

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

In re	)
	) Chapter 9
	)
CITY OF DETROIT, MICHIGAN,	) Case No. 13-53846
	)
Debtor.	) Hon. Steven W. Rhodes
	)
	) <b>Expedited Consideration</b>
	) <b>Requested</b>

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**THE OBJECTORS' MOTION *IN LIMINE* TO PRECLUDE DEBTOR  
FROM OFFERING EVIDENCE REGARDING THE CITY'S NEED TO  
OBTAIN CASINO REVENUES IN CONNECTION WITH ITS DEBTOR-  
IN-POSSESSION FINANCING EFFORTS**

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**Preliminary Statement**

By this motion, the Objectors<sup>1</sup> seek to preclude the introduction of evidence and argument by the debtor, the City of Detroit (the "City"), regarding the City's post hoc rationalization for the Forbearance Agreement, i.e., that it needed to cut a deal with the Swap Counterparties in order to free up the casino revenues as collateral for post-petition debtor-in-possession ("DIP") financing. The City's

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<sup>1</sup> This motion is joined by Syncora Capital Assurance and Syncora Guarantee Inc. ("Syncora"), Erste Europäische Pfandbriefund Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A., DEPFA Bank PLC, Retiree Association Parties, Retired Detroit Police Members Association, Ambac Assurance Corporation, National Public Finance Guarantee Corporation, Assured Guaranty Municipal Corp., Financial Guaranty Insurance Company, the Police and Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit, and the Official Committee of Retirees.

motion and supporting exhibits never referenced this purported justification.<sup>2</sup> Instead, it surfaced for the very first time during the depositions of the City's representatives. Still, while the City's witnesses testified that the ability to collateralize the casino revenue for DIP financing was a driving factor and a business justification for the Forbearance Agreement, they refused to provide information regarding the request for proposals or the anticipated DIP loan collateral package on the grounds that such information was "commercially sensitive." The Objectors anticipate that the City will argue that its need for collateralization of the casinos revenues in order to obtain post-petition financing supports its exercise of business judgment and the fairness and equity of the settlement purportedly effectuated by the Forbearance Agreement. Because the City has refused to provide any information regarding its efforts to secure DIP financing, it should be precluded from offering any evidence at the hearing of its new-found theory that the need for casino revenue collateralization justified the Forbearance Agreement.

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<sup>2</sup> This motion relates to the September 23, 2013 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") [Docket No. 17].

## **Background**

### **I. Collateralization of the Casino Revenue Is a Post Hoc Justification for the Forbearance Agreement.**

Neither the City's motion to approve the Forbearance Agreement nor any of its supporting exhibits cite collateralization of the casino revenue as a business reason supporting this settlement. The City's motion cited three reasons why the Forbearance Agreement purportedly constituted a sound exercise of business judgment and was fair and equitable: (1) it would allow the City access to cash flow; (2) it provides a workable unwind of the swap obligations; and (3) it avoids litigation with the swap counterparties. (*See* Assumption Motion ¶ 41.) These three reasons were discussed in the City's moving papers at length. Nowhere in its papers does the City discuss DIP financing or the need to offer a lien on casino revenues as part of the DIP collateral package. This purported justification was raised for the very first time during the depositions of the City's witnesses, Emergency Manager Kevyn Orr and the lead negotiator of the Forbearance Agreement, Kenneth Buckfire. Notably, these depositions occurred just after the City had issued a request for DIP financing proposals to more than thirty parties. (Buckfire Dep. 73:9-11.)

### **II. The City and Its Representatives Have Barred Inquiry into Key Aspects of the DIP Financing.**

While Mr. Buckfire and Mr. Orr suddenly testified that the Forbearance Agreement was necessary so that the City could offer collateralization of the

casino revenues in a DIP loan, the City's counsel blocked the Objectors from inquiring into details regarding the collateral package being offered as part of the City's DIP financing. Over 15 times throughout these depositions, it was claimed that this information could not be disclosed because it was "commercially sensitive."<sup>3</sup>

Mr. Buckfire would not, for instance, discuss the covenants in the term sheet, the collateral package (aside from the casino revenues), or the parties potentially involved in the financing.

MR. SUMMERS: What covenants, if any, are included in the RFP as being acceptable or not acceptable?

MR. BUCKFIRE: I'm not going to discuss that. It's commercially sensitive.

(Buckfire Dep. 73:24-74:2)

MR. CULLEN: . . . So, we're not going to answer questions about individual parties, we're not going to answer questions about the strategy of negotiating with those parties . . . You can go through those general items, but the actual strategy, the terms of arrangements with individual parties I'm not going to have him go into now.

(Buckfire Dep 72:7-22.)

Mr. Buckfire also refused to answer any questions about the collateral package being offered as part of the DIP financing on the basis of the claim that this information was commercially sensitive.

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<sup>3</sup> The City never sought a protective order with respect to this information; it merely directed its witnesses to refuse to answer the Objectors' questions.

MR. SUMMERS: What other [in addition to a lien on casino revenues] collateral is the City offering to secure the DIP financing loan?

MR. BUCKFIRE: I'm not going to answer that question.

(Buckfire Dep. 74:12-14.)

MR. SUMMERS: Is the City offering art work as collateral?

MR. BUCKFIRE: I'm not going to discuss the terms of the term sheet, sorry.

(Buckfire Dep. 75:2-4).

Specifically, Mr. Buckfire would not discuss at all whether the City had considered alternate sources of funding from the State of Michigan or federal government, continuing to claim that this is commercially sensitive information.

MR. SUMMERS: Has the City looked into possible sources of funding from the State of Michigan?<sup>4</sup>

MR. BUCKFIRE: I'm not going to discuss that.

MR. SUMMERS: Has the City looked into possible sources of funding from the federal government?

MR. BUCKFIRE: I'm not going to discuss that either.

MR. SUMMERS: On what basis?

MR. BUCKFIRE: Commercially sensitive information.

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<sup>4</sup> Mr. Orr stated in his deposition that, though the information regarding aid from the State of Michigan and the Federal Government was commercially sensitive, he understood that neither liquidity nor credit enhancement would be provided by the State of Michigan or the Federal Government in connection with the DIP financing. (Orr Dep 207:6-21.) He did not provide specifics and admitted that Mr. Buckfire is leading the DIP financing process for the City. (Orr Dep 201:10-17.) Mr. Buckfire, as noted above, refused to answer the relevant questions.

(Buckfire Dep. 107:12-19.)

MR. HACKNEY: And why aren't you going to tell me about [alternate sources of funding from the State or federal government]?

MR. BUCKFIRE: It's commercially sensitive information,

(Buckfire Dep. 162:20-163:2.)

Mr. Buckfire also declined to provide specifics about the operation of the collateral package being offered in connection with the DIP financing, even though he had stated the DIP would be in part collateralized with casino revenues:

MR. HACKNEY: As the banker who is leading the DIP, what's your understanding of the role the casino revenues will play in the collateral package offered in connection with the DIP?

MR. BUCKFIRE: They will be part of the collateral package.

MR. HACKNEY: So, they will be part, and when you say they, do you mean a specific period of time of the casino revenues or do you mean casino revenues projecting into the future?

MR. BUCKFIRE: It's commercially sensitive so I'm going to decline to answer it.

(Buckfire Dep. 142:19-143:4.)

Finally, the City's counsel also invoked commercial sensitivity in Mr. Orr's deposition:

MR. HACKNEY: Is the -- is the City considering pledging art as collateral?

MR. SHUMAKER: Again, I'm going to get into now the -- this is a very commercially sensitive subject.

MR. HACKNEY: I'm just asking the questions. You guys got to decide --

MR. SHUMAKER: I'm just stating my objection, and the fact of the matter is, as was stated yesterday with -- with Mr. Buckfire, is that when we get into the -- as you said, the RFP, the DIP RFP process is just started. We're not going to go into strategy or what the terms are or what the specifics are, because we do not believe that this is something that would be down to the City's benefit.

(Orr Dep. 209:21-210:10.)

Thus, the City blocked from discovery all of the Objectors' inquiry into the content of the DIP financing collateral package, while at the same time contending that the collateral package was one of the reasons that justified entering into the Forbearance Agreement.

### **Argument**

#### **I. The City Will Provide Evidence Regarding the Fairness and Equity of the Forbearance Agreement and the City's Use of Business Judgment in Entering the Forbearance Agreement.**

In order to approve a settlement under Rule 9019 of the Bankruptcy Code, a court must determine that the settlement is fair and equitable. *Reynolds v. Comm'r*, 861 F.2d 469, 473 (6th Cir. 1988) citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The City has the burden to establish that a settlement is fair and equitable. *See In re Hallet*, 33 B.R. 564, 565 (Bankr. D. Me. 1983). In meeting that burden, the City

must provide the court with a factual basis for concluding that the settlement is fair and equitable. *Reynolds* 861 F.2d 469, 473 (6th Cir. 1988).

A debtor's decision to assume or reject a contract under section 365 of the Bankruptcy Code is reviewed under the "business judgment" standard. *In re Orion Pictures Corp.*, 4 F.3d 1095, 1099 (2d Cir. 1993). The business judgment standard "presupposes that the estate will assume a contract only where doing so will be to its economic advantage . . . ." *In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008). To satisfy this standard, "[t]he act of assumption must be grounded, at least in part, in the conclusion that maintenance of the contract is . . . beneficial to the estate." *In re Great Atlantic & Pacific Tea Co., Inc.*, 472 B.R. 666, 672 (S.D.N.Y. 2012) (quoting *Century Indem. Co. v. Nat'l Gypsum Co. Settlement Trust (In re Nat'l Gypsum Co.)*, 208 F.3d 498, 505 (5th Cir. 2000).).

The Objectors anticipate that, in representing to the Court that the Forbearance Agreement is fair and equitable under Rule 9019 and a sound exercise of business judgment under section 365, the City will now attempt to argue that a sound business reason that justifies approval of the Forbearance Agreement is that it will allow for the casino revenues to be collateralized, which is necessary in order to obtain the post-petition DIP financing it seeks. (Orr Dep. 213:9-15.) However, as explained below, the City should not be permitted to make this newly



discovered argument because it has blocked the Objectors' inquiry into key features of the DIP financing and its collateral package.

**II. To the Extent the City seeks to Support Its Argument In Favor of Approving the Forbearance Agreement By Reference to Its Need For Casino Revenues in Connection With the DIP Loan, It Should be Precluded from Doing So Because It Has Blocked the Objectors' Inquiry into the Issue.**

A party is not permitted to withhold information during discovery and then introduce it at trial to support its claims. *See, e.g., In re Lott*, 139 F. App'x 658, 660 (6th Cir. 2005) (“[L]itigants cannot hide behind the privilege if they are relying upon privileged communications to make their case. ‘The attorney-client privilege cannot at once be used as a shield and a sword.’”) *quoting United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991). If a party intends to rely on information as evidence at trial, it is required to permit discovery of that information or waive its use at trial. *See, e.g., Arista Records LLC v. Lime Grp. LLC*, 06 CV 5936 KMW, 2011 WL 1642434 (S.D.N.Y. Apr. 20, 2011) (“[A] party who intends to rely at trial on the advice of counsel must make a full disclosure during discovery; failure to do so constitutes a waiver of the advice-of-counsel defense . . . .”); *see also Trouble v. Wet Seal, Inc.*, 179 F. Supp. 2d 291, 304 (S.D.N.Y. 2001) (“[Defendant] waived any available advice of counsel defense by objecting . . . to [Plaintiff’s] discovery requests . . . .”).

Thus, where a litigant prevents an adversary's inquiry regarding facts relevant to the claims at issue, he should not be permitted to introduce evidence of those facts at trial. *See In re Residential Capital, LLC*, 491 B.R. 63, 72 (Bankr. S.D.N.Y. 2013); *E.G.L. Gem Lab Ltd. v. Gem Quality Inst., Inc.*, 90 F. Supp. 2d 277, 296 (S.D.N.Y. 2000) *aff'd*, 4 F. App'x 81 (2d Cir. 2001) ("Having blocked his adversary from conducting discovery on this issue, he will not now be heard to advance reliance on counsel."). In *In re Residential Capital*, a debtor sought court approval of a settlement with certain parties under Rule 9019. *Id.* In the discovery phase leading up to the hearing on its 9019 motion, the debtor claimed privilege throughout its document productions and depositions. *Id.* In deposition, the debtor's CEO was instructed by counsel not to reveal the basis for any of the decisions to enter the settlement in question. *Id.* Objectors to the settlement argued that the debtor should be precluded from introducing the evidence because the debtor had blocked access to the information throughout the discovery period. *Id.* The court agreed, and ruled that "A court should exclude any testimony or evidentiary presentations by the Defendants at trial if that same testimony or evidence was withheld from Plaintiffs during discovery . . . ." *Id.* at 69.

Here, it is bad enough that this purported rationale supporting the Forbearance Agreement was never even mentioned in the City's moving papers. But the fact that the City then proffered the rationale, while denying any discovery

on it whatsoever, is wholly improper. To the extent the City seeks to justify its decision to enter into the Forbearance Agreement by reference to its need for collateralization of the casino revenues, it should not be permitted do so by relying on the casino revenues' use in the DIP loan's collateral package. The City should not be permitted to block all inquiry by the Objectors into the nature of the DIP loan's collateral and terms while, at the same time, advancing an argument in favor of the Forbearance Agreement that depends on this feature of the DIP loan's collateral package. Specifically, because the Objectors have not been given an opportunity to examine whether the City is using other sources of collateral and how much, relative to the casino revenues, might be available to the City from other sources, the Objectors would be unfairly prejudiced if evidence and arguments regarding the City's need for casino revenues in connection with the DIP loan were introduced at the hearing. The Objectors cannot adduce information regarding funding and collateral alternatives from any source other than the City. The City should therefore be precluded from introducing any evidence regarding the City's need for collateralization of casino revenues in connection with its DIP financing efforts.

### **Conclusion**

For the foregoing reasons, the Objectors respectfully request that this Court preclude the City from introducing evidence and argument concerning City's need

for collateralization of the casino revenues in connection with its DIP financing efforts as a business justification for the Forbearance Agreement and enter an order substantially similar to that attached herein as Exhibit 1.

Dated: September 18, 2013

**KIRKLAND & ELLIS LLP**

By: /s/ Stephen C. Hackney  
James H.M. Sprayregen, P.C.  
Ryan Blaine Bennett  
Stephen C. Hackney  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

- and -

Stephen M. Gross  
David A. Agay  
Joshua Gadharf  
MCDONALD HOPKINS PLC  
39533 Woodward Avenue  
Bloomfield Hills, MI 48304  
Telephone: (248) 646-5070  
Facsimile: (248) 646-5075

*Attorneys for Syncora Guarantee Inc. and  
Syncora Capital Assurance Inc.*

By: /s/ Vincent J. Marriott, III  
Howard S. Sher  
**JACOB & WEINGARTEN, P.C.**  
Somerset Place  
2301 W. Big Beaver Road, Suite 777  
Troy, Michigan 48084

Telephone: (248) 649-1200  
Facsimile: (248) 649-2920  
E-mail: [howard@jacobweingarten.com](mailto:howard@jacobweingarten.com)

-and-

Vincent J. Marriott, III  
**BALLARD SPAHR LLP**  
1735 Market Street, 51st Flr.  
Philadelphia, PA 19103  
Phone: 215.864.8236  
Fax: 215.864.9762  
Email: [marriott@ballardspahr.com](mailto:marriott@ballardspahr.com)

-and-

Matthew G. Summers  
**BALLARD SPAHR LLP**  
919 North Market Street, 11th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 252-4428  
Facsimile: (410) 361-8930  
E-mail: [summersm@ballardspahr.com](mailto:summersm@ballardspahr.com)

*Attorneys for Erste Europäische Pfandbrieffund  
Kommunalkreditbank Aktiengesellschaft in  
Luxemburg S.A.*

By: /s/ Karen V. Newbury  
Rick L. Frimmer  
Karen V. Newbury  
Michael W. Ott  
SCHIFF HARDIN, LLP  
233 S. Wacker Drive, Suite 6600  
Chicago, IL 60606  
Telephone: (312) 258-5600  
Facsimile: (312) 258-5600  
E-mail: [rfrimmer@schiffhardin.com](mailto:rfrimmer@schiffhardin.com)  
E-mail: [knewbury@schiffhardin.com](mailto:knewbury@schiffhardin.com)  
E-mail: [mott@schiffhardin.com](mailto:mott@schiffhardin.com)

*Attorneys for DEPFA Bank PLC*

By: /s/ Thomas R. Morris

Thomas R. Morris

Karin F. Avery

**SILVERMAN & MORRIS, P.L.L.C.**

30500 Northwestern Highway, Suite 200

Farmington Hills, Michigan 48334

Telephone: (248) 539-1330

Facsimile: (248) 539-1355

E-mail: [morris@silvermanmorris.com](mailto:morris@silvermanmorris.com)

