

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

Expedited Consideration Requested

**DEBTOR'S *EX PARTE* MOTION FOR AN ORDER SHORTENING
NOTICE AND SCHEDULING AN EXPEDITED HEARING WITH
RESPECT TO DEBTOR'S MOTION *IN LIMINE* TO
EXCLUDE TESTIMONY OF ALEXANDRA SCHWARZMAN**

The City of Detroit hereby moves for the entry of an *ex parte* order pursuant to Rules 9006(c)(1) and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9006-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Michigan (the "Local Rules") (a) shortening the notice period with respect to the Debtor's Motion *in Limine* to Exclude the Testimony of Alexandra Schwarzman (the "Motion"), and (b) scheduling a hearing on the Motion for September 23, 2013, immediately prior to the scheduled hearing on the Motion of Debtor for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section

365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019, and (III) Granting Related Relief (the “Assumption Motion”). In support of this *Ex Parte* Motion, the City respectfully states as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

Relief Requested

2. The City filed the Motion contemporaneously with the filing of the instant *Ex Parte* Motion. In the Motion, the City seeks entry of an order excluding the testimony of Alexandra Schwarzman, a potential rebuttal witness designated by Syncora Guarantee Inc., at the hearing on the Assumption Motion.

3. By this *Ex Parte* Motion, the City seeks an order (a) shortening the notice period with respect to the Motion, and (b) scheduling a hearing on the Motion on September 19, 2013 at 3:00 p.m.

Basis for Relief

4. Bankruptcy Rule 9006(c)(1) provides that “when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.” Fed. R.

Bankr. P. 9006(c)(1). Local Rule 9006-1(b) further provides that “a party may file a motion for an *ex parte* order reducing or enlarging the time for a party to take any action or file any paper.” E.D. Mich. LBR 9006-1(b).

5. In addition, pursuant to Bankruptcy Rule 9007, “[w]hen notice is to be given under the [Bankruptcy Rules], the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.” Fed. R. Bankr. P. 9007.

6. Together, these rules provide the Court with the authority to enter an *ex parte* order scheduling a hearing on shortened notice and approve the manner of notice of such hearing.

7. On September 12, 2013, the City took the deposition of Ms. Schwarzman.

8. As explained more fully in its Motion, the City believes that the testimony that Ms. Schwarzman will offer at the hearing is inadmissible under Fed. R. Evid. 401, 403 and/or 802.

9. Since the hearing at which Ms. Schwarzman will seek to offer such testimony is scheduled for September 23, 2013, it is necessary to bring the Motion before the Court expeditiously. The Court has already scheduled a hearing in this case on September 19, 2013. Hearing the Motion at the same time will promote efficiency for all of the parties, and will prevent Ms. Schwarzman – who

is based in Chicago – from incurring unnecessary travel expenses if the Motion is granted.

10. The City will serve this *Ex Parte* Motion via the Court's ECF system to the parties in the above-captioned proceeding, and will provide notice of the *ex parte* order promptly upon issuance.

11. For these reasons, the City submits that cause exists to schedule a hearing on its Motion for September 19, 2013, at 3:00 p.m., on shortened notice.

WHEREFORE, the City respectfully requests that the Court enter an order, substantially in the form attached as Exhibit 1, granting the relief requested in this *Ex Parte* Motion and granting such further relief as the Court deems appropriate.

Dated: September 16, 2013

Respectfully submitted,

/s/ Deborah Kovsky-Apap
Robert S. Hertzberg
Deborah Kovsky-Apap
PEPPER HAMILTON LLP
4000 Town Center, Suite 1800
Southfield, MI 48075
Telephone: (248) 359-7300
Fax: (248) 359-7700
hertzbergr@pepperlaw.com
kovskyd@pepperlaw.com

- and -

Thomas F. Cullen, Jr.
Gregory M. Shumaker
Geoffrey S. Stewart
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001.2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
tfcullen@jonesday.com
gshumaker@jonesday.com
gstewart@jonesday.com

**ATTORNEYS FOR THE CITY OF
DETROIT**

EXHIBIT 1

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 GRANTING DEBTOR'S *EX PARTE* MOTION FOR AN ORDER
SHORTENING NOTICE AND SCHEDULING
AN EXPEDITED HEARING**

This matter coming before the Court on Debtor's *Ex Parte* Motion for an Order Shortening Notice and Scheduling an Expedited Hearing with Respect to Debtor's Motion *in Limine* to Exclude the Testimony of Alexandra Schwarzman (the "Motion");¹ the Court having reviewed the Motion; having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Motion was sufficient under the circumstances; having determined after due deliberation

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

that the relief requested in the Motion is in the best interests of the Debtor and its creditors; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. A hearing with respect to the Debtor's Motion *in Limine* to Exclude Testimony of Alexandra Schwarzman shall be held on September 19, 2013, at 3:00 p.m. (prevailing Eastern Time) before the Hon. Steven Rhodes in Courtroom 716, Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan.