer in good faith” in an attempt to reach mutually satisfactory modifications. *See* 11 U.S.C. § 1113(b)(1),(2); 11 U.S.C. § 1114(f)(2). *See generally, In re Pinnacle Airlines, Inc.*, 483 B.R. 381, 404-6 (Bankr. S.D.N.Y. 2012) (describing procedures under Section 1113).<sup>2</sup>

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<sup>1</sup> Section 1113 was enacted to change the rules for rejection of a CBA following the Supreme Court’s ruling in *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 526 (1984), that a debtor could reject a collective bargaining agreement under a permissive standard showing only that the CBA burdened the estate and that the balance of the equities favored rejection.

<sup>2</sup> The procedures and requirements under Section 1114 operate in a similar manner where a debtor seeks to modify retiree benefits. *See In re Horsehead Indus., Inc.*, 300

The courts have construed the duty to bargain in good faith as an obligation to conduct bargaining with an “open mind and a sincere desire to reach agreement”. *E.g., NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 686 (9th Cir. 1943). *See also id.* (duty to bargain means participating actively “so as to indicate a present intention to find a basis for agreement”). Michigan public sector labor law incorporates a comparable duty to bargain patterned after federal labor law. *Detroit Police Officers Ass’n v. City of Detroit*, 214 N.W. 2d 803, 807-09 (1974). *See also id.* at 808 (good faith bargaining requirement “is simply that the parties manifest such an attitude and conduct that will be conducive to reaching an agreement”). The courts apply a similar standard under Section 1113. *See e.g., In re Walway*, 69 B.R. 967, 973 (Bankr. E.D. Mich. 1987) (good faith bargaining requires “conduct indicating an honest purpose to arrive at an agreement as the result of the bargaining process.”); *In re Blue Diamond Coal Co.*, 131 B.R. 633, 646 (Bankr. E.D. Tenn. 1991).

The standards for good faith labor negotiations serve several goals under labor law that are relevant to chapter 9 eligibility: fostering the conditions for achieving a consensual resolution; establishing rules that are known to all participants; and ensuring that the law functions as intended, specifically, that meaningful negotiations are in fact conducted and that the alternative “impracticality” standard under Section 109(c)(5)(C) does not become a mere default option that effectively eliminates the

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B.R. 573, 583 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 134 B.R. 515, 519-20 (Bankr. S.D.N.Y. 1991).

“good faith negotiation” requirement of Section 109(c)(5)(B).<sup>3</sup> Under Section 1113, court-imposed rejection is intended as a last resort, after negotiations have failed to produce an agreement. Chapter 9 is also supposed to be a last resort. For rejection under Section 1113, and chapter 9, to truly be last resorts, then a requirement for negotiations that precedes court intervention must be an effective one and Congress has signaled as such by requiring, in both instances, “good faith” negotiations.<sup>4</sup>

The courts determine good faith by the examining the facts and circumstances of each case. *See NLRB v. Truitt Mfg. Co.*, 351 U.S. 152 153-5 (1956); *see also Calex Corp. v. NLRB*, 144 F. 3d 904, 909 (in determining good faith, court examines the “overall conduct of the parties”). Similarly, under Section 1113, the courts employ a case by case analysis, reviewing the totality of the circumstances in the context of the statutory requirements. *E.g., In re Delta Airlines*, 342 B.R. 684, 692 (Bankr. S.D.N.Y. 2006).

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<sup>3</sup> For chapter 9, the “good faith” requirement under Section 109(c) serves “[i]mportant constitutional issues that arise when a municipality enters the bankruptcy arena” by requiring that, “before rushing to” bankruptcy court, the municipality first sought to negotiate in good faith concerning the treatment the creditors may be expected to receive under a plan. *In re Cottonwood Water and Sanitation Dist.*, 138 B.R. 973, 979 (Bankr. D. Colo. 1992).