E-mail: [avery@silvermanmorris.com](mailto:avery@silvermanmorris.com)

-and-

**LIPPITT O'KEEFE, PLLC**

Brian D. O'Keefe

Ryan C. Plecha

370 East Maple Road, 3rd Floor

Birmingham, Michigan 48009

Telephone: (248); 646-8292

Facsimile: (248) 646-8375

E-mail: [bokeefe@lippittokeefe.com](mailto:bokeefe@lippittokeefe.com)

E-mail: [rplecha@lippittokeefe.com](mailto:rplecha@lippittokeefe.com)

*Attorneys for Retiree Association Parties*

By: /s/Meredith E. Taunt

Lynn M. Brimer (P43291)

Meredith E. Taunt (P69698)

Mallory A. Field (P75289)

**STROBL & SHARP, P.C.**

300 East Long Lake Road, Suite 200

Bloomfield Hills, MI 48304-2376

Telephone: (248) 540-2300

Facsimile: (248) 645-2690

[lbrimer@stroblpc.com](mailto:lbrimer@stroblpc.com)

[mtaunt@stroblpc.com](mailto:mtaunt@stroblpc.com)

[mfield@stroblpc.com](mailto:mfield@stroblpc.com)

*Attorneys for Retired Detroit Police Members  
Association*

By: /s/ Caroline Turner English  
Carol Connor Cohen  
Caroline Turner English  
**ARENT FOX LLP**  
1717 K Street, NW  
Washington, DC 20036-5342  
Telephone: (202) 857-6054  
E-mail: [Carol.Cohen@arentfox.com](mailto:Carol.Cohen@arentfox.com)

-and-

David L. Dubrow  
Mark A. Angelov  
**ARENT FOX LLP**  
1675 Broadway  
New York, NY 10019  
Telephone: (212) 484-3900

-and-

SCHAFFER AND WEINER, PLLC  
Daniel J. Weiner (P32010)  
Brendan G. Best (P66370)  
40950 Woodward Ave., Suite 100  
Bloomfield Hills, MI 48304  
Telephone: (248) 540-3340  
E-mail: [bbest@schaferandweiner.com](mailto:bbest@schaferandweiner.com)

*Attorneys for Ambac Assurance Corporation*

By: /s/ Guy S. Neal  
Eric D. Novetsky  
Louis P. Rochkind  
**JAFFE, RAITT, HEUER & WEISS, P.C.**  
2777 Franklin Road, Suite 2500  
Southfield, MI 48034

Telephone: (248) 351-3000  
Facsimile: (248) 351-3082  
E-mail: [enovetsky@jaffelaw.com](mailto:enovetsky@jaffelaw.com)

-and-

Jeffrey E. Bjork  
**SIDLEY AUSTIN LLP**  
555 West Fifth Street, Suite 4000  
Los Angeles, CA 90013  
Telephone: (213) 896-6000  
Facsimile: (213) 896-6600  
E-mail: [jbjork@sidley.com](mailto:jbjork@sidley.com)

-and-

**SIDLEY AUSTIN LLP**  
Guy S. Neal  
1501 K Street, N.W.  
Washington, DC 20005  
Telephone: (202) 736-8000  
Facsimile: (202) 736-8711  
E-mail: [gneal@sidley.com](mailto:gneal@sidley.com)

*Attorneys for National Public Finance Guarantee Corporation*

By: /s/ Lawrence A. Larose  
Lawrence A. Larose, Esq.  
Samuel S. Kohn, Esq.  
Carrie V. Hardman, Esq.  
**WINSTON & STRAWN LLP**  
200 Park Avenue  
New York, NY 100166-4193  
Telephone: (212) 294-6700  
Facsimile: (212) 294-4700  
E-mail: [llarose@winston.com](mailto:llarose@winston.com)  
E-mail: [skohn@winston.com](mailto:skohn@winston.com)  
E-mail: [chardman@winston.com](mailto:chardman@winston.com)



-and-

Sarah T. Foss, Esq.  
**WINSTON & STRAWN LLP**  
1111 Louisiana, 25th Floor  
Houston, TX 77002-5242  
Telephone: (713) 651-2600  
Facsimile: (713) 651-2700  
E-mail: [sfoss@winston.com](mailto:sfoss@winston.com)

*Attorneys for Assured Guaranty Municipal Corp.*

By: /s/ Mark R. James  
Ernest J. Essad Jr.  
Mark R. James  
**WILLIAMS, WILLIAMS, RATTNER &  
PLUNKETT, P.C.**  
280 North Old Woodward Avenue, Suite 300  
Birmingham, MI 48009  
Telephone: (248) 642-0333  
Facsimile: (248) 642-0856  
E-mail: [EJEssad@wwrplaw.com](mailto:EJEssad@wwrplaw.com)  
E-mail: [mrjames@wwrplaw.com](mailto:mrjames@wwrplaw.com)

-and-

Alfredo R. Pérez  
**WEIL, GOTSHAL & MANGES LLP**  
700 Louisiana Street, Suite 1600  
Houston, TX 77002  
Telephone: (713) 546-5000  
Facsimile: (713) 224-9511  
E-mail: [Alfredo.perez@weil.com](mailto:Alfredo.perez@weil.com)

*Attorneys for Financial Guaranty Insurance  
Company*

By: /s/Robert D. Gordon  
Robert D. Gordon

Shannon L. Deeby  
CLARK HILL PLC  
151 South Old Woodward Avenue, Suite 200  
Birmingham, MI 48009  
Telephone: (248) 988-5882  
Facsimile: (248) 988-2502  
E-mail: rgordon@clarkhill.com

*Counsel to the Police and Fire Retirement System  
of the City of Detroit and the General Retirement  
System of the City of Detroit*

By: /s/ Carole Neville  
Carole Neville  
Claude Montgomery  
DENTONS  
1221 Avenue of the Americas  
New York, New York 10020-1089  
D +1 212 768 6700  
F +1 212 768 6800  
[carole.neville@dentons.com](mailto:carole.neville@dentons.com)  
[claudemontgomery@dentons.com](mailto:claudemontgomery@dentons.com)

*Counsel to the Official Committee of Retirees*

### **Summary of Attachments**

Exhibit 1 - Proposed Order

Exhibit 2 - Notice

Exhibit 3 - Brief [Not Required]

Exhibit 4 - Certificate of Service [To be Filed]

Exhibit 5 - Affidavits [Not Applicable]

Exhibit 6-A - Excerpts of Deposition of Kenneth Buckfire

Exhibit 6-B - Excerpts of Deposition of Kevyn D. Orr

**Exhibit 1**  
**Proposed Order**

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

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

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**ORDER GRANTING THE OBJECTORS' MOTION *IN LIMINE* TO  
PRECLUDE DEBTOR FROM OFFERING EVIDENCE REGARDING THE  
CITY'S NEED TO OBTAIN CASINO REVENUES IN CONNECTION  
WITH ITS DEBTOR-IN-POSSESSION FINANCING EFFORTS**

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This matter having come before the Court on the motion of the Objectors for the entry of an order precluding the City of Detroit from offering evidence regarding the City's need to obtain casino revenues in connection with its debtor-in-possession financing efforts, the Court having reviewed the Objectors' motion; and the Court having determined that the legal and factual bases set forth in the motion establish just cause for the relief granted herein;

**IT IS HEREBY ORDERED THAT:**

1. The Objectors' Motion *in Limine* to Preclude Debtor from Offering Evidence Regarding the City's Need to Obtain Casino Revenues in Connection With Its Debtor-In-Possession Financing Efforts is GRANTED.

2. The Debtor, the City of Detroit, is precluded from introducing evidence regarding the City's need to obtain casino revenues in connection with its debtor-in-possession financing at the 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.

3. The joining Objectors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the motion.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**IT IS SO ORDERED.**

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STEVEN W. RHODES  
United States Bankruptcy Judge

**Exhibit 2**

**Notice of Motion and Opportunity to Object**

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

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

)  
) Chapter 9  
)  
) Case No. 13-53846  
)  
) Hon. Steven W. Rhodes  
)

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**NOTICE OF THE OBJECTORS’  
MOTION *IN LIMINE* TO PRECLUDE DEBTOR  
FROM OFFERING EVIDENCE REGARDING THE CITY’S  
NEED TO OBTAIN CASINO REVENUES IN CONNECTION  
WITH ITS DEBTOR-IN-POSSESSION FINANCING EFFORTS**

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**PLEASE TAKE NOTICE** that on September 18, 2013, the Objectors, filed its *Motion in Limine to Preclude Debtor from Offering Evidence Regarding the City’s Need to Obtain Casino Revenues in Connection with Its Debtor-In-Possession Financing Efforts* (the “*Motion in Limine*”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) seeking entry of an order to preclude the introduction of evidence and argument by the debtor, the City of Detroit (the “City”), regarding the need for the City to obtain access to casino revenues in connection with its efforts to secure post-petition debtor-in-possession financing.

**PLEASE TAKE FURTHER NOTICE** that **your rights may be affected by the relief sought in the *Motion in Limine*. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.**

**PLEASE TAKE FURTHER NOTICE** that if you do not want the Bankruptcy Court to grant the Objectors *Motion in Limine*, or you want the Bankruptcy Court to consider your views on the *Motion in Limine*, by **October 3, 2013 at 4:00 p.m. (EDT)** you or your attorney must:<sup>1</sup>

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<sup>1</sup> Concurrently herewith, the Objectors are seeking expedited consideration and shortened notice of the *Motion in Limine*. If the Court grants such expedited consideration and shortened notice, the Objectors will file and serve notice of the new response deadline. The *Motion in Limine*. If the Court grants such expedited consideration and shortened notice, the Objector will file and serve notice of the new response deadline.



1. File with the court a written response to the Motion *in Limine*, explaining your position explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court's electronic case filing system in accordance with the Local Rules of the Bankruptcy Court or by mailing any objection or response to:<sup>2</sup>

United States Bankruptcy Court  
Theodore Levin Courthouse  
231 West Lafayette Street  
Detroit, MI 48226

You must also serve a copy of any objection or response upon:

James H.M. Sprayregen, P.C.  
Ryan Blaine Bennett  
Stephen C. Hackney  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

- and -

Stephen M. Gross  
David A. Agay  
Joshua Gadharf  
MCDONALD HOPKINS PLC  
39533 Woodward Avenue  
Bloomfield Hills, MI 48304  
Telephone: (248) 646-5070  
Facsimile: (248) 646-5075

2. If an objection or response is timely filed and served, the clerk will schedule a hearing on the Motion *in Limine* and you will be served with a notice of the date, time and location of the hearing.

**PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion in Limine and may enter an order granting such relief.**

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<sup>2</sup> A response must comply with F. R. Civ. P. 8(b), (c) and (e).

Dated: September 18, 2013

**KIRKLAND & ELLIS LLP**

By: /s/ Stephen C. Hackney

James H.M. Sprayregen, P.C.

Ryan Blaine Bennett

Stephen C. Hackney

KIRKLAND & ELLIS LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Stephen M. Gross

David A. Agay

Joshua Gadharf

MCDONALD HOPKINS PLC

39533 Woodward Avenue

Bloomfield Hills, MI 48304

Telephone: (248) 646-5070

Facsimile: (248) 646-5075

*Attorneys for Syncora Guarantee Inc. and  
Syncora Capital Assurance Inc.*

By: /s/ Vincent J. Marriott, III

Howard S. Sher

**JACOB & WEINGARTEN, P.C.**

Somerset Place

2301 W. Big Beaver Road, Suite 777

Troy, Michigan 48084

Telephone: (248) 649-1200

Facsimile: (248) 649-2920

E-mail: [howard@jacobweingarten.com](mailto:howard@jacobweingarten.com)

-and-

Vincent J. Marriott, III

**BALLARD SPAHR LLP**

1735 Market Street, 51st Flr.  
Philadelphia, PA 19103  
Phone: 215.864.8236  
Fax: 215.864.9762  
Email: [marriott@ballardspahr.com](mailto:marriott@ballardspahr.com)

-and-

Matthew G. Summers  
**BALLARD SPAHR LLP**  
919 North Market Street, 11th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 252-4428  
Facsimile: (410) 361-8930  
E-mail: [summersm@ballardspahr.com](mailto:summersm@ballardspahr.com)

*Attorneys for Erste Europäische Pfandbriefund  
Kommunkreditbank Aktiengesellschaft in  
Luxemburg S.A.*

By: /s/ Karen V. Newbury  
Rick L. Frimmer  
Karen V. Newbury  
Michael W. Ott  
SCHIFF HARDIN, LLP  
233 S. Wacker Drive, Suite 6600  
Chicago, IL 60606  
Telephone: (312) 258-5600  
Facsimile: (312) 258-5600  
E-mail: [rfrimmer@schiffhardin.com](mailto:rfrimmer@schiffhardin.com)  
E-mail: [knewbury@schiffhardin.com](mailto:knewbury@schiffhardin.com)  
E-mail: [mott@schiffhardin.com](mailto:mott@schiffhardin.com)

*Attorneys for DEPFA Bank PLC*

By: /s/ Thomas R. Morris  
Thomas R. Morris  
Karin F. Avery  
**SILVERMAN & MORRIS, P.L.L.C.**  
30500 Northwestern Highway, Suite 200

Farmington Hills, Michigan 48334  
Telephone: (248) 539-1330  
Facsimile: (248) 539-1355  
E-mail: [morris@silvermanmorris.com](mailto:morris@silvermanmorris.com)  
E-mail: [avery@silvermanmorris.com](mailto:avery@silvermanmorris.com)

-and-

**LIPPITT O'KEEFE, PLLC**

Brian D. O'Keefe  
Ryan C. Plecha  
370 East Maple Road, 3rd Floor  
Birmingham, Michigan 48009  
Telephone: (248); 646-8292  
Facsimile: (248) 646-8375  
E-mail: [bokeefe@lippittokeefe.com](mailto:bokeefe@lippittokeefe.com)  
E-mail: [rplecha@lippittokeefe.com](mailto:rplecha@lippittokeefe.com)

*Attorneys for Retiree Association Parties*

By: /s/Meredith E. Taunt  
Lynn M. Brimer (P43291)  
Meredith E. Taunt (P69698)  
Mallory A. Field (P75289)  
**STROBL & SHARP, P.C.**  
300 East Long Lake Road, Suite 200  
Bloomfield Hills, MI 48304-2376  
Telephone: (248) 540-2300  
Facsimile: (248) 645-2690  
[lbrimer@stroblpc.com](mailto:lbrimer@stroblpc.com)  
[mtaunt@stroblpc.com](mailto:mtaunt@stroblpc.com)  
[mfield@stroblpc.com](mailto:mfield@stroblpc.com)

*Attorneys for Retired Detroit Police Members Association*

By: /s/ Caroline Turner English  
Carol Connor Cohen  
Caroline Turner English  
**ARENT FOX LLP**

1717 K Street, NW  
Washington, DC 20036-5342  
Telephone: (202) 857-6054  
E-mail: [Carol.Cohen@arentfox.com](mailto:Carol.Cohen@arentfox.com)

-and-

David L. Dubrow  
Mark A. Angelov  
**ARENT FOX LLP**  
1675 Broadway  
New York, NY 10019  
Telephone: (212) 484-3900

-and-

SCHAFER AND WEINER, PLLC  
Daniel J. Weiner (P32010)  
Brendan G. Best (P66370)  
40950 Woodward Ave., Suite 100  
Bloomfield Hills, MI 48304  
Telephone: (248) 540-3340  
E-mail: [bbest@schaferandweiner.com](mailto:bbest@schaferandweiner.com)

*Attorneys for Ambac Assurance Corporation*

By: /s/ Guy S. Neal  
Eric D. Novetsky  
Louis P. Rochkind  
**JAFFE, RAITT, HEUER & WEISS, P.C.**  
2777 Franklin Road, Suite 2500  
Southfield, MI 48034  
Telephone: (248) 351-3000  
Facsimile: (248) 351-3082  
E-mail: [enovetsky@jaffelaw.com](mailto:enovetsky@jaffelaw.com)

-and-

Jeffrey E. Bjork  
**SIDLEY AUSTIN LLP**

555 West Fifth Street, Suite 4000  
Los Angeles, CA 90013  
Telephone: (213) 896-6000  
Facsimile: (213) 896-6600  
E-mail: [jbjork@sidley.com](mailto:jbjork@sidley.com)

-and-

**SIDLEY AUSTIN LLP**

Guy S. Neal  
1501 K Street, N.W.  
Washington, DC 20005  
Telephone: (202) 736-8000  
Facsimile: (202) 736-8711  
E-mail: [gneal@sidley.com](mailto:gneal@sidley.com)

*Attorneys for National Public Finance Guarantee  
Corporation*

By: /s/ Lawrence A. Larose

Lawrence A. Larose, Esq.

Samuel S. Kohn, Esq.

Carrie V. Hardman, Esq.

