

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

MOTION FOR LIMITED RELIEF FROM AUTOMATIC STAY

Jessie Payne (“Movant”), by her attorneys, Simon, Stella & Zingas, P.C., submits this Motion for Limited Relief from the Automatic Stay for the limited purposes of asserting a claim for satisfaction of personal injury judgments she holds against the City of Detroit (“City”) against funds held in an escrow account established for the benefit of the City by the State of Michigan, Department of Treasury (“Treasury”). In support of this Motion, Movant states as follows:

1. The above-captioned Chapter 9 proceedings were commenced by the City on July 18, 2013 (“Petition Date”).
2. As of the Petition Date, Movant was the holder of two judgments entered against the City by the Oakland County Circuit Court in the amounts of \$3,000,000.00 and \$475,000.00 arising out of personal injuries sustained by Movant stemming from a motor vehicle accident involving a vehicle owned and operated by the City. Copies of the Judgments are attached hereto as **Exhibit A** and **B** respectively.
3. Pursuant to 11 USC § 362(d), the automatic stay created by the filing of these proceedings may be terminated, annulled or modified, for “cause”. Movant asserts that cause exists for limited relief from the automatic stay as set forth herein.
4. As part of a settlement relating to an administrative law action brought by the

Michigan Secretary of State Ruth Johnson to deny certification of self insurance to the City, Treasury and the Michigan Department of Insurance and Financial Services (“MDIFS”) executed a Memorandum of Understanding (“MOU”) wherein Treasury agreed to escrow certain sums in a separate segregated account (“Escrow Account”) to be used to pay claims arising from the operation of the City’s motor vehicles during the period the Certificate of Self Insurance was issued to the City. The MOU specifically provides that payment of such claims is to be made if the City is unable to or fails to pay a judgment or claim. In exchange, MDIFS agreed to the issuance of certificate of self insurance to the City for a period of one (1) year, beginning June 9, 2013. A copy of the MOU is attached hereto as **Exhibit C**.

5. Based on the foregoing, Movant respectfully requests that this Court grant relief from the automatic stay, for the limited purpose of allowing Movant to assert a claim for payment of her judgments from the Escrow Account.

6. While it is believed that the Escrow Account does not constitute property of this bankruptcy estate, Movant brings this Motion out of an abundance of caution so as to not be in violation of 11 U.S.C. §362.

7. Pursuant to LBR 9014-1(g), concurrence in the relief sought herein was sought on February 10, 2014 and such concurrence was denied.

WHEREFORE, Jessie Payne prays that this Court modify the automatic stay in accordance with the proposed order which is attached hereto, and grant such further relief as the

Court deems just and equitable considering the facts and circumstances of this case.

SIMON, STELLA & ZINGAS, P.C.

BY: /S/ Stephen P. Stella
STEPHEN P. STELLA (P33351)
Attorney for Jessie Payne
645 Griswold, Ste. 3466
Detroit, MI 48226
(313) 962-6400
attorneystella@sszpc.com

Dated: February 12, 2014

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

Ex. 1

ORDER GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY

This matter having come to be heard on Jessie Payne's Motion for Limited Relief From the Automatic Stay. All parties in interest were provided notice of the Motion, and the Court is advised that no objections were filed or received. The Court is otherwise fully advised in this matter.

IT IS ORDERED that Jessie Payne's Motion for Limited Relief From the Automatic Stay is granted, and the Automatic Stay in these proceedings is lifted for the limited purpose of allowing Jessie Payne to seek satisfaction of the judgments she holds against the City of Detroit from any escrow or other account established to pay such claims as described in the Motion or other applicable insurance coverage and any other sources of recovery which may be liable on such obligations, and other than property of the estate and/or estate assets.

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Ex. 2

NOTICE OF MOTION FOR LIMITED RELIEF FROM AUTOMATIC STAY

Please take notice that Jessie Payne has filed a Motion for Limited Relief from Automatic Stay.

Yours rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then within **14 days after service of this Notice**, you or your attorney must:

1. File a written response or answer, explaining your position at:

INTAKE OFFICE
U.S. Bankruptcy Court
211 West Fort Street, 17th Floor
Detroit, Michigan 48226

If you mail your response to court for filing, you must mail it early enough so that the court will receive it on or before the date stated above.

2. Serve a copy of your response so that it is **received** on or before **fourteen (14) days from the date of service of this Motion**, upon:

Stephen P. Stella, Esq.
645 Griswold, Ste. 3466
Detroit, MI 48226

If a response is timely filed and served, the Clerk of the Court will schedule a hearing on the motion and you will be served with notice of the date, time, and location of the hearing.