<sup>4</sup> There are important differences, however. Section 1113 takes place in a chapter 11 case. Thus, the two statutory phases—bargaining and, if necessary, litigation—both take place under circumstances where eligibility to use federal bankruptcy power is not at issue. In chapter 9, where state authorization serves the “gatekeeping” function, whether and to what extent federal bankruptcy power will ultimately be used cannot be known at the pre-bankruptcy stage. Even so, in each case, the good faith standard is directed to the parties’ intent and conduct, and to that extent the good faith labor bargaining standards are instructive in determining eligibility.



The cases establish certain basic elements that fulfill the standards of honest purpose and sincere attempt to reach agreement required for good faith bargaining. In the seminal case of *Truitt Manufacturing*, for example, the Supreme Court ruled that an employer that withheld financial information to substantiate its claim that it could not afford a wage increase proposed by the union had engaged in bad faith bargaining:

“Good faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to pay in increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy.”

*Truitt Mfg.*, 351 U.S. at 152-53. Section 1113 expressly requires that a debtor’s proposal be based on “the most complete and reliable information” available and be submitted to the union with information necessary to evaluate the proposal. 11 U.S.C. § 1113(b)(i)(A),(B). Where an employer does not fulfill these requirements, the debtor’s rejection motion will be denied. *See In re Mesaba Aviation, Inc.*, 341 B.R. 693, 717 (Bankr. D. Minn. 2006).

In addition, courts have denied CBA rejection motions under 1113 where the debtor remains intransigent in its proposal for modifications. *See In re Pinnacle Airlines*, 483 B.R. at 422-23 (debtor’s motion to reject CBA denied where debtor made no movement from its initial aggregate savings demand); *see also Delta Airlines*, 342 B.R. at 697 (holding, as a general matter, that a debtor that “steadfastly maintains” that its initial proposal is non-negotiable does not comply with the “good faith” requirement under Section 1113, and denying rejection motion.)

These standards—evidencing a sincere attempt to reach agreement through a willingness to compromise, and substantiating proposals for concessions with credible

information sufficient for the counter party to evaluate and respond—can readily be applied to determine good faith negotiations under Section 109(c) because the objectives are comparable—to reach an agreement that avoids court intervention.

## **II. The City Did Not Conduct Good Faith Negotiations**

Under these standards, the City clearly failed to conduct good faith negotiations. First, strategically negotiating “in the shadow of chapter 9,” as it is evident the City planned to do and did, is the very antithesis of conducting good faith bargaining. Rather than demonstrating a true “present” intent to reach agreement outside of bankruptcy based on credible information presented in an atmosphere that would foster a dialogue, the rollout of the Creditor Proposal and the ensuing meetings instead reflected activity designed for a chapter 9 filing. To begin with, the Creditors’ Proposal, reflecting an ambitious 10-year program that radically revamped the City’s spending priorities by sacrificing protected benefits, was a challenging vehicle for conducting negotiations. Whether the object is a new agreement under labor law or a modified CBA under Section 1113, good faith bargaining is premised on the parties understanding the objective. Here, the EM presented a creditors recovery proposal embedded in (and based upon) a broad, 10-year revitalization plan. If creditors were expected to respond with their own revitalization plans reflecting different spending priorities, it is inconceivable that proposals of that nature could be prepared—let alone discussed—within the meager three-week period the EM allowed prior to his arbitrary evaluation period. If all the EM expected were responses to the narrowly focused creditors recoveries, then his proposal was, in fact, a “take it or leave it” proposal because the recoveries were driven by the revamped spending priorities and the City’s

insistent assertions that they were simply treating everyone the same.<sup>5</sup> Moreover, an “honest” claim requires credible substantiation.<sup>6</sup> Here, the data room information was incomplete and (as it turned out) inappropriately restricted. The single pension underfunding figure that drove the pension proposal bordered on misleading—in any event, not explained by its architects. Indeed, the forward-looking revitalization plan was premised on myriad assumptions about the expenditures that were worked into the plan—all forecasts and predictions. It is difficult to imagine that the entire \$1.25 Billion program did not contain some elements about which reasonable minds could differ in terms of whether they were services that would make Detroit more attractive to residents and businesses (a goal which itself involved predictions about what will spur growth and economic recovery).<sup>7</sup>