**WINSTON & STRAWN LLP**

200 Park Avenue  
New York, NY 100166-4193  
Telephone: (212) 294-6700  
Facsimile: (212) 294-4700  
E-mail: [llarose@winston.com](mailto:llarose@winston.com)  
E-mail: [skohn@winston.com](mailto:skohn@winston.com)  
E-mail: [chardman@winston.com](mailto:chardman@winston.com)

-and-

Sarah T. Foss, Esq.

**WINSTON & STRAWN LLP**

1111 Louisiana, 25th Floor  
Houston, TX 77002-5242  
Telephone: (713) 651-2600

Facsimile: (713) 651-2700  
E-mail: [sfoss@winston.com](mailto:sfoss@winston.com)

*Attorneys for Assured Guaranty Municipal Corp.*

By: /s/ Mark R. James

Ernest J. Essad Jr.

Mark R. James

**WILLIAMS, WILLIAMS, RATTNER &  
PLUNKETT, P.C.**

280 North Old Woodward Avenue, Suite 300  
Birmingham, MI 48009

Telephone: (248) 642-0333

Facsimile: (248) 642-0856

E-mail: [EJEssad@wwrplaw.com](mailto:EJEssad@wwrplaw.com)

E-mail: [mrjames@wwrplaw.com](mailto:mrjames@wwrplaw.com)

-and-

Alfredo R. Pérez

**WEIL, GOTSHAL & MANGES LLP**

700 Louisiana Street, Suite 1600

Houston, TX 77002

Telephone: (713) 546-5000

Facsimile: (713) 224-9511

E-mail: [Alfredo.perez@weil.com](mailto:Alfredo.perez@weil.com)

*Attorneys for Financial Guaranty Insurance  
Company*

By: /s/Robert D. Gordon

Robert D. Gordon

Shannon L. Deeby

**CLARK HILL PLC**

151 South Old Woodward Avenue, Suite 200  
Birmingham, MI 48009

Telephone: (248) 988-5882

Facsimile: (248) 988-2502

E-mail: [rgordon@clarkhill.com](mailto:rgordon@clarkhill.com)

*Counsel to the Police and Fire Retirement System  
of the City of Detroit and the General Retirement  
System of the City of Detroit*

By: /s/ Carole Neville

Carole Neville

Claude Montgomery

DENTONS

1221 Avenue of the Americas

New York, New York 10020-1089

D +1 212 768 6700

F +1 212 768 6800

[carole.neville@dentons.com](mailto:carole.neville@dentons.com)

[claude.montgomery@dentons.com](mailto:claude.montgomery@dentons.com)

*Counsel to the Official Committee of Retirees*



**Exhibit 3**

**None [Brief Not Required]**

**Exhibit 4**

**None [Separate Certificate of Service to be Filed]**

**Exhibit 5**

**None**

**Exhibit 6A**

**Excerpts of Deposition of Kenneth Buckfire**

1 **A. I would recommend it.**  
2 **BY MR. SUMMERS:**  
3 Q. Okay.  
4 **MR. SUMMERS:** Let's mark that for follow-up  
5 after the deposition.  
6 **BY MR. SUMMERS:**  
7 Q. You testified that as of the last analysis your  
8 understanding is the estimated amount of the  
9 termination payment that would be due is roughly three  
10 hundred million dollars, is that correct?  
11 **A. Well, it clearly moves around as the interest rate**  
12 **curve moves around. I think the most recent number is**  
13 **somewhere reaching 275 and 300 million dollars.**  
14 **That's before the application of the applicable**  
15 **discount that we had provided for in the termination**  
16 **agreement.**  
17 Q. And that last analysis, when was that performed?  
18 **A. A few days ago.**  
19 Q. How does the City plan to get the cash necessary to  
20 make the termination payment?  
21 **MR. CULLEN:** Objection. Foundation. Form.  
22 **BY MR. SUMMERS:**  
23 **Q. Does the City have a plan at this point for how it**  
24 **will obtain the cash necessary to pay the termination**  
25 **payment?**

1 nondisclosure agreements?  
2 **A. That's the universe I'm discussing, approximately 30**  
3 **or more.**  
4 Q. So, everybody you've talked to signed?  
5 **A. No, some people didn't want to participate. I can't**  
6 **tell you how many we called. I can tell you how many**  
7 **we sent NDAs to which have been returned to us, it's**  
8 **in excess of 30.**  
9 Q. Are some of the people or some of the potential  
10 sources of financing that Miller Buckfire have spoken  
11 to said no, we're not interested?  
12 **A. Yes.**  
13 Q. And approximately how many have said no?  
14 **A. Hasn't been that many, maybe ten. Would your client**  
15 **like one?**  
16 **Q. And do you know who those ten entities are that have**  
17 **said they are not interested?**  
18 **A. I do, yes.**  
19 Q. And who are they?  
20 **A. I'm not going to tell you that.**  
21 Q. On what basis?  
22 **A. It's commercially sensitive information.**  
23 **MR. CULLEN:** Counsel, maybe it will help,  
24 and I don't know whether you want this on the record  
25 or not, but the position we are going to take with

1 **MR. CULLEN:** Objection, foundation, form,  
2 but you can address the question.  
3 **A. Yes, the City has a plan.**  
4 **BY MR. SUMMERS:**  
5 Q. And what is that plan?  
6 **A. The City intends to secure a debtor in possession**  
7 **financing of sufficient proceeds to fund the**  
8 **termination payment as well as provide sufficient cash**  
9 **for the City to execute on its reinvestment program**  
10 **during the bankruptcy.**  
11 Q. And what is -- what actions, if any, has the City  
12 taken toward obtaining debtor in possession financing?  
13 **A. We have contacted a large universe of potentially**  
14 **interested investors, many of whom have signed**  
15 **nondisclosure agreements, NDAs, pursuant to which they**  
16 **have received the request for proposal, the RFP which**  
17 **went out yesterday.**  
18 Q. And is Miller Buckfire leading the effort to obtain  
19 debtor in possession financing?  
20 **A. Yes.**  
21 Q. And when you say a large universe of potential  
22 investors, do you know approximately how many have  
23 been talked to?  
24 **A. At the moment it's in excess of 30.**  
25 Q. And how many have -- how many have signed

1 respect to this is that this is a competitive process  
2 and the best result in that process is achieved by us  
3 being able to negotiate with the individual parties  
4 who are out there, and not to litigate the negotiating  
5 strategy before we have something to bring back to the  
6 court to approve.  
7 **So, we're not going to answer questions**  
8 **about individual parties, we're not going to answer**  
9 **questions about the strategy of negotiating with those**  
10 **parties and we're not at liberty to give out the**  
11 **information with respect to the people who responded**  
12 **to the NDAs because they understandably don't want to**  
13 **be shopped, don't want to take up a lot of your time.**  
14 **We can fight this through a lot of objections and so**  
15 **forth, and if we want to fight about that at some**  
16 **later time, perfectly fine.**  
17 **You can ask about his general strategy on**  
18 **this, you can ask about the basis for his confidence**  
19 **or nonconfidence in it. You can go through those**  
20 **general items, but the actual strategy, the terms of**  
21 **arrangements with individual parties I'm not going to**  
22 **have him go into now. Hopefully by the time we get to**  
23 **the hearing, we'll have an agreement that you will be**  
24 **on a --**  
25 **MR. SUMMERS:** Let's go -- I think let's

1 go -- move through the questions and see how we do.  
2 **MR. CULLEN:** Okay.  
3 **MR. SUMMERS:** I understand the City's  
4 position on it.  
5 **MR. CULLEN:** Okay.  
6 **BY MR. SUMMERS:**  
7 Q. You said an RFP went out yesterday?  
8 **A. Correct.**  
9 Q. Approximately how many people was the RPF sent to  
10 yesterday?  
11 **A. The 30 plus people who signed the NDA.**  
12 Q. How much debtor-in-possession financing does the City  
13 hope to obtain?  
14 **A. Three hundred fifty million dollars, up to three**  
15 **hundred fifty million dollars.**  
16 Q. And does the City have a goal on the interest rate?  
17 **A. The lowest possible interest rate.**  
18 Q. Does the RFP attempt to define what that lowest  
19 possible interest rate is?  
20 **A. No.**  
21 Q. Does it define whether the interest rate needs to be  
22 fixed or variable?  
23 **A. No.**  
24 Q. What covenants, if any, are included in the RFP as  
25 being acceptable or not acceptable?

1 **A. I'm not going to discuss that. It's commercially**  
2 **sensitive.**  
3 Q. How long of maturity on the DIP financing is the City  
4 looking to obtain?  
5 **A. Through the pendency of the end of the case.**  
6 Q. And is the City offering a lien on casino revenues in  
7 connection with the DIP financing?  
8 **A. In part.**  
9 Q. I assume the City does not expect to obtain unsecured  
10 financing?  
11 **A. I would take it if it was offered.**  
12 Q. No doubt. What other collateral is the City offering  
13 to secure the DIP financing loan?  
14 **A. I'm not going to answer that question.**  
15 Q. Does the RFP define what collateral would be  
16 available?  
17 **A. Yes, it does.**  
18 Q. And that's been sent out to potential investors?  
19 **A. Who have signed nondisclosure agreements.**  
20 Q. If somebody new came and said I would be interested in  
21 providing DIP financing, you would have them sign an  
22 NDA and then provide them the RFP?  
23 **A. If they wanted to make an unsolicited proposal without**  
24 **the benefit of the RPF, we would be happy to accept**  
25 **it. Are you suggesting your client is interested in**

1 **is submitting a proposal?**  
2 Q. Is the City offering art work as collateral?  
3 **A. I'm not going to discuss the terms of the term sheet,**  
4 **sorry.**  
5 Q. Well, we kind of picked and choose what terms in the  
6 RFP we are discussing and not discussing.  
7 **MR. CULLEN:** We have in the attempt to  
8 accommodate your desire for information and to  
9 maintain control of the integrity of this process  
10 which we believe is best negotiated as a negotiation  
11 and not a litigation.  
12 **MR. SUMMERS:** I guess I struggle with  
13 understanding why the collateral that's offered in the  
14 RPF that's been sent out when we know the interest  
15 rate, the amount of the financing the debtor seeks,  
16 why that puts the City at a competitive disadvantage.  
17 **MR. CULLEN:** We didn't say the interest  
18 rate.  
19 **MR. SUMMERS:** The lowest possible.  
20 **MR. CULLEN:** This is the beginning of a  
21 negotiation. It's the beginning of a negotiation that  
22 isn't at an end yet, that hasn't had any response to  
23 the RFPs yet, it's an initial offer, and that's what  
24 it is, and he's discussing it as such and willing to  
25 testify about it as such, but I'm not going to read

1 the terms of the RFP in the newspaper and our bidders  
2 are not going to read the terms of the RFP in the  
3 newspaper because that would hamper the process and  
4 hamper our ability to get best value.  
5 **MR. SUMMERS:** But we already have in the  
6 record that the casino revenues are part of the  
7 collateral that's being offered, so, what's wrong with  
8 finding out what the rest of the collateral that's  
9 being offered?  
10 **MR. CULLEN:** Not going to argue with you,  
11 Counsel. I'm telling you what the position is. I've  
12 tried to be accommodating. It's as far as I am going  
13 to go.  
14 **BY MR. SUMMERS**  
15 Q. Has the City had discussions with the State of  
16 Michigan about providing financing?  
17 **A. I'm not going to discuss that.**  
18 Q. What is the City's view about what has to happen in  
19 order to be able to obtain debtor-in-possession  
20 financing -- let me put a finer point.  
21 Are there certain events that the City  
22 believes has to happen in the case for it to be able  
23 to realistically obtain debtor-in-possession  
24 financing?  
25 **A. Yes, there are events in the case.**

1 all of the gaming revenues until that claim has been  
2 fully satisfied.  
3 Now, simple math will tell you if we have  
4 170 million of gaming revenues and we have a three  
5 hundred million dollar termination payment and we have  
6 an implied interest rate on that termination payment  
7 it will probably take somewhere between two and three  
8 years to pay it off in full.  
9 Q. That presumes that the lien held by the Swap  
10 counterparties against the casino revenues is a valid  
11 and enforceable lien, correct?  
12 A. That's what the agreement specifies.  
13 Q. Well --  
14 A. The 2009 agreement specifies.  
15 Q. Right, but --  
16 A. That's the agreement the City is bound by if the  
17 forbearance agreement is not approved.  
18 Q. Unless there's a litigation claim that exists that  
19 might invalidate the liens?  
20 A. In which case who knows what the Swap counterparties  
21 might do and what we might have access to in terms of  
22 gaming revenue.  
23 Q. So, the legal analysis is important to informing --  
24 A. Any risk the City is being asked to take that doesn't  
25 have access to gaming revenues is an unacceptable risk

1 A. Yes, by the end of October 2013.  
2 Q. What is the City's intention with respect to analyzing  
3 the appraisal and making a determination as to the art  
4 work once it receives the appraisal?  
5 MR. CULLEN: Objection. Foundation. Form.  
6 A. I can't even speculate as to what we'll do until we  
7 have some facts as to what value we're dealing with.  
8 That's why they were retained.  
9 BY MR. SUMMERS:  
10 Q. Has the City considered selling or leasing Belle Isle?  
11 A. Not to my knowledge.  
12 Q. Has the City looked into possible sources of funding  
13 from the State of Michigan?  
14 A. I'm not going to discuss that.  
15 Q. Has the City looked into possible sources of funding  
16 from the federal government?  
17 A. I'm not going to discuss that either.  
18 Q. On what basis?  
19 A. Commercially sensitive information.  
20 MR. SUMMERS: I'm going to propose we take  
21 maybe -- why don't we stop the tape for a minute.  
22 VIDEO TECHNICIAN: The time is 12:18 p.m.  
23 we are off the record.  
24 (Recess taken at 12:18 p.m.)  
25 (Back on the record at 1:21 p.m.)

1 from the point of view of the City's ability to  
2 rehabilitate itself.  
3 Q. Have you evaluated noncore assets as a source of funds  
4 for the City?  
5 MR. CULLEN: Objection. Foundation. Form.  
6 A. Yes.  
7 BY MR. SUMMERS:  
8 Q. And what evaluation have you performed?  
9 A. As we've identified in the June 14th plan we did  
10 identify for the benefit of the public and the  
11 creditors all potential noncore assets that might have  
12 value that could be used pursuant to the plan of  
13 adjustment.  
14 Q. And on August 5th you announced the City had hired  
15 Christie's to appraise the collection at the Detroit  
16 Institute of Art, correct?  
17 A. I didn't announce that.  
18 Q. The City announced it.  
19 A. The City announced it.  
20 Q. That they hired Christie's, correct? Do you have an  
21 understanding of the approximate value of the City's  
22 art collection?  
23 A. No.  
24 Q. Do you have an understanding as to when the City  
25 expects to receive the appraisal from Christie's?

1 VIDEO TECHNICIAN: We are back on the  
2 record at 1:21 p.m. This marks the beginning of tape  
3 number three.  
4 EXAMINATION  
5 BY MR. HACKNEY:  
6 Q. Mr. Buckfire, good afternoon. My name is Steve  
7 Hackney. I'm an attorney at Kirkland & Ellis, and I  
8 represent Syncora Capital Assurance and Syncora  
9 Guaranty. Nice to meet you.  
10 A. Likewise.  
11 Q. I think we had a brief conversation which you  
12 suggested there might have been something you'd like  
13 to correct with respect to a name from the morning's  
14 testimony.  
15 A. Yes, thank you, Mr. Hackney. I incorrectly identified  
16 the attorney from Cadwalader who was present at the  
17 June 4th meeting. His correct name is Larry  
18 Stromfeld, S T R O M F E L D. That's his correct name  
19 and that's who attended the meeting.  
20 Q. If you think of any other corrections, don't hesitate  
21 to stop me and let me know and we'll give you an  
22 opportunity to make them.  
23 A. Thank you.  
24 Q. So, I've been listening to your testimony. It's not  
25 my intention to re-ask you all the questions that were

1 would have demanded Syncora made good on its Swap  
2 insurance and let Syncora try and stick around and  
3 collect the casino revenues, correct?  
4 **MR. CULLEN:** Objection. Foundation. Form.  
5 Calls for speculation.  
6 **A. It wasn't an issue for the City.**  
7 **BY MR. HACKNEY:**  
8 Q. I'm asking whether you thought that was a possibility  
9 back at the time you were negotiating the forbearance  
10 agreement?  
11 **A. It wasn't an issue for the City. Had no impact on the**  
12 **City's access to cash.**  
13 Q. But if Syncora was a party that might come in in lieu  
14 of the Swap counterparties, didn't you want to find  
15 out whether you might be able to cut a better deal  
16 with Syncora?  
17 **MR. CULLEN:** Objection. Foundation. Form.  
18 Calls for speculation.  
19 **A. I can't speculate to that.**  
20 **BY MR. HACKNEY:**  
21 Q. All you can say is that you never did, correct?  
22 **A. Correct.**  
23 Q. And in fact between June 29th when you spoke to  
24 Mr. Snyder and today, there have never been  
25 substantive negotiations between the City and Syncora

1 or do you mean casino revenues projecting into the  
2 future?  
3 **A. It's commercially sensitive so I'm going to decline to**  
4 **answer it.**  
5 **MR. HACKNEY:** Okay. I'll just reserve on  
6 that. I obviously don't think there's a bunch of  
7 value we have going back and forth. I understand your  
8 position about this. On some of the other ones, we  
9 may come to those briefly and talk about it, but I get  
10 the DIP one.  
11 **BY MR. HACKNEY:**  
12 Q. You agree that the goal of the forbearance agreement  
13 is to get the collateral agreement to terminate so  
14 that the City can get access to the casino revenues,  
15 correct?  
16 **MR. CULLEN:** Objection. Foundation. Form.  
17 **A. That is one of the goals.**  
18 **BY MR. HACKNEY:**  
19 Q. That is one of the goals. And isn't it true that your  
20 current expectation is that you need the postpetition  
21 financing, the DIP loan to close in order to be able  
22 to exercise the option under the forbearance  
23 agreement, correct?  
24 **A. Correct.**  
25 Q. And there was testimony on that today because you

1 to your knowledge, isn't that correct?  
2 **A. Not on this, no.**  
3 Q. I wanted to clarify something that you said about the  
4 DIP earlier and it was mainly that -- you used the  
5 phrase I didn't understand with respect to the casino  
6 revenues, you said -- you either said that the casino  
7 revenues would be a part of the collateral package or  
8 that part of the casino revenues would be in the  
9 collateral package, and I wanted to clarify that.  
10 **MR. CULLEN:** Objection. Foundation. Form.  
11 I don't think he said either.  
12 **A. I didn't.**  
13 **BY MR. HACKNEY:**  
14 Q. Oh, okay. Well, I thought for sure you had said one  
15 of those two, but let me understand what you  
16 anticipate -- this is subject to counsel's concern,  
17 but I think there has been testimony about the casino  
18 revenues as part of the collateral package.  
19 **As the banker who is leading the DIP,**  
20 **what's your understanding of the role the casino**  
21 **revenues will play in the collateral package offered**  
22 **in connection with the DIP?**  
23 **A. They will be part of the collateral package.**  
24 Q. So, they will be part, and when you say they, do you  
25 mean a specific period of time of the casino revenues

1 don't have the money otherwise, right, Mr. Buckfire?  
2 **A. That is part of the collateral package, yes.**  
3 Q. I'm talking about the use of proceeds of the DIP just  
4 so we're clear. Part of the use of proceeds of the  
5 DIP will be to exercise the option under the  
6 forbearance agreement, correct?  
7 **A. Correct.**  
8 Q. You understand that you won't have unfettered access  
9 to the casino revenues until you exercise the option  
10 that leads to the termination of a Swap in the  
11 collateral agreement, correct?  
12 **A. Yes.**  
13 Q. Isn't this a bit circular?  
14 **A. Regrettably.**  
15 Q. How did you factor that consideration into the  
16 determination as to whether to engage in the  
17 forbearance agreement?  
18 **A. Well, this is why the Swap collateral agreement is**  
19 **such a problem for the City. Unless we can eliminate**  
20 **the collateral and regain control over gaming revenues**  
21 **without risk of loss because of defaults that would**  
22 **trap it, we need to rationalize and clean this up in**  
23 **order to put the City on a sound financial basis.**  
24 Q. So, there are two parts -- there are -- there may be  
25 many parts but two of the important parts of the



1 City's plan is are the investments that Mr. Orr wants  
2 to make, right?  
3 **A. Right.**  
4 Q. And the cost reductions he wants to make, right?  
5 **A. And the increase in staffing levels across services to**  
6 **provide higher level services to the City.**  
7 Q. But that's in the reinvestment, right?  
8 **A. No, it's actually hard to break out that way because a**  
9 **lot of it is actually in the salaries line and the HR**  
10 **lines.**  
11 **So, you have to go back to the numbers and**  
12 **ask me a lot of those questions.**  
13 Q. The proposed investments that he wants to make, that  
14 he proposes to make that I'm so ruthlessly omitting,  
15 they are in this document, right?  
16 **A. Not in this projection.**  
17 Q. They're not in this projection, but they are in this  
18 proposal?  
19 **A. That's right.**  
20 Q. He laid them all out in gory detail?  
21 **A. Yes, he did.**  
22 Q. He also lays out a number of cost cutting initiatives,  
23 isn't that correct?  
24 **A. Yes, he does.**  
25 Q. And one of his goals is also to make the City more

1 **Q. And why aren't you going to tell me about that?**  
2 **A. It's commercially sensitive information.**  
3 Q. Why?  
4 **A. That's my answer.**  
5 Q. Well, I can understand why if you are seeking estate  
6 guarantee of a DIP or other things today, I get that,  
7 and I'm not going to ask you about that, but I am  
8 going to say that I think I deserve an answer on what  
9 happened prior to June 4 in terms of finding  
10 alternative ways to address the City's liquidity  
11 crisis because after all what's been presented to us  
12 was if we didn't do this deal, the City would die, and  
13 I do think we are entitled to ask well, what had you  
14 tried to do with other actors, so, can we get over it  
15 or --  
16 **MR. CULLEN:** You could certainly ask if he  
17 had received any assurance of the availability of any  
18 other funding from any other source during that time  
19 period.  
20 **MR. HACKNEY:** Well, I do appreciate that  
21 but I often tend to ask my own questions. Let me  
22 try and ask it in a way that hopefully serves your  
23 concerns.  
24 **BY MR. HACKNEY:**  
25 Q. And let me first ask you, Mr. Buckfire, had your firm,

1 efficient, correct?  
2 **A. Yes.**  
3 Q. At the same time he also wants to make it operate  
4 better, correct?  
5 **A. Correct.**  
6 Q. Those two things from a net operating standpoint work  
7 in tension with one another, right?  
8 **A. They do over time, but you have to consider the**  
9 **timetable and when these things are done.**  
10 Q. I want to ask you a question about state and federal  
11 aid but I don't want to mix it up into the DIP which I  
12 understand -- which I took to mean earlier was one of  
13 the sensitivities there. I want to go back to June 4,  
14 2011.  
15 Prior to June 4, 2011 had you undertaken  
16 any effort to evaluate whether there was either state  
17 aid or federal aid that you could use in lieu of  
18 having to negotiate this deal with the Swap  
19 counterparties?  
20 **A. We are assuming there is no aid available to the City.**  
21 **Q. You were assuming that there was none, but had you**  
22 **undertaken an effort to determine whether there could**  
23 **be some?**  
24 **A. I've already testified that I'm not going to discuss**  
25 **that.**

1 you or your firm undertaken any analysis of this  
2 question? You don't have to tell me what it was.  
3 Let's go in stages.  
4 Had you analyzed the problem?  
5 **A. Yes, we did.**  
6 Q. You had analyzed the problem. And is it your  
7 testimony that divulging the results of that analysis  
8 would be commercially sensitive?  
9 **A. Yes.**  
10 Q. Is part of the reason for that because of the way any  
11 potential aid from the City or from the state or the  
12 feds might interplay with the DIP process, is it the  
13 way they knit up, is that the problem?  
14 **A. Yes.**  
15 Q. All right.  
16 **MR. HACKNEY:** Let me suggest a short break.  
17 I think that it may be time for me to pass the baton.  
18 **MR. CULLEN:** Okay.  
19 **VIDEO TECHNICIAN:** The time is 2:19 p.m.  
20 This marks the end of tape number three. We are off  
21 the record.  
22 (Recess taken at 2:19 p.m.)  
23 (Back on the record at 2:30 p.m.)  
24 **VIDEO TECHNICIAN:** We are back on the  
25 record at 2:30 p.m. This marks the beginning of tape

**Exhibit 6B**

**Excerpts of Deposition of Kevyn D. Orr**

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1 Q. Your view of those legacy expenditures in the  
2 bankruptcy is that they are unsecured claims, correct?  
3 **A. Yes. Many of them are, yes. There are some**  
4 **expenditures that are secured with regard to the water**  
5 **department and parking and some miscellaneous, but the**  
6 **roughly 11 and a half, 12 billion dollars that we put**  
7 **out there we view as unsecured.**  
8 Q. So let's go back to sourcing this termination payment.  
9 **A. Yes.**  
10 **Q. It was my understanding of his testimony that**  
11 **Mr. Buckfire who, by the way, is the individual tasked**  
12 **with obtaining the City's post petition financing,**  
13 **correct?**  
14 **A. Yes.**  
15 **Q. And is presumably the individual that's most**  
16 **knowledgeable about that effort?**  
17 **A. Yes.**  
18 Q. It was -- I'll represent to you that his testimony was  
19 that the proceeds for the optional termination payment  
20 would likely come from the post -- the proceeds of the  
21 post petition financing?  
22 **A. Yes.**  
23 **MR. JURGENS:** Objection to form.  
24 **BY MR. HACKNEY:**  
25 Q. Is that also your understanding?