If you do not file and serve a response to the motion as set forth above, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without conducting a hearing.

SIMON, STELLA & ZINGAS, P.C.

BY: /S/ Stephen P. Stella
STEPHEN P. STELLA (P33351)
Attorney for Jessie Payne
645 Griswold, Ste. 3466
Detroit, MI 48226
(313) 962-6400
attorneystella@sszpc.com

Dated: February 12, 2014

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
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In re:

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Chapter 9
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Ex. 3

**BRIEF IN SUPPORT OF MOTION FOR
LIMITED RELIEF FROM AUTOMATIC STAY**

Jessie Payne relies on the facts and authority cited in her Motion for Limited Relief From Automatic Stay.

SIMON, STELLA & ZINGAS, P.C.

BY: /S/ Stephen P. Stella
STEPHEN P. STELLA (P33351)
Attorney for Jessie Payne
645 Griswold, Ste. 3466
Detroit, MI 48226
(313) 962-6400
attorneystella@sszpc.com

Dated: February 12, 2014

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

_____ /

PROOF OF SERVICE

STATE OF MICHIGAN)

) ss.

COUNTY OF WAYNE)

I, Antinette Gaty, hereby certify that on February 12, 2014, I electronically filed the following:

Motion For Limited Relief From Automatic Stay, Notice of Motion For Limited Relief From Automatic Stay, proposed Order, Brief In Support Of Motion For Limited Relief From Automatic Stay and this Proof of Service

with the Clerk of the Court using the ECF and I hereby certify that the Court's ECF System has served all registered users.

/S/ Antinette Gaty

ANTINETTE GATY

645 Griswold, Ste. 3466

Detroit, MI 48226

(313) 962-6400

attorneystella@sszpc.com

Assistant to Stephen P. Stella

Subscribed and sworn to before me
this day 12th of February, 2014

/s/ Stephen P. Stella

STEPHEN P. STELLA, Notary Public

Oakland County, Michigan

My commission expires: 11-18-17

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JESSIE PAYNE,
Plaintiff,

Vs.

Case No. 12-126172-NI
Hon. Colleen O'Brien

DERRICK AVERTT and
CITY OF DETROIT,
Defendants.

THE SAM BERNSTEIN LAW FIRM
Leonard E. Miller (P35114)
Attorneys for Plaintiff
31731 Northwestern Hwy, Suite 333
Farmington Hills, Michigan 48334
(248) 538-5920
lmiller@sambernstein.com

CITY OF DETROIT LAW DEPT.
Calvert Bailey (P42409)
Attorneys for Defendants
660 Woodward Avenue, Suite 1650
Detroit, Michigan 48226
(313) 237-3004
bailC@detroitmi.gov

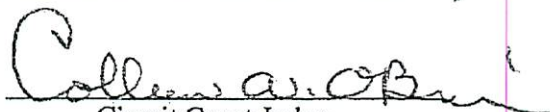
ORDER OF JUDGMENT

At a session of the said Court, held in the Oakland County
Courthouse, in the City of Pontiac, County of d, State of
Michigan on JUL 17 2013

PRESENT: Honorable COLLEEN A. O'BRIEN
Circuit Court Judge

Upon the Arbitration Agreement of the parties which provides for the Entry of Judgment
upon the award rendered by the arbitrators, and upon an Arbitration Award having been rendered;

IT IS HEREBY ORDERED that Judgment is entered against defendants, Derrick Avertt and
the City of Detroit, jointly and severally, in the amount of Three Million Dollars.


Circuit Court Judge

THE
SAM BERNSTEIN
LAW FIRM
31731 NORTHWESTERN HIGHWAY
SUITE 333
FARMINGTON HILLS,
MICHIGAN 48334-1650
(800) 225-5726
A PROFESSIONAL LIMITED
LIABILITY COMPANY



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JESSIE PAYNE,

Plaintiff,

Vs.

Case No. 12-126172-NI
12-129554-NF

Hon. Colleen O'Brien

DERRICK AVERTT and
CITY OF DETROIT,

Defendants.

THE SAM BERNSTEIN LAW FIRM
Leonard E. Miller (P35114)
Attorneys for Plaintiff
31731 Northwestern Hwy, Suite 333
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CITY OF DETROIT LAW DEPT
Calvert Bailey (P42409)
Paula L. Cole (P31888)
Attorneys for Defendants
2 Woodward Avenue, Suit e500
Detroit, Michigan 48226
(313) 237-3004
bailec@detroitmi.gov

ORDER REINSTATING CASE, ENTRY OF JUDGMENT AND FINAL ORDER

At a session of the said Court, held in the Oakland County
Court House, in the City of Pontiac, County of Oakland,
State of Michigan on JUN-12-2013.