Moreover, signs of willingness among the stakeholders to discuss aspects of the proposal even in the time permitted were rebuffed. We know that the UAW’s general counsel approached the EM’s professionals with a suggestion for a framework to

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<sup>5</sup> We know that, one month earlier, Mr. Orr viewed his preliminary plan as not negotiable, Mr. Orr testified that he probably would not have accepted any counter that did not cut accrued pensions in any event. October 29, 2013 Transcript, p. 95. In any event, the City’s proposal depended on *federal* bankruptcy law to find that the creditors were “the same.” The City was not obliged to offer such treatment.

<sup>6</sup> The EM’s declaration at the public meeting that pension benefits were “sacrosanct” at the same time that his June 14 Creditor Proposal was nearing completion is certainly antithetical to the assertion of an “honest” claim.

<sup>7</sup> The asserted privileges by both the City and the State during the eligibility litigation only confirm that their pre-bankruptcy effort was marked by deliberate restriction and control of information rather than a sincere effort to engage in informed, meaningful negotiations.

discuss OPEB benefits. He was told that there “wasn’t time,” in effect a refusal to bargain. Fundamental questions about the unions’ authority to engage in discussions regarding accrued pensions protected by the Michigan constitution went unanswered. November 5, 2013 Transcript, pp. 56, 69. A team focused on a present intention to “find a basis for agreement” and a “sincere desire” to reach agreement would have answers to such basic questions at the ready, and would not simply dismiss constructive suggestions. Clearly, the City was not interested in reaching an agreement outside of bankruptcy and thus not sincere in their efforts to find a basis for an agreement. Instead, they preferred to orient their discussions to the bankruptcy process. In short, the City breached basic premises of good faith negotiations and is ineligible for chapter 9.

**CONCLUSION**

For the foregoing reasons, and those set forth in the Amended Objection, the City’s chapter 9 petition should be dismissed.

Dated: New York, New York  
November 13, 2013

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
14.	509	8/19/2103	Corrected Objection to Eligibility to Chapter 9 Petition Kreisberg Declaration filed by creditor Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (Attachments: Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 12; Exhibit A; Exhibit B; Exhibit C)

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE:

Chapter 9

City of Detroit, Michigan,

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

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**THE DETROIT FIRE FIGHTERS ASSOCIATION, THE DETROIT  
POLICE OFFICERS ASSOCIATION, THE DETROIT POLICE  
LIEUTENANTS & SERGEANTS ASSOCIATION AND  
THE DETROIT POLICE COMMAND OFFICERS ASSOCIATION  
SUPPLEMENTAL TRIAL BRIEF ON GOOD FAITH NEGOTIATIONS IN  
SUPPORT OF THEIR AMENDED OBJECTION TO DEBTOR'S  
BANKRUPTCY PETITION AND STATEMENT OF QUALIFICATIONS  
UNDER 11 U.S.C. SECTION 109(c)**

The Detroit Fire Fighters Association (the "DFFA"), the Detroit Police Officers Association (the "DPOA"), the Detroit Police Lieutenants & Sergeants Association (the "DPLSA") and the Detroit Police Command Officers Association (the "DPCOA") (collectively, the "Detroit Public Safety Unions"), through their counsel, Erman, Teicher, Miller, Zucker & Freedman, P.C., file this supplemental brief in accordance with this Court's Notice Regarding Briefing on "Good Faith Negotiations" [Docket No. 1353] in support of their Amended Objection to Debtor's Bankruptcy Petition and Statement of Qualifications under 11 U.S.C. Section 109(c) and state as follows:





Section 109(c)(2) imposed an independent obligation on both the City and the Detroit Public Safety Unions to negotiate in good faith, and, under near universal principles of labor law, the City not only failed to meet that obligation and also successfully blocked the Detroit Public Safety Unions' efforts to do so.

