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

CITY OF DETROIT'S PRE-TRIAL BRIEF IN (I) SUPPORT OF ENTRY OF AN ORDER FOR RELIEF AND (II) OPPOSITION TO OBJECTIONS REQUIRING THE RESOLUTION OF ISSUES OF MATERIAL FACT

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The City of Detroit (the "City" or the "Debtor") respectfully submits this pre-trial brief in (i) support of the entry of an order for relief in this chapter 9 case (any such order, an "Order for Relief") and (ii) opposition to objections to the entry of an Order for Relief that require the resolution of genuine issues of material fact (each, an "Objection").[1]

Many of the legal and factual issues supporting the entry of an Order for Relief (and underlying the Objections) have been exhaustively documented – through argument and evidence – and/or briefed by the City in:

- its Memorandum in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 14) (the "Eligibility Memorandum");
- the Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 11) (the "Orr Declaration");[2]
- the Declaration of Gaurav Malhotra in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 12) (the "Malhotra Declaration");
- the Declaration of Charles M. Moore in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 13) (the "Moore Declaration");
- its Consolidated Reply to Objections to the Entry of an Order for Relief (Docket No. 765) (the "Consolidated Reply"); and

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1 The various parties that have filed Objections to the entry of an Order for Relief are referred to herein as "Objectors").

2 Capitalized terms used but not defined herein have the meaning given to them in the Orr Declaration.

- its Reply to the Objection of the Official Committee of Retirees to the Entry of an Order for Relief (Docket No. 918) (the "Reply to Committee Objection" and, collectively with each of the foregoing submissions, the "Prior Submissions").

Rather than rehearse arguments and facts set forth in the Prior Submissions, this Brief (i) incorporates the Prior Submissions by reference, (ii) supplements the Prior Submissions by reference to discovery propounded in connection with this contested matter and (iii) responds to certain arguments set forth in certain amended Objections filed with the Court.[3] The City reserves its right to rely at trial

[3] On October 11, 2013, amended Objections to the entry of an Order for Relief were filed by: (a) the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees ("AFSCME") (Docket No. 1156) (the "Amended AFSCME Objection"); (b) GRS and PFRS (together, the "Retirement Systems") (Docket No. 1166) (the "Amended Retirement Systems Objection"); (c) certain of the City's public safety unions (collectively, the "Public Safety Unions") (Docket No. 1169) (the "Amended Public Safety Unions Objection"); (d) the International Union, UAW (the "UAW") and certain plaintiffs in the lawsuit captioned as Flowers v. Snyder, No. 13-729-CZ (Ingham Cnty. Cir. Ct.) (Docket No. 1170) (the "Amended UAW Objection"); and (e) the official committee of retirees appointed in this chapter 9 case (the "Retiree Committee") (Docket No. 1174) (the "Amended Committee Objection" and, collectively with the foregoing amended Objections, the "Amended Objections").

Although Section VII of this Court's First Amended Order Regarding Eligibility Objections, Notices of Hearings and Certifications Pursuant to 28 U.S.C. § 2403(a) & (b) (Docket No. 821) provided that the Amended Objections were to be "based on evidence obtained during discovery" (and, moreover, "shall supersede the party's original objection"), many of the Amended Objections serve primarily (a) as sur-replies to the City's Consolidated Reply and/or Reply to Committee Objection and (b) to

on any and all evidence relevant to the entry of an Order for Relief, including, but not limited to, any deposition testimony or documents not cited or referenced herein.

I. PRELIMINARY STATEMENT

As set forth in the Prior Submissions (particularly, the Orr Declaration), the City of Detroit currently is beset by a state-declared emergency. Decades of declining population, employment and revenues and failures of management have produced a multitude of civic ills: widespread urban blight; deteriorating infrastructure and assets; alarming crime rates (compounded by low response times); and an inability to provide acceptable levels of the most basic municipal services.

These problems are exacerbated – and rendered intractable – by the City's debt burden. The City estimates that, as of the Petition Date, it owed approximately $18 billion to more than 100,000 creditors: approximately (A) $5.85 billion in special revenue obligations; (B) $6.4 billion in other post-employment benefit liabilities; (C) $3.5 billion in underfunded pension liabilities based on current estimates; (D) $1.13 billion in secured and unsecured

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supplement prior briefing on constitutional arguments (with little to no reference to relevant discovery).

general obligation liabilities; (E) $1.43 billion in liabilities under pension-related certificates of participation ("COPs"); (F) $296.5 million in swap liabilities related to the COPs; and (G) $300 million in other liabilities. Even after removing special revenue (enterprise fund) debt from the equation, debt service on these obligations consumes substantial amounts of the City's annual revenue (i.e., 42.5% in the current fiscal year and a projected 65% by 2017).

It quickly became apparent to the City – following good faith attempts to negotiate an out-of-court, consensual restructuring of its obligations with a fragmented creditor constituency (all of whom are competing for every available dollar) – that, absent court intervention, the City's problems (both financial and operational) could not be resolved in a fashion that would maximize equitable recoveries for creditors while also permitting the substantial reinvestment necessary for the long-term rejuvenation of the City. Accordingly, the City commenced this chapter 9 case on July 18, 2013 (the "Petition Date") by filing a Petition for Relief (the "Petition").

In light of the foregoing realities, it would seem manifest that, if ever a city needed to adjust its debts consistent with the provisions and purpose of chapter 9, Detroit is that city. Nevertheless, the prospect of an Order for Relief for the City has met with fierce opposition, with arguments covering the spectrum from

allegations of bad faith on the part of the City to the threshold unconstitutionality of chapter 9 itself.

None of these objections has merit. As demonstrated at length in the Prior Submissions, and further demonstrated herein, the City is eligible to be a chapter 9 debtor and has demonstrated that an Order for Relief should be entered. The City has demonstrated its satisfaction of the state law requirements that govern – and permit – access to chapter 9 (and has refuted the sundry arguments that the federal and Michigan Constitutions prohibit such access). It has conclusively shown, by way of essentially unrebutted financial analyses and projections, its financial insolvency. It has demonstrated both the impracticability of attempts to negotiate a resolution of that insolvency and adjust its $18 billion in debt, as well as its good faith attempts to engage as much of its creditor constituency as possible despite that impracticability. Finally, it has demonstrated both that it desires to effect a plan of adjustment in consonance with the rehabilitative purposes of the Bankruptcy Code, and that it filed its Petition in good faith to achieve those ends.

Accordingly, as set forth in the Statement of Qualifications, the Prior Submissions and herein, the City has satisfied all the requirements of section 109(c) of the Bankruptcy Code, it is eligible to be a debtor under chapter 9 and the Court should promptly enter an Order for Relief.

II. THE CITY WAS SPECIFICALLY AUTHORIZED TO COMMENCE THIS CHAPTER 9 CASE AND HAS SATISFIED SECTION 109(c)(2) OF THE BANKRUPTCY CODE

No party disputes that the City has satisfied the mechanical requirements of PA 436 governing a Michigan municipality's filing of a chapter 9 petition. On July 16, 2013, consistent with MCL § 141.1558(1), the Emergency Manager provided the Governor and Treasurer with his written recommendation that the City be authorized to file for chapter 9 relief. See Orr Declaration, at Exhibit J (copy of Emergency Manager's written recommendation). Thereafter, on July 18, 2013, pursuant to the same statute, the Governor approved in writing the Emergency Manager's recommendation to commence this chapter 9 case. See id. at Exhibit K (copy of Governor's written approval of Emergency Manager's recommendation). Finally, on July 18, 2013 (and, again, pursuant to MCL § 141.1558(1)), consistent with the Governor's written approval, the Emergency Manager issued a written order directing the City to commence this chapter 9 case. See id. at Exhibit L (copy of Emergency Manager's order directing commencement). Unable to contest either (A) PA 436's authorization of chapter 9 filings or (B) the City's satisfaction of the applicable statutory requirements, the Objectors have resorted to indirect attacks on the City's authorization to commence this case; i.e., attacks on the constitutionality of (A) the Emergency Manager's and Governor's actions, (B) PA 436 and (C) chapter 9 itself.

Although the purpose of the Amended Objections was to give Objectors the opportunity to update their arguments with new facts in light of the ongoing discovery process, the Objectors instead have taken the opportunity to raise a slew of new constitutionally-based arguments on the eve of the eligibility trial. The Court should decline to entertain these eleventh-hour arguments. In any event, the new arguments raised by the Objectors do not undermine the soundness of the City's legal position. As the City has already explained at length, chapter 9 is perfectly constitutional under binding Supreme Court precedent, and the City was validly authorized under Michigan law to become a chapter 9 debtor. The State's authorization did not violate the Pensions Clause or the Contracts Clause because no pensions or other contractual obligations have been impaired.

A. Chapter 9 Is Constitutional

Over seventy years ago, the Supreme Court held that the municipal bankruptcy provisions of the Bankruptcy Act of 1937 – the predecessor of the current chapter 9 – was not "an unconstitutional interference with the essential independence of the State as preserved by the Constitution." United States v. Bekins, 304 U.S. 27, 49, 53-54 (1938). The Objectors now seek to upend this longstanding precedent on the ground that subsequent Supreme Court cases have "effectively overruled" Bekins. Because Bekins has never been "actually overruled" by the Supreme Court, however, and because it has "direct application"

to this case, this Court must adhere to it, even if it "appears to rest on reasons rejected in some other line of decisions." Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484 (1989). The Objectors have yet to offer any response to this well-established rule.

Although Bekins alone is dispositive of chapter 9's constitutionality, none of the Supreme Court's post-Bekins cases provides any reason to doubt the continued validity of chapter 9. The Objectors insist, for example, that chapter 9 is no longer necessary to adjust municipal debts (and thus no longer constitutional) because the Court's New Deal-era Contracts Clause cases, particularly Faitoute Iron & Steel Co. v. City of Asbury Park, 316 U.S. 502 (1942), allow States to enact their own municipal bankruptcy laws. But the Objectors' attempt to scrub the Contracts Clause out of the Constitution cannot be squared with the Supreme Court's admonition that "[w]hen a State itself enters into a contract, it cannot simply walk away from its financial obligations." Energy Reserves Grp., Inc. v. Kan. Power & Light Co., 459 U.S. 400, 412 n.14 (1983).

For this reason, the Supreme Court itself, as well as other courts, have viewed Asbury Park as an outlier. "In almost every case," observed the Supreme Court, it "has held a governmental unit to its contractual obligations when it enters financial or other markets." Energy Reserves Grp., 459 U.S. at 412 n.14 (citing U.S. Trust Co. of N.Y. v. New Jersey, 431 U.S. 1, 25-28 (1977), W.B. Worthen Co.

v. Kavanaugh, 295 U.S. 56 (1935), and Murray v. Charleston, 96 U.S. 432 (1877), in contrast to Asbury Park, 316 U.S. 502); see also In re Jefferson Cnty., 474 B.R. 228, 279 & n.21 (Bankr. N.D. Ala. 2012) (explaining that, because of the Contracts Clause, "non-consensual alteration of contracted debt is, at the very least, severely restricted, if not impossible" and stating that "[t]here has been only one instance in this and the last century when the Supreme Court of the United States has sustained the alteration of a municipal bond contract outside a bankruptcy case" and that Asbury Park has since been "distinguished and its precedent status, if any, is dubious"), aff'd sub nom. Mosley v. Jefferson Cnty. (In re Jefferson Cnty.), No. 11-05736, 2012 WL 3775758 (N.D. Ala. Aug. 28, 2012). Indeed, even Asbury Park sees itself as a limited case bound by its facts. 316 U.S. at 516 (clarifying that "[w]e do not go beyond the case before us" and that "[d]ifferent considerations may come into play in different situations"). The Objectors' attempt to transform Asbury Park into a watershed case is simply unavailing.

Even if Asbury Park stands for the proposition that States may adjust municipal debts in limited ways under extraordinary conditions without violating the Contracts Clause, that power is not – and cannot be – coextensive with Congress' power to authorize the adjustment of municipal debts through Congress' bankruptcy power or any other of its enumerated powers since Congress, unlike the States, is not bound at all by the Contracts Clause. For this reason, Bekins's

essential point – that the "bankruptcy power is competent to give relief to debtors" where state law is not (304 U.S. at 54) – is still valid.

Also unavailing is the Objectors' contention that Congress unconstitutionally enlarged its powers through chapter 9, thus infringing the States' reserved powers under the Tenth Amendment. As a textual matter, Congress' bankruptcy power easily encompasses regulation of municipal bankruptcy. Bekins itself acknowledged that Congress' "bankruptcy power is competent to give relief" to municipal debtors. See Bekins, 304 U.S. at 54. Because municipal bankruptcy falls squarely within Congress' bankruptcy power, the only limitation on Congress' exercise of that power is that it not "commandeer" the States into enacting or administering the federal bankruptcy scheme. See Printz v. United States, 521 U.S. 898, 900 (1997) ("The Federal Government may not compel the States to enact or administer a federal regulatory program.") (quoting New York v. United States, 505 U.S. 144, 188 (1992)). Congress has not done so here. State participation in chapter 9 is wholly voluntary.[4]

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[4] AFSCME argues that chapter 9 (and, specifically, section 903 of the Bankruptcy Code) is "coercive," and thus violative of the Tenth Amendment, because it establishes the sole means of adjusting municipal debt. Amended AFSCME Objection, ¶¶ 86, 89. This argument is inconsistent with Bekins, which contemplated that the power to adjust municipal debts "was not available under state law," but nonetheless held that States were free to choose whether to opt in to the federal municipal bankruptcy scheme or to "oppose federal interference." 304 U.S. at 54. Although section 903 might

Not only is chapter 9 non-coercive, it is carefully crafted "to preserve the niceties of the state-federal relationship" for those States that voluntarily authorize their municipalities to seek relief under it. Ass'n of Retired Emps. v. City of Stockton (In re City of Stockton), 478 B.R. 8, 20 (Bankr. E.D. Cal. 2012). Under 11 U.S.C. § 903, a bankruptcy court is prohibited from "limit[ing] or impair[ing] the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality …." Therefore, even if there is some core of sovereign state functions – such as the enactment of State law – that cannot be ceded to the federal government by State consent, chapter 9 itself prohibits the bankruptcy court from intruding on those core functions.

B. The Tenth Amendment Does Not Pose Any Obstacle to Chapter 9

The Objectors contend that Detroit cannot enter chapter 9 because the Tenth Amendment purportedly reserves all regulation of state and municipal pension

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> have curtailed the States' limited power under Asbury Park to make minor adjustments to municipal debts, States are no worse off than they were in Bekins. In that case, the Court assumed that the States were "powerless" to adjust their municipal debts except through the federal bankruptcy process, but nonetheless held that States had a free choice whether to do so. See id. Even though States cannot pass their own bankruptcy laws, they remain free to forgo chapter 9 and to deal with municipal debts in other ways – for example, by using State tax revenues to relieve their financially-strapped municipalities.

benefits to the States. See Amended Retirement Systems Objection, at 25-27. At the outset, this argument is premature at the eligibility stage, because the permissibility of any impairment of pensions is best addressed at the stage of plan confirmation. If the Objectors' argument is relevant, it must be rejected because it would eviscerate chapter 9. For state sovereignty purposes, nothing distinguishes municipal pension debt from debt that arises from other municipal obligations; a city's decision to issue bonds, hire contractors or purchase property reflects its control over its spending priorities just as much as its decision to offer certain pension benefits does. It follows that if the Objectors were right about pension benefits, the Tenth Amendment would prohibit virtually any effort by a bankruptcy court to adjust *any* municipal debt. That cannot be right. Bekins makes clear that the adjustment of municipal debts does not impermissibly intrude on state sovereignty, and this Court is bound to follow that holding.

The Objectors also fail to marshal any real evidence in support of their claim that the Tenth Amendment reserves all issues surrounding municipal pensions to the States. To demonstrate Congress' supposed lack of power, the Objectors note only that, out of respect for federalism, the Employee Retirement Income Security Act ("ERISA") does not cover government pension plans. See Amended Retirement Systems Objection, at 25-26 (citing Roy v. Teachers Ins. & Annuity

Ass'n, 878 F.2d 47 (2d Cir. 1989); see also 29 U.S.C. § 1003(b)(1) (exempting "governmental plan[s]")).

This is not enough. To begin with, Congress' decision not to regulate a given area, even if inspired by a desire to foster federalism, does not prove that Congress lacks power to enter that area later if it so chooses; many subjects within the States' traditional purview are now filled with federal additions. See, e.g., Perrin v. United States, 444 U.S. 37, 42 (1979) (noting Congress' "now familiar power under the Commerce Clause . . . to prohibit activities of traditional state and local concern that also have an interstate nexus"). Moreover, it is far from clear – to say the least – that Congress lacks the power to impose general substantive rules on state and municipal pension plans if it so desired. See Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985) (holding that Congress had power under the Commerce Clause to subject state governments to the Fair Labor Standards Act despite Tenth Amendment concerns).

Finally, the differences between ERISA and chapter 9 demonstrate that Congress has not impermissibly intruded upon state sovereignty by allowing states to authorize municipal bankruptcies. ERISA creates a host of substantive rules with which pension plans must comply. See, e.g., 29 U.S.C. §§ 1081-85 (funding rules); §§ 1101-14 (fiduciary duties). By contrast, chapter 9 simply allows a state, if it chooses, to permit its municipalities to address their insolvency through federal

bankruptcy court. See 11 U.S.C. § 109(c). At every step of that process, chapter 9 protects the State's sovereign interests from disruption or control. See, e.g., 11 U.S.C. §§ 903 ("This chapter does not limit or impair the power of a State to control . . . a municipality of or in such State in the exercise of the political or governmental powers of such municipality …."); 11 U.S.C. § 904(1) ("[T]he court may not . . . interfere with . . . any of the political or governmental powers of the debtor."). Thus, whatever Congress' authority to impose ERISA's substantive requirements on state or municipal pension plans might be, the Tenth Amendment does not prohibit Congress from working with states to solve municipal crises through state-authorized federal bankruptcy proceedings.

C. The Pensions Clause Does Not Pose Any Obstacle to Chapter 9

As the City has already explained, the Pensions Clause treats pensions as "contractual obligation[s]," thus entitling them to the same protection that applies under the Contracts Clause – which does not pose any obstacle to chapter 9. A State's authorization of municipal bankruptcy does not impair pensions or any other contractual obligations, but merely "invites the intervention of the bankruptcy power" to resolve the crisis of municipal insolvency pursuant to federal law. Bekins, 304 U.S. at 54. See also Ashton v. Cameron Cnty. Water Improvement Dist. No. 1, 298 U.S. 513, 542 (1936) (Cardozo, J., dissenting) ("If contracts are impaired, the tie is cut or loosened through the action of the court of bankruptcy

approving a plan of composition under the authority of federal law. There, and not beyond in an ascending train of antecedents, is the cause of the impairment to which the law will have regard."). The Objectors ask this Court to ignore Bekins and to revert to the long-discredited holding in Ashton that State authorization is unconstitutional because it allows States to accomplish impairments indirectly in violation of the Contracts Clause and/or the Pensions Clause. See Amended AFSCME Objection, at ¶¶ 92-93. Bekins rejected this argument for good reason: the federal municipal-bankruptcy scheme does not authorize *States* to impair contractual obligations. On the contrary, unilateral impairment can only occur pursuant to *federal* law, by order of an impartial *federal* judge. For that reason, chapter 9 simply does not implicate the Contracts Clause or the Pensions Clause. To conclude otherwise would be to fly in the face of both Bekins and the plain language of the constitutional text.

Objectors now raise the new argument that the Pensions Clause offers greater protection than the Contracts Clause because the Pensions Clause prevents pensions from being "diminished or impaired," while the Contracts Clause only prevents contracts from being "impaired." Id. at ¶¶ 139-140. According to Objectors, this linguistic difference must mean that the Pensions Clause is somehow more "absolute" than the Contracts Clause. There is no basis for that conclusion.

In fact, when interpreting the Contracts Clause to be non-absolute, courts have never relied on the bizarre notion that the Clause's prohibition on the "impairment" of contracts does not apply to the "diminishment" of contracts. Rather, courts have given a flexible meaning to the Contracts Clause because reading it too rigidly would "throttle the capacity of the states to protect their fundamental interests." Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 443-44 (1934), and "would make [the Clause] destructive of the public interest by depriving the State of its prerogative of self-protection." W. B. Worthen Co. v. Thomas, 292 U.S. 426, 433 (1934). For that reason, the United States Supreme Court has held that the Contracts Clause prohibits contractual impairments only if they are "substantial," and not "reasonable and necessary to serve an important public purpose." U.S. Trust, 431 U.S. at 25; see also Blaisdell, 290 U.S. at 438 (stating that contracts may be impaired by measures that are "addressed to a legitimate end" as long as "the measures taken are reasonable and appropriate to that end").

In light of this long-established doctrine, the way for the drafters of the Pensions Clause to create an "absolute" protection for pensions would have been to include language to the effect that pensions cannot be impaired even if the impairment is *not* substantial, and even if the impairment *is* reasonable and

necessary to serve a legitimate public purpose. Of course, the Pensions Clause contains no such language.