PRESENT: Honorable COLLEEN A. O'BRIEN
Circuit Court Judge

Upon the Motion of Plaintiff to Reinstate Case, Enter Judgment and Reserve Costs and
Attorney Fees, and this Court having been advised as to the Premises;

IT IS HEREBY ORDERED that Plaintiff's Motion to Reinstate Case Number 12-
129554NF is granted;

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IT IS FURTHER ORDERED that Judgment is entered against the Defendants in the following amounts:

Feinberg Consulting.....	\$ 3,575.00
Pharmascript of Michiga.....	\$ 2,821.00
Rainbow Rehabilitation.....	\$103,373.03
Beaumont Hospital.....	\$304,241.96
Medicare.....	\$ 81,381.41

TOTAL JUDGEMENT TO PLAINTIFF AND HER PROVIDERS.....	\$495,392.22
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IT IS FURTHER ORDERED THAT Plaintiff may notice up a hearing for costs, no-fault interest on untimely paid medical bills, interest from the date of filing the Complaint, costs expended in this litigation and attorney fees.

It is further ordered that any reinstatement fees are herein waived.

IT IS FURTHER ORDERED that this Order resolves the last pending claim in this matter and closes the case M.C.R. 2.602(A) (3).

/s/ Judge Colleen A. O'Brien

COLLEEN A. O'BRIEN
Circuit Court Judge

ML

MEMORANDUM OF UNDERSTANDING
Between the
MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
and the
MICHIGAN DEPARTMENT OF TREASURY

CITY OF DETROIT - CERTIFICATE OF SELF INSURANCE ESCROW

I. PURPOSE AND BACKGROUND:

1. The purpose of this Memorandum of Understanding [MOU] is to describe the commitment from the Michigan Department of Treasury [Treasury] to the Michigan Department of Insurance and Financial Services [DIFS] concerning funds that Treasury intends to escrow and issue in the event the City of Detroit [City] does not pay claims and judgments relative to the City's Self Insurance Certificate under the authority of the Michigan Administrative Code - Certificates of No-Fault Self-Insurance [the Code] [R 257.531 *et seq.*].

2. On May 2, 2013, the City submitted a certificate of self insurance application [application] to the Director. The City asked the Director to issue a certificate of self insurance under authority the Code, section 3101 of the Insurance Code of 1956 [MCI 500.3101]. This certificate would enable the City to comply with state law requiring insurance on vehicles it operates.

As reported on the application, the City's net worth is (\$371,973,905). This negative amount fails to meet certificate of self insurance qualifications requiring a net worth greater than \$5,000,000; a sound financial condition and utilization of financial practices and methods that would not bring into question the ability to pay *claims* fully and in a timely manner. [Rule 2 (2)(d) and (e); R 257.532].

Rule 8 of the Code [R 257.538] allows the Director to disapprove the application of an applicant who fails to possess a qualification for the issuance of a certificate of self insurance as set forth in R 257.232. The Director intended to deny the City's application for this reason.

In reliance on Treasury's commitment to escrow funds and to pay claims and judgments, the Director will issue a Certificate to the City.

II. TREASURY AGREES TO:

1. Escrow an amount of at least fifteen million, two hundred thousand dollars (\$15,200,000) in a separate segregated account to be used to pay claims during the period of the Certificate of Self Insurance issued to the City.
2. If the City is unable to or fails to pay a judgment or claim pursuant to the law, make appropriate payments from the escrowed funds.

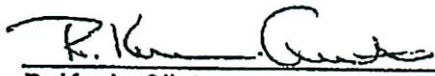
III. MDIFS AGREES TO:

1. Issue a Certificate of Self Insurance to the City for a period of one year, beginning June 9, 2013.
2. Perform its responsibilities under the Code.

IV. EFFECTIVE DATE AND LENGTH:

1. This MOU goes into effect when both parties have signed it and shall be in effect for the duration of the Certificate of Self Insurance issued to the City.

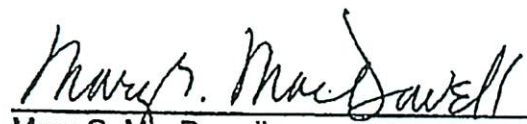
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES



R. Kevin Clinton
Director
Department of Insurance and Financial Services
Lansing, Michigan

6/4/13
Date

DEPARTMENT OF TREASURY



Mary G. MacDowell
Chief Deputy Treasurer
Department of Treasury
Lansing, Michigan

5/21/2013
Date