### ARGUMENT

Assuming that the City could not “cherry pick” its way into bankruptcy by using PA 436 and the timing of the appointment of the Emergency Manager to write Section 109(c)(2) out of the Bankruptcy Code with regard to its active and essential public safety employees,<sup>1</sup> a brief review of state and federal labor law suggests that, both inside and outside of bankruptcy, there is a near universal, totality of the circumstances approach to evaluating a party's obligation of good faith in negotiations that was not met by the City in this case.

The Detroit Public Safety Unions have argued that the City did not negotiate as contemplated by the Bankruptcy Code, nor in any other context contemplated by the plain meaning of the word.

According to Black's Law Dictionary, 5<sup>th</sup> Ed, 1979:

Negotiation is process of submission and consideration of offers until acceptable offer is made and accepted. *Gainey v. Brotherhood of Ry. And S.S. Clerks, Freight Handlers, Exp. & Station Emp., D.C. Pa.*, 275 F.Supp. 292, 300. The deliberation, discussion or conference upon the terms of a proposed agreement; the act of settling or

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<sup>1</sup> See *In re City of Stockton*, 478 B.R. 8, 16-17 (E.D. Cal. 2012) and cases cited therein.



arranging the terms and conditions of a bargain, sale or other business transaction.

Similarly, the record before the Court establishes that, under any definition of good faith in the labor context, the City's carefully planned and orchestrated acts, which largely stripped the Detroit Public Safety Unions of the ability to negotiate with the City through (i) the enactment of the referendum-proof PA 436, (ii) the timing of the appointment of Kevyn Orr under former PA 72, (iii) the refusal to negotiate with the Public Safety Unions after the effective date of PA 436 (Gurewitz Testimony), (iv) the blocking of Act 312 proceedings (Gurewitz Testimony, Exhibit 718) to prevent negotiations and to ensure that the collective bargaining agreements governing three of the four Detroit Public Safety Unions would expire by June 30, 2013 (Stipulation with City) prior to the chapter 9 filing<sup>2</sup> and (v) the City's acknowledged refusal to negotiate with the Detroit Public Safety Unions (based on the suspension of its duty to bargain under PA 436) regarding the City's proposal to significantly impair their constitutionally protected, accrued, vested pension benefits not only failed the "good faith" negotiation requirement of Section 109(c)(2), it neutralized the Detroit Public Safety Unions' efforts to engage the City in such negotiations and compels the conclusion that the City did not

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<sup>2</sup> Notably, in stating its intent to unilaterally modify the DPOA's pension rights under its collective bargaining agreement (as established by the March 25, 2013 Act 312 Award, DPSU Exhibits 706, 707), the City also failed to comply with the requirements of MCL 141.1552(k) or 141.1559 during the 35 days it allotted for "discussions" with the Detroit Public Safety Unions prior to filing the petition.

satisfy the requirements of 109(c)(2). *See In re Stockton*, 493 B.R. 772, 784-785 (E.D. Cal. 2013) (“*Stockton III*”), applying California law with regard to neutral evaluation process, recognizing that good faith negotiations are a “two way street,” and declining to find to find that certain bondholders could not complain about the municipal debtor’s failure to negotiate in good faith after they refused to participate in the neutral evaluation process.

Interestingly, as a threshold matter, the California definition of “good faith” in *Stockton III* is virtually identical to the definition of good faith that would have applied to the City had it elected the neutral evaluation process set forth in PA 436:

“‘Good faith’ means participation by an interested party or a local government representative in the neutral evaluation process *with the intent to negotiate a resolution* of the issues that are the subject of the neutral evaluation process, including the timely provision of complete and accurate information to provide the relevant participants through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the local government’s debt.”

MCL 141.1524(h) (emphasis added). Here, rather than engaging in such a “two way” negotiation with the Detroit Public Safety Unions, the City chose to rely on the suspension of its duty to bargain collectively under MCL 141.1567(3) to not negotiate at all with the Detroit Public Safety Unions and other labor constituents. Further, the draconian nature of the Proposal for Creditors and the brief time the City allotted for “discussion” of same with those constituents belies any suggestion

that the City intended to negotiate a resolution of the pension issue prior to the bankruptcy filing.