1 Q. Okay. So I think there -- if I'm not mistaken, your  
2 father was an amen minister.  
3 **A. Great grandfather, grandfather and father.**  
4 Q. So maybe --  
5 **A. Yeah, took me back to -- over in the corner with the**  
6 **deacons, yeah, took me back.**  
7 Q. Okay. I won't compare myself to your father,  
8 grandfather and great grandfather, but I can aspire.  
9 **A. Yeah.**  
10 Q. So I do want to talk about -- this is important.  
11 Okay. This is -- isn't it true that one aspect of the  
12 DIP -- I'm not going to get into the others -- is that  
13 the casino revenues will be pledged or anticipated to  
14 be pledged as collateral for the post petition  
15 financing?  
16 **A. Let me say this. That is certainly under**  
17 **consideration.**  
18 Q. Okay. Now, isn't it also true, though, that the  
19 casino revenues have not currently been freed up on a  
20 permanent basis because the City has not currently  
21 exercised the option, correct?  
22 **A. The certainty that we hope to get out of the**  
23 **forbearance agreement has not been approved yet,**  
24 **correct.**  
25 Q. Well, even if it is approved by the Court, you still

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1 **A. Yes.**  
2 Q. Okay. Now, isn't it also true that the City hopes to  
3 pledge the casino revenues as part of the collateral  
4 package for the post petition financing?  
5 **MR. SHUMAKER:** I'm going to object here.  
6 We're getting into an area where it is incredibly  
7 commercially sensitive as to what sort of post  
8 petition financing that the City is seeking.  
9 **MR. HACKNEY:** Let me not be rude. I will  
10 tell you I'm just going to ask him questions that  
11 Buckfire asked yesterday -- answered. So I'm not  
12 going to try and play the whole thing, but there were  
13 absolutely areas where Buckfire answered. I think  
14 there were a lot of other people in the room that were  
15 there. I think any of your colleagues --  
16 **MR. SHUMAKER:** Okay, that's fine.  
17 **MR. HACKNEY:** Any of your colleagues.  
18 **MR. SHUMAKER:** I just want to caution you.  
19 **MR. HACKNEY:** I understand. I understand  
20 the sensitivity. There were absolutely areas, though,  
21 that Buckfire talked about. This was one of them. I  
22 mean can I get an Amen or --  
23 (Consensus Amen.)  
24 **A. Okay.**  
25 **BY MR. HACKNEY:**

1 won't have exercised the option.  
2 **A. That is true with regard to the optional termination**  
3 **payment.**  
4 Q. Right.  
5 **A. Yes.**  
6 Q. And you need to exercise the option to terminate the  
7 hedge, right?  
8 **A. Yes.**  
9 Q. You need to terminate the hedge to terminate the  
10 collateral agreement.  
11 **A. I think that's --**  
12 **MR. SHUMAKER:** Object to form, to the  
13 extent calls for a legal conclusion.  
14 **A. Yeah, without getting into legal conclusions --**  
15 **COURT REPORTER:** I'm sorry. This is --  
16 **BY MR. HACKNEY:**  
17 Q. You think it's a fair characterization that you need  
18 to get the hedge terminated to get the collateral  
19 agreement terminated?  
20 **A. Yes.**  
21 Q. And the good part for the City, if those things  
22 happen, is that now you have unchanneled access to the  
23 casino revenues going into the future?  
24 **A. Yes, as we've said today, that certainty is one of the**  
25 **motivations to enter into the agreement.**

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1 Q. But do you also understand that you can't currently  
2 pledge the casino revenues to a post petition lender  
3 in a -- prior to having exercised the option under the  
4 forbearance agreement?

5 **A. Well, let's be careful without drawing legal**  
6 **conclusions. You can always enter into agreements**  
7 **that have contingencies attached to them and the**  
8 **parties will wait for those contingencies to occur.**  
9 **That certainly has happened with a number of different**  
10 **negotiations, not just in this case, but happens all**  
11 **the time.**

12 Q. That's fair that you absolutely -- you make a pledge  
13 that's contingent on something else. But isn't it  
14 true that, as a general matter, post petition lenders  
15 typically like to make sure that they have clean  
16 collateral before they make a loan that's secured by  
17 that collateral?

18 **MR. SHUMAKER:** Objection, calls for  
19 speculation.

20 **A. I think that's generally a fair characterization;**  
21 **however, there have been cases that I've been involved**  
22 **with outside of this one where post petition lenders**  
23 **have been willing to make pledges or commitments**  
24 **subject to certain contingencies.**

25 **BY MR. HACKNEY:**

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1 Q. Isn't it your expectation today, though -- is it -- is  
2 it your expectation today that any post petition  
3 lender will want clear -- a clear lien on the casino  
4 revenues before it's willing to lend? Is that your  
5 current expectation?

6 **A. Well, my current expectation is it might well want**  
7 **clear lien before it's willing to fund. I would think**  
8 **in many of the bankruptcy cases that I've been**  
9 **involved in, post petition lenders, for instance, are**  
10 **willing to make commitments subject to the Court**  
11 **approving their super priority liens, and then once**  
12 **that approval is granted, they fund the loan, so**  
13 **that's fairly common.**

14 Q. I'm going to confirm for the record that conversations  
15 with the State of Michigan about providing DIP  
16 financing or with the federal government about  
17 providing DIP financing are still questions that you  
18 will refuse to answer on the grounds of commercial  
19 sensitivity?

20 **MR. SHUMAKER:** I think you can ask Mr. Orr  
21 those questions. I don't want to -- I don't want to  
22 categorically exclude you from doing that.

23 **BY MR. HACKNEY:**

24 Q. Are they commercially sensitive?

25 **A. They are commercially sensitive, but I don't want to**

1 **mislead you. It is my assumption that, while they're**  
2 **commercially sensitive, that's not going to be**  
3 **forthcoming.**

4 Q. Oh, really?

5 **A. Yes.**

6 Q. So just to tie it up, you tried to get a -- whether  
7 it's credit enhancement or liquidity from the State  
8 and the Feds, and your expectation is that you won't  
9 be able to?

10 **A. My understanding at the State level is that there's**  
11 **certain prohibitions of the State law on the ability**  
12 **of the State to lend to the City, and at the Federal**  
13 **level my understanding is that it's not going to be**  
14 **forthcoming, direct aid.**

15 Q. Interesting. And what about credit enhancement by the  
16 State?

17 **A. Here again, it's highly commercially insensitive --**  
18 **sensitive. I don't want to say anything that**  
19 **forecloses it, but we -- let me answer it this way.**  
20 **We are operating on the assumption that that will not**  
21 **come -- be forthcoming.**

22 Q. The casino revenues are about 170 million dollars a  
23 year; isn't that correct?

24 **A. Yeah, 170, 180 somewhere in there.**

25 Q. Yeah. In fact, that -- it's interesting because the

1 DIP proceeds you're seeking are up to 350; is that  
2 correct?

3 **A. Here again, those are commercially sensitive, but I**  
4 **think that's fair. Yes, I think that's fair.**

5 Q. Okay. And that's the equivalent of two years' worth  
6 of casino revenues, correct?

7 **A. Yes.**

8 Q. Okay. And that's something that you think you may be  
9 able to get without having to pledge a clear lien on  
10 the casino revenues, right?

11 **A. No. What I'm trying to say is you can certainly enter**  
12 **into commitments. I'm drawing commitments different**  
13 **from funding. You can certainly have a lender which**  
14 **is quite common in bankruptcy cases to make a**  
15 **commitment subject to approval of its security**  
16 **interest or priorities to actually fund.**

17 Q. Okay.

18 **A. So that can occur.**

19 Q. So the fact that that can occur means that there can  
20 be uncertainty in connection with the casino revenues  
21 and it won't hamstring your DIP process, correct?

22 **A. Yeah, it's not so much -- well, to a degree what**  
23 **you're saying is correct. It's not so much**  
24 **uncertainty with casino revenues because that's math.**  
25 **It may be some uncertainty with regard to the ability**