

**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

**OBJECTIONS TO PETITION AND ENTRY OF AN ORDER FOR RELIEF**

I, David Dye, as an interested part, and a party with standing as a current City of Detroit employee (Detroit Water and Sewerage Department), I am lodging this statement of objections to the City of Detroit's bankruptcy filing. I understand that there may be problems with the financial condition of the City of Detroit, but I am not absolutely convinced that this is the best approach to solve them.

The reasons that the City of Detroit should not be allowed to file for bankruptcy are:

1. The City is not bankrupt, as shown on the 2012 Comprehensive Annual Financial Report (CAFR),
2. The alleged debts that the City owes to the banks that sold them the interest rate swap derivatives are not valid debts,
3. The original law that created the EM and EFM was voted down by public referendum, but Governor Snyder drafted a new law (PA 436) that did the same thing and thereby unlawfully overturning the vote of the Michigan public,
4. EM Kevyn Orr has conflicts of interest due to his current and/or previous affiliation with Jones-Day law firm, and that law firm having parties in the bankruptcy action that are clients of Jones-Day (i.e., UBS Bank, Bank of America, etc.)

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**Point 1: The City of Detroit is not Bankrupt**

There are a lot of figures being circulated in the media about Detroit being billions of dollars in debt. This is true, but the figures I'm seeing are specialized budget reports that are not reflective of the entire financial picture of the City. One thing that had me seriously doubt this public picture being painted is how the City can afford to pay a consultant (Conway MacKenzie) up to \$200,000 a week for services. If, in fact, the City is 'bankrupt'.

In my examination of the CAFR, I found some interesting things. On page 41 of the City of Detroit's 2012 CAFR, in the *Statement of Net Assets*, the City's total assets amounted to \$10.3 billion and the liabilities amounted to \$10.6 billion, leaving a net deficit of \$371 million. The problem with the figure is that in the liability section, of the \$10.6 billion in liabilities, approximately \$9.1 billion is listed as due after one year, which means that they are future debt payments that aren't really due currently. How can a debt or debt payment that is due more than a year out be counted as a current debt payment? After removing the debt that was due over one year, that left a net surplus of \$8.7 billion dollars, hardly a

number indicative of a bankrupt entity. In addition to that, I did not see any corresponding asset class that accounted for projected revenues that would be used to make the payments on this future debt.

So what this means is that the City of Detroit is claiming a future liability as a current liability, but meanwhile ignoring the projected future revenues that will be received in the future as current assets to balance these future liabilities. This is not only being done with the City of Detroit, but with most government instrumentalities. This act is dramatically skewing the financial figures to make it appear that the City of Detroit is in a deficit while the truth is that it is nowhere near a deficit.

**Point 2: The Interest Rate Swap Debts are not valid**

The news has already reported that the London interbank offered rate (LIBOR), a benchmark interest rate for approximately \$300 trillion of securities was manipulated. The investigation into this market manipulation has, to date, led to fines of about \$2.5 billion against Barclays Plc (BARC), UBS AG(UBSN) and Royal Bank of Scotland Group Plc (RBS).

In addition to this interest rate manipulation, it has been reported that recorded telephone calls and e-mails that have been reviewed by the Commodity Futures Trading Commission (CFTC) show that traders at Wall Street banks instructed ICAP Plc brokers in Jersey City, New Jersey to buy or sell as many interest rate swaps as necessary to drive the benchmark rate, known as the ISDAfix, to predetermined levels.

U.S. investigators found evidence that banks made millions of dollars in trading profits at the expense of companies, government entities and pension funds by manipulating benchmarks for interest-rate derivatives. Pension funds, investment firms and pension funds all over the country and world use the type of derivatives that are the subject of the ISDAfix probe to hedge against losses or to speculate on interest rate fluctuations.

By rigging the benchmark, the banks stood to profit on separate derivatives trades they had with clients who were seeking to hedge against interest rate fluctuations, like the City of Detroit and its pension funds. These acts are illegal according to provisions in the 2010 Dodd-Frank Act that bars traders from intentionally interfering with the "orderly execution" of transactions that establish settlement prices.

Although the ISDAfix is not as well-known as the LIBOR, it has the potential to affect more people's lives because it is used by pension funds to hedge portfolio risks and by most companies or users of fixed-income derivatives. The ISDAfix fraud will probably end up being a bigger story than the huge situation with the LIBOR rate-fixing scandal.

This is all relevant to the City of Detroit because these losses on derivatives 'investing' were fraudulent because these banks and traders have been shown to have rigged the interest rates in their favor. There is no statute of limitation on fraud. If the EM/EFM for the City of Detroit was representing the best interests of the City, he would be pursuing lawsuits against these banks who have sold the City these fraudulent interest rate swaps. He would be suing them instead of quickly settling with these banks for 75 cents on the dollar. These alleged debts represent at least \$300-400 million dollars annually to the City of Detroit's finances.

**Point 3: The Voters Struck Down the Original EM Law, and the Governor unlawfully Passed Another One.**

Governor Snyder has sought to do indirectly what he could not do directly. He has passed a law, PA 436, which replaces the PA 4 that was struck down by a popular vote. Although the people voted to repeal the EM/EFM law, Snyder went and, with the help of a compliant Michigan Congress, passed a virtually identical law anyway. The applicable legal maxim is *Quando aliquid prohibetur ex directo, prohibetur et per obliquum*; "When anything is prohibited directly, it is prohibited indirectly" (Co. Litt. 223).

PA 436 is an unconstitutional encroachment on the due process rights of an elected, republican form of government. In addition to this, this law establishes an entirely different form of government in Michigan that is not accountable to the People. It institutes a new form of government similar to a dictatorship because the unelected Emergency Manager is not subject to the people. They do not have any ability to hold this person accountable, nor do they have any recourse to any action that this person may initiate. The People are guaranteed a republican form of government in Article 4, Section 4 of the US Constitution.

It disenfranchises the People of the State of Michigan because by allowing this type of 'end around' to an issue brought to popular vote, it shows that the Governor and Michigan Congress are not accountable to the people. What meaning does the popular vote have when government officials can ignore with impunity any voting results they choose?

**Point 4: EM Kevyn Orr has conflicts of interest due to his current and/or previous affiliations with Jones Day Law Firm and due to the fact that Jones Day has clients that are creditors of the City of Detroit.**

Kevyn Orr was a partner of the Jones Day law firm, and his law firm has been a major part of the City of Detroit's efforts towards constructing a Consent Agreement with the State of Michigan. In addition, Jones Day represents virtually all of the City's bondholders as clients in other actions. It appears that Orr is still beholden to Jones Day and its clients. He seeks to protect the rights of bondholders and banks, but offers no protection to pensioners and the pension funds. In fact, he has always said that he seeks to cut them very severely. Jones Day is also to be the City's restructuring advisor. In addition to this, Jones Day has acted as an advisor to most of the banks that have been caught up in the LIBOR scandal. So this is a serious conflict of interest because Orr may have severed his official relationship with Jones Day, but he was a part of that culture for years and still has a deep allegiance to the firm and its clients, as evidenced by his behavior.

One clause in PA 436, under which Orr is operating, says that he has an obligation to investigate criminal activity that may have led to the City's financial crisis. When asked about it, Orr only referred to investigations of the current pension funds, but never mentioned the criminal activities of the banks and mortgage holders mentioned above, some of which have led to fines in excess of \$1 billion.

Orr seems to be confident that he can slash workers' pensions, regardless of the Constitutional protection of them (cf. Article 9, Section 24 of the Michigan Constitution). He has already stated that he

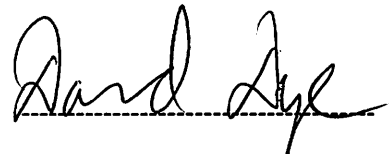
strongly believes that he can either use the Federal Bankruptcy filing, or work with Governor Snyder and others to change or nullify this constitutional protection of the pensions.

While stating that pensions are unsecured creditors, he has worked to protect the banks, and has negotiated a 75% payment on the outstanding balance to banks while working to force retirees and the pensions to take 10% payment on what the City owes them. Never before has a municipality sought to slash the contractually bound payments that they owe to pensioners.

Orr has never really negotiated in good faith with the pension funds. But he has publically said that he seeks to severely cut state-vested pension rights when he spoke to the Detroit Free Press Editorial Board. Since the Michigan State Constitution protects pensions, Snyder, Orr and others appear to want to use the federal bankruptcy to bypass the Michigan Constitution. This is why Orr made the statement that 'the federal bankruptcy law trumps the state's laws'. Snyder, who has already bypassed the voters' verdict on PA 4 by instituting PA 436 is now seeking to bypass the Michigan Constitution by appointing an EM and authorizing a bankruptcy filing to accomplish it.

#### **Prayer for Relief**

In recognition of the above points, I pray that the Honorable Judge will remand this case back to the State court for adjudication and resolution. It is a State issue that comes under state jurisdiction, until which time that a federal and/or US Constitutional issue manifests.



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