In establishing the standards for labor negotiations, Bankruptcy Code Section 1113(B)(2), NLRA Section 8(d)<sup>3</sup> and PERA, MCL 141.215(1) all require the parties to “meet and confer in good faith.” Like the “good faith” standard under PA 436, generally, under labor law, what constitutes good faith is determined based upon the “totality of the circumstances,” including the employer’s conduct outside the formal negotiations. *NLRB v. Hardesty Co., Inc.* 308 F.3d 859, 865 (8<sup>th</sup> Cir. 2002) (citations omitted). Michigan labor law on good faith negotiations also applies a totality of the circumstances approach:

The exact meaning of the duty to bargain in good faith has not been rigidly defined in the case law. Rather, **the courts look to the overall conduct of a party to determine if it has actively engaged in the bargaining process with an open mind and a sincere desire to reach an agreement.** *National Labor Relations Board v. Montgomery Ward & Co.*, 133 F.2d 676, 686, 146 A.L.R. 1045 (CA 9, 1943); *National Labor relations Board v. General Electric Co.*, 418 F.2d 736, 756 (CA 2, 1949) (*sic*), *cert. den.* 397 U.S. 965, 90 S.Ct. 995, 25 L.Ed.2d 257 (1970); Morris, Ed, *The Developing Labor Law*, ch. 11, 1971). The law does not mandate that the parties ultimately reach agreement, nor does it dictate the substance of the terms on which the parties manifest such an attitude and conduct that will be conducive to reaching an agreement.

*Detroit Police Officers Ass’n v. Detroit*, 391 Mich. 44, 53-54 (1974) (emphasis added).

While, in the present case, the City may not, by virtue of PA 436, have had the duty to bargain collectively for the purpose of negotiating a collective bargaining

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<sup>3</sup> 11 U.S.C. §158(d).

agreement, under Section 109(c)(2), it most certainly had the duty to negotiate in good faith with the Detroit Public Safety Unions over its stated intention to impair their constitutionally protected, vested, accrued pension benefits prior to filing its chapter 9 bankruptcy petition. While, as *Stockton III* recognized, the obligation of good faith may have different meanings, depending upon its context,<sup>4</sup> 478 B.R. at 784, in the context of labor negotiations and given the consistency with which the “meet and confer in good faith” standard permeates both the bankruptcy code and state and federal labor law, it makes perfect sense to apply that good faith standard to these proceedings. Furthermore, that standard’s focus on the parties’ intent to attempt to reach agreement is consistent with the good faith standard set forth in *Stockton III* and PA 436.

As argued by the Detroit Public Safety Unions and others in closing arguments in this matter, rather than engaging the Detroit Public Safety Unions in good faith negotiations in an effort to reach a resolution in a timely fashion, the City, consciously and deliberately, elected to avoid and to prevent any negotiations at all with the Detroit Public Safety Unions and others until after it had made its decision to file the petition. Even then, while steadfastly maintaining that the June and July meetings were not negotiations, the City engaged in the sort of “surface

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<sup>4</sup> Interestingly, by engaging its union constituents in good faith negotiations through the neutral evaluation process in *Stockton III*, the municipal debtor reached concessionary agreements with those constituents.

bargaining” or orchestrated sham meetings with no real intent to reach an agreement that, under federal labor law, has been found to show a lack of good faith. *See, e.g., Hardesty, supra.*

Based upon the record before this Court, it cannot be said that, in the context the June and July meetings with the Detroit Public Safety Unions occurred, that the City bargained in good faith with them, as required by Section 109(c)(2).

Respectfully submitted,

ERMAN, TEICHER, MILLER,  
ZUCKER & FREEDMAN, P.C.