Nor does the Pensions Clause contain any language suggesting that pensions, unlike contracts, should be rigidly protected during the rare crisis of municipal bankruptcy. There is nothing about the word "diminish" as opposed to the word "impair" that would suggest as much. Indeed, as the City has already pointed out, when the Pensions Clause was ratified in 1963, Michigan law specifically authorized instrumentalities of the State to commence bankruptcy cases, and that authority remained in place for another 20 years without anyone ever thinking there was a conflict with the Pensions Clause. See Consolidated Reply, at 26 (quoting Public Act 72 of 1939, MCL § 141.201(1) (repealed in 1982)).

Finally, Objectors insist that the term "diminished" must be given *some* independent legal effect for the sake of avoiding surplusage in the constitutional text. If the term "diminish" is given any meaning independent from "impair," however, the Contracts Clause would be hobbled because it would not prohibit diminishments. Any reading of the Pensions Clause that would so impair the Contracts Clause cannot be correct. On the contrary, it has long been understood that the "diminishment" of an obligation is a specific type of "impairment." As the United States Supreme Court has explained, "'[o]ne of the tests that a contract has been impaired is that its value has by legislation been diminished.'" Bank of

Minden v. Clement, 256 U.S. 126, 128 (1921) (quoting Planters' Bank v. Sharp, 47 U.S. 301, 327 (1848)). "The dictionary definition of 'impair' is '[t]o weaken, to make worse, to lessen in power, *diminish*, or relax, or otherwise affect in an injurious manner.'" Humana Inc. v. Forsyth, 525 U.S. 299, 309-10 (1999) (quoting Black's Law Dictionary 752 (6th ed. 1990)) (emphasis added). The Sixth Circuit has relied on the same definition. See Riverview Health Inst. LLC v. Med. Mut. of Ohio, 601 F.3d 505, 515 n.3 (6th Cir. 2010) ("To 'impair' means '[t]o weaken, to make worse, to lessen in power, *diminish*, or relax, or otherwise affect in an injurious manner.'") (quoting Black's Law Dictionary at 752 (6th ed. 1990)) (emphasis added).[5] The most recent version of Black's Law Dictionary continues to define the verb "impair" as "[t]o diminish the value of (property or a property right)," and it defines the noun "impairment" as: "[t]he fact or state of being damaged, weakened, or diminished." Black's Law Dictionary (9th ed. 2009).

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[5] Several state courts have made the same point. See, e.g., State ex rel. Cleveringa v. Klein, 249 N.W. 118, 122 (N.D. 1933) (""[T]he term 'impair' means diminish in value or excellence or strength."); Swinburne v. Mills, 50 P. 489, 490 (Wash. 1897) ("What is an impairment of a contract? Webster's definition of 'impair' is, 'To make worse; to diminish in quality, value, excellence, or strength; to deteriorate.' Then, if the value of a contract is deteriorated or lessened by the passage of an act, the obligation of the contract is most certainly impaired."). People v. Williams, 160 Cal. Rptr. 3d 779, 790 (Cal. Ct. App. 2013) ("The verb 'impair' means 'to damage or make worse by or as if by diminishing in some material respect.'") (quoting Merriam-Webster's Collegiate Dictionary 622 (11th ed. 2011)).

Webster's Third similarly defines "impair" as "to make worse: diminish in quantity, value, excellence, or strength: do harm to." Webster's Third New International Dictionary (1986). Consequently, because "diminish" is a linguistic subset of "impair," the former does not have any additional legal effect.

Although it may be somewhat redundant for the Pensions Clause to use the phrase "diminished or impaired," such redundancy is hardly uncommon. "Amplification by synonym has long been a part of the English language, and especially a part of the language of the law. In the English Renaissance, this habit was a common figure of speech called *synonymia*…. The purpose of doubling [is] dual: to give rhetorical weight and balance to the phrase, and to maximize the understanding of readers or listeners." Bryan A. Garner, Garner's Dictionary of Legal Usage 294 (3d ed. 2011) ("Doublets, Triplets, and Synonym-Strings"). To take but a few examples of well-known "doublets" in the law, consider the following pairs: "aid and abet," "pardon and forgive," "dominion and authority," "each and every," "false and untrue," "furnish and supply," "null and void," "part and parcel," "power and authority," "restrain and enjoin," and "sole and exclusive." Id. at 295.

As the Sixth Circuit has explained, "lawyers frequently say two (or more) things when one will do or say two things as a way of emphasizing one point. Courts themselves frequently apply 'arbitrary and capricious' review in

administrative law cases. But no one, I suspect, has ever seen agency action that was 'arbitrary' but not 'capricious.'" TMW Enters., Inc. v. Fed. Ins. Co., 619 F.3d 574, 578 (6th Cir. 2010) (citation omitted). See also, e.g., In re Ocwen Loan Servicing, LLC Mortg. Servicing Litig., 491 F.3d 638, 646 (7th Cir. 2007) ("The full name of the duty, … 'duty of good faith and fair dealing' – could be thought ominously open-ended. But the full name is merely what is called a 'doublet,' a form of redundancy in which lawyers delight, as in 'cease and desist' and 'free and clear.'") (quoting Bryan A. Garner, The Redbook: A Manual on Legal Style § 11.2(f) (2d ed. 2006)); Majkowski v. Am. Imaging Mgmt. Servs., LLC, 913 A.2d 572, 588 (Del. Ch. 2006) (declining to give independent meaning to the synonymous phrases "indemnify and hold harmless").

To be sure, the terms "diminish" and "impair" are not exact synonyms, because diminishment is a linguistic subset of impairment. The important point, however, is that "diminish" does not add any legal effect beyond "impair," since every diminishment of a contractual obligation is also an impairment. To diminish a contractual obligation is simply to impair it in a specific way. Indeed, the fact that the term "diminish" has a more specific meaning than "impair" helps illustrate why the drafters had good reason to use both terms together: By using "impair" they ensured that pensions would be covered by the full, traditional legal protection of the Contracts Clause. By adding the term "diminish," they focused attention on

the specific type of impairment that the ratifying public would have found most easily understandable.

Finally, as the City has already explained, a party invoking the canon against surplusage must be able to offer a better alternative – i.e., a "competing interpretation [that] gives effect to every clause and word." Microsoft Corp. v. i4i L.P., 131 S. Ct. 2238 (2011). Objectors cannot meet that test because their reading of the Pensions Clause suffers from an even worse surplusage problem: it fails to give effect to the provision that each pension "shall be a contractual obligation." See Reply to Committee Objection, at 9-11. Objectors do not even attempt to explain why the drafters of the Pensions Clause would have gone out of their way to refer to pensions as "contractual obligation[s]" if they did not intend to treat pensions as contracts, entitled only to the familiar protection of the Contracts Clause. On the City's reading, by contrast, it is perfectly plausible that the drafters added the term "diminished" simply to emphasize the specific point that pension payments could not be reduced – an important political point that may not have been as clear to the public if the drafters had used only the broader and more legalistic term "impaired."

D. The Takings Clause Does Not Pose Any Obstacle to Chapter 9

The Objectors contend that modifying their pension benefits through bankruptcy would take their property in violation of the Fifth Amendment.

See Amended Retirement Systems Objection, at 29-30; U.S. Const. amend. V ("nor shall private property be taken for public use, without just compensation"). Once again, this argument is premature and incorrect.

As unsecured creditors, the Objectors lack the kind of property interest required to support a takings claim. "The bankruptcy power is subject to the Fifth Amendment's prohibition against taking private property without compensation," United States v. Sec. Indus. Bank, 459 U.S. 70, 75 (1982), but not everyone whose rights are affected by a bankruptcy plan has his or her property taken for purposes of the Fifth Amendment. Rather, in defining what constitutes "property," the Supreme Court has distinguished between contractual obligations and "traditional property interests"; modifications of the former cannot support a takings claim, while deprivations to the latter can. Id.; see also Americredit Fin. Servs., Inc. v. Nichols (In re Nichols), 440 F.3d 850, 854 (6th Cir. 2006) (distinguishing between "the *contractual* right to obtain repayment of [a] debt" and the "*property right* the [secured] creditor has in the collateral that secures the debt") (emphasis in original).

To even trigger a takings analysis, then, the Objectors must demonstrate that they have a property right in a part of the debtor's property, not just a contractual right to be repaid. This they cannot do. As unsecured creditors, they "do not have interests in any of [the] debtor's property prior to the debtor filing bankruptcy," and thus their "unsecured … claims do not rise to the level of a property interest" for

purposes of the Takings Clause. In re Varanasi, 394 B.R. 430, 438 (Bankr. S.D. Ohio 2008); see also In re Chrysler LLC, 405 B.R. 84, 111 (Bankr. S.D.N.Y. 2009) (rejecting an objection premised on the Takings Clause because "the objector holds an unsecured claim, rather than a lien in some collateral that is property of the estate, which is a necessary prerequisite to a Fifth Amendment Takings Clause claim in the bankruptcy context").

In an effort to bootstrap their contractual rights into a Fifth Amendment property interest, the Objectors note that the Takings Clause applies where the government "seize[s] a sum of money from a specific fund," McCarthy v. City of Cleveland, 626 F.3d 280, 284 (6th Cir. 2010), or where it "appropriate[s], transfer[s], or encumber[s] … specific identified property interest[s], such as a bank account or accrued interest," id. at 285 (quoting E. Enters. v. Apfel, 524 U.S. 498, 540 (1998) (Kennedy, J., concurring in part and dissenting in part)). These facts, while true, are irrelevant. A modification of pension benefits would not "seize" money from a "specified fund"; it would discharge Detroit from certain contractual obligations to make payments from future cash flow going forward. Cf. Brown v. Legal Found. of Wash., 538 U.S. 216 (2003) (state law requiring lawyers to transfer interest on certain accounts to legal aid services constituted a taking of that interest).

Moreover, modifying pension benefits would not "encumber" any of the Objectors' "specific identified property interests." They have no such interest in any particular account, only a general contract claim to receive future cash payments from the City's coffers on account of a pension underfunding. Because modifying pension benefits to address underfunding would not "seize or otherwise impair an identifiable fund of money," McCarthy, 626 F.3d at 286, the Objectors' Takings claim fails.

E. The Emergency Manager Was Validly Appointed Under Both PA 72 and PA 436

In her (late-filed) Objection (D.I. 1222) to the entry of an Order for Relief (the "Crittenden Objection"), Objector Krystal Crittendon argued that the appointment of the Emergency Manager was invalid – and, thus, the filing of the Petition was invalid – because (a) the rejection of PA 4 by referendum in November of 2012 did not serve to revive PA 72 (i.e., the statute under which the Emergency Manager was initially appointed) (Crittendon Objection, at 1-2) and (b) a temporal ambiguity in the initial contract appointing the Emergency Manager resulted in a 24-hour period during which no emergency manager served (Crittendon Objection, at 2-3). Each of these arguments should be rejected.

First, Ms. Crittendon's assertion that PA 72 was not revived by the electorate's rejection of PA 4 has already been rejected by the Michigan Court of Appeals. See Order, Davis v. Roberts, No. 313297 (Mich. Ct. App. Nov. 16, 2012)

(confirming that the tenure of an emergency manager appointed under PA 4 continued under a revived PA 72; holding that, as with the rest of the statute, the section of PA 4 repealing PA 72 "did not survive the referendum and has no effect"; holding that Michigan's anti-revival statute, MCL § 8.4, "includes no reference to statutes that have been rejected by referendum" and that "MCL [§] 8.4 does not apply to the voters' rejection, by referendum, of PA 4."); see also Mich. Att'y Gen. Op. No. 7267 (Aug. 6, 2012) (opining, prior to the rejection of PA 4, that a rejection by referendum of PA 4 would not constitute a "repeal" of the statute and, thus, MCL § 8.4 would not apply; opining that PA 72 would be permanently revived upon the rejection of PA 4).[6] Accordingly, the Emergency Manager was validly appointed under the revived PA 72, and Ms. Crittendon's argument should be rejected.

Second, Ms. Crittendon's suggestion that an alleged gap in the Emergency Manager's tenure of service invalidates his appointment (and, thus, the City's Petition) should likewise be rejected. Ms. Crittendon intends to exploit an ambiguity in the "Contract for Emergency Financial Manager Services" (the "Initial EM Contract"), entered into between the Emergency Manager and the LEFALB on March 14, 2013 pursuant to PA 72. Ms. Crittendon argues that,

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[6] Copies of the Michigan Court of Appeals order in Roberts and the Michigan attorney general's opinion are attached hereto as Exhibit A.

because (a) the Initial EM Contract provides that it "shall terminate at *midnight* on Wednesday, March 27, 2013" (Initial EM Contract, at § 2.2; emphasis added) and (b) the current contract between the Emergency Manager and the State of Michigan, dated March 27, 2013 (the "Current EM Contract"), did not become effective until Thursday, March 28, 2013 (Current EM Contract, at § 2.2),[7] there was no emergency manager appointed for the City on March 27, 2013.

The Michigan Supreme Court has previously indicated its understanding that the term "midnight" means the *end* of the specified day. See Hallock v. Income Guar. Co., 259 N.W. 133, 134 (Mich. 1935) (holding that an insurance policy expired at "midnight," i.e., at the end of the day, on the specified expiration date, and not at the beginning of said date). Other courts commonly find the term "midnight" to be ambiguous. See, e.g., Am. Transit Ins. Co. v. Wilfred, 745 N.Y.S.2d 171, 172 (N.Y. App. Div. 2002) (holding that where an insurance contract specified that the policy was valid "to midnight" on a certain date, the word "midnight" was ambiguous because it could have referred to the beginning or end of the specified expiration date); Frankfather & Sons Trucking, Inc. v. Guar. Nat'l Cos., No. 93WD080, 1994 WL 236185, at *1 (Ohio Ct. App. May 27, 1994) ("[T]he term '12:00 a.m.' is capable of having several meanings in reference to [a

[7] Copies of the Initial EM Contract and the Current EM Contract are attached hereto as Exhibit B.

specific] date …. Such term could refer to the first moment of the day …. However, the term also could refer to … the last moment of the day."). Michigan courts have held that, when a contract term is ambiguous, the trier of fact must decide what the term means, and may consider extrinsic evidence in such cases without violating the parol evidence rule. See, e.g., Klapp v. United Ins. Grp. Agency, Inc., 663 N.W.2d 447, 454 (Mich. 2003) ("A written instrument is open to explanation by parol or extrinsic evidence when it is … susceptible of two constructions, or where the language employed is vague, uncertain, obscure, or ambiguous ….").

In light of the foregoing, Ms. Crittendon's restrictive interpretation of the word "midnight" – which is plainly contrary to the parties' intent that the Emergency Manager's tenure be continuous – should be rejected by this Court. Moreover, even if such a gap in the contracts for services existed (which the Court should find it does not), such a gap does not compel the conclusion that the Emergency Manager's *appointment* by the LEFALB is thereby invalidated as a threshold matter.

…..

Accordingly, the City has satisfied the requirements of section 109(c)(2) of the Bankruptcy Code, no constitutionally based argument impairs the City's access to chapter 9 and the Court should enter the Order for Relief.

III. THE CITY IS INSOLVENT AND HAS SATISFIED SECTION 109(c)(3) OF THE BANKRUPTCY CODE

The Prior Submissions – including the extensive data contained in or accompanying the Orr Declaration and the Malhotra Declaration – conclusively demonstrate that the City satisfies each of the disjunctive tests for municipal insolvency contained in section 101(32)(C) of the Bankruptcy Code.

Specifically, the City has demonstrated that:

- the City (A) did not make a $39.7 million payment due and owing to certain service corporations established in connection with the issuance of the COPs on June 14, 2013, (B) on the same day, publicly declared a moratorium on all payments related to unsecured debt and (C) had deferred nearly $110 million in required pension contributions for the 2012 and 2013 fiscal years (among other payments) and, thus, was "generally not paying its debts as they become due" within the meaning of section 101(32)(C)(i) of the Bankruptcy Code;[8]

- the City satisfies the prospective test for "cash insolvency" where (A) it has experienced negative cash flows for years (including negative cash flows of $115.5 million in fiscal year 2012), (B) the City's $31.5 million positive cash flow for fiscal year 2013 was accomplished only through the non-payments and deferrals referenced in the prior bullet and a $10 million draw of escrowed debt proceeds, (C) the City projects cash flow deficits of $198.5 million for the current fiscal year and $260.4 million for the next fiscal year and (D) the City's net cash position will turn negative by the end of the calendar year, reach negative $143.3 million by the end of the current fiscal year and reach negative $404.5 million as of the end of fiscal

[8] See Orr Declaration, at ¶¶ 12, 54, n.152; Eligibility Memorandum, at 13.

year 2015 (numbers that would only be exacerbated by the inclusion of accumulated payment deferrals);[9]

- the City is "budget insolvent" where (A) it had run substantial budget deficits for the preceding six years, (B) its accumulated deficit (excluding the effect of certain borrowings) would have been approximately $700 million as of the end of the 2013 fiscal year and (C) at the City's current run rate, the accumulated deficit was projected to grow to approximately $1.3 billion by fiscal year 2017;[10]

- the City is "service delivery insolvent" and unable to fund the necessary costs of providing its residents with basic municipal services, as evidenced by (A) alarmingly high crime rates and low response times and case clearance rates, (B) approximately 40% of the City's street lights being inoperative, (C) the existence of more than 140,000 blighted properties throughout the City (including approximately 40,000 abandoned structures considered to be dangerous), (D) the City's aged and inadequately maintained infrastructure and equipment and (E) the City's obsolete and non-integrated information technology;[11] and

- the City is unable to render itself solvent where it (A) cannot raise taxes, (B) cannot reduce expenditures without further endangering public health and safety, (C) cannot ameliorate its insolvency on a sustainable basis through asset sales that would be insufficient to resolve its $18 billion debt burden and would threaten to impair the City's long term growth prospects and (D) has limited access to capital markets.[12]

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9 See Orr Declaration, at ¶¶ 11, 50-51, 56-57; Malhotra Declaration, at ¶¶ 20-23; Eligibility Memorandum, at 19-22.

10 See Orr Declaration, at ¶ 50; Malhotra Declaration, at ¶ 23; Eligibility Memorandum, at 22.

11 See Orr Declaration, at ¶¶ 31-44; Eligibility Memorandum, at 23-26; June 14 Creditor Proposal (attached as Exhibit A to Orr Declaration), at pp. 9-22.

12 See Orr Declaration, at ¶¶ 29-31, 38-44, 53, 58, 64-66, 72, 83 n.53; Eligibility Memorandum, at 23-26; Malhotra Declaration, at ¶ 25.

No Objector challenges *any* of the foregoing with evidence. None of the initial Objections challenged the City's showing of insolvency with any facts then available, despite all interested parties having had access to a wealth of financial information for months (e.g., the cash flow projections and other financial data set forth in the June 14 Creditor Proposal; the detailed financial information contained in the data room). The subsequent opportunity to conduct extensive discovery and submit Amended Objections based thereon has not addressed the evidentiary deficiency in the Objectors' case for solvency.[13] Indeed, four of the five Amended Objections filed (i.e., those filed by the Retiree Committee, the Retirement Systems, the Public Safety Unions and the UAW) do not mention the topic of insolvency *at all*, and the Amended Objection that does (the AFSCME Amended Objection) provides only scant citation to evidence in support of its argument.

The Amended AFSCME Objection argues (A) the City's prepetition non-payment of debt (described above) does not satisfy the test for insolvency set forth at section 101(32)(C)(i) (i.e., whether the City generally is paying its debts as they come due) and (B) the City cannot satisfy the test for insolvency set forth at

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[13] See Transcript of Deposition of Kenneth A. Buckfire, dated September 20, 2013, Case No. 13-53846 (the "Buckfire Deposition"), at 34:3-7 ("Well, we've produced a tremendous amount of financial information including balance sheets, both historical as audited by the City's auditors, and more recent analyses produced by Ernst & Young."). Excerpts from the Buckfire Deposition containing all testimony cited herein are attached hereto as Exhibit C.

section 101(32)(C)(ii) of the Bankruptcy Code (i.e., whether the City is "unable to pay its debts as they come due") because it (1) deliberately budgeted itself into insolvency and (2) the City's evidence of insolvency is founded on unreliable evidence. See Amended AFSCME Objection, at ¶¶ 225-237.

None of these arguments withstands scrutiny. AFSCME's characterization of the City's prepetition non-payment of debt as the "purposeful refusal to make a few payments comprising a relatively small part of the City's budget" (Amended AFSCME Objection, at ¶ 227) implies that the City essentially manufactured its prepetition insolvency for the purpose of satisfying section 109(c)(3) of the Bankruptcy Code. In so doing, AFSCME ignores relevant evidence addressing precisely this topic and mischaracterizes the financial reality facing the City in the months preceding the Petition Date.

In the first half of 2013, the City was starved for liquidity and driven to take emergency measures to preserve cash. See Buckfire Deposition, at 15:5-16:22 (Miller Buckfire had "evaluate[d] the City's financial condition from a solvency perspective," determined that the City was insolvent in May of 2013 and advised the Emergency Manager that "the City's financial condition was so dire that we had to take immediate steps to preserve the City's liquidity so that it would [not] be in jeopardy of losing essential public services…."); 20:5-10 (noting that the Emergency Manager "agreed, having