By: /s/ Barbara A. Patek

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DATED: November 13, 2013

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE:

Chapter 9

City of Detroit, Michigan,

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

**CERTIFICATE OF SERVICE**

The undersigned certifies that on November 13, 2013, The Detroit Fire Fighters Association, The Detroit Police Officers Association, The Detroit Police Lieutenants & Sergeants Association and The Detroit Police Command Officers Association's Supplemental Trial Brief on Good Faith Negotiations in Support of Their Amended Objection to Debtor's Bankruptcy Petition and Statement of Qualifications Under 11 U.S.C. Section 109(c) and Certificate of Service were electronically filed with the Clerk of the Court for the United States Bankruptcy Court, Eastern District of Michigan, Southern Division using the CM/ECF System, which will send notification of such filing to all attorneys and parties of record registered electronically.

By: /s/ Barbara A. Patek

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DATED: November 13, 2013

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re  CITY OF DETROIT, MICHIGAN,  Debtor.	No. 13-53846  Chapter 9  HON. STEVEN W. RHODES
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**ATTACHMENT**

**APPELLEE STATE OF MICHIGAN'S DESIGNATION OF ITEMS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

Design- ation	Docket #	Filing Date	Description
15.	512	8/19/2013	Objection to Eligibility to Chapter 9 Petition, Brief in Support, filed by creditors Detroit Fire Fighters Association, I.A.F.F. Local 344, Detroit Police Command Officers Association, Detroit Police Lieutenants and Sergeants Association, Detroit Police Officers Association (Attachments: Exhibit A – Declaration of Mark Diaz; Exhibit A-1 (Part 1) Award; Exhibit A-1 (Part 2); Exhibit A-1 (Part 3); Exhibit A- 2 Interim Award; Exhibit B - McNamara Declaration and Ex 1 and 2; Exhibit C – Young Declaration; Exhibit D – Gurewitz Declaration)



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**MEMORANDUM REGARDING SUPPLEMENTAL AUTHORITY**

On November 8, 2013, the Sixth Circuit Court of Appeals entered its Order in the case *City of Pontiac Retired Employees Assoc., et. al. v. Schimmel*, docket no. 12-2087 (November 8, 2013 Order) and granted Defendant's and Intervenor Defendant's Petition for Rehearing En Banc. (Exhibit 1.) As a result, the decision in this case reported at *City of Pontiac Retired Employees Assoc., et. al. v. Schimmel*, 726 F.3d 767 (6th Cir. 2013) is vacated and the mandate is stayed. The case has been restored to the docket to be briefed and argued *en banc*.

The reported decision was cited and relied on by several Objectors in support of arguments challenging the constitutionality of 2012 P.A. 436. The most recent references are found in Doc. #1471, pp. 8-9 (RDPMA's supplemental briefing) and Doc. #1474, pp. 13-15 (Official



Committee of Retirees supplemental briefing). Because this Order vacates the reported decision and stays the mandate, it has no application in the captioned matter.

Respectfully submitted,

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Dated: November 14, 2013

No. 12-2087

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Nov 08, 2013  
) DEBORAH S. HUNT, Clerk  
)

CITY OF PONTIAC RETIRED EMPLOYEES ASSOCIATION, ET AL.,

Plaintiffs-Appellants,

v.

LOUIS SCHIMMEL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY  
AS EMERGENCY MANAGER OF THE CITY OF PONTIAC, ET AL.,

Defendants-Appellees.

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ORDER

**BEFORE:   BATCHELDER, Chief Judge; BOGGS, MOORE, COLE, CLAY, GIBBONS,  
ROGERS, SUTTON, COOK, McKEAGUE, GRIFFIN, KETHLEDGE, WHITE,  
STRANCH, and DONALD, Circuit Judges.**

A majority of the Judges of this Court in regular active service have voted for rehearing of this case en banc. Sixth Circuit Rule 35(b) provides as follows:

“A decision to grant rehearing en banc vacates the previous opinion and judgment of the court, stays the mandate, and restores the case on the docket as a pending appeal”

Accordingly, it is **ORDERED**, that the previous decision and judgment of this court is vacated, the mandate is stayed and this case is restored to the docket as a pending appeal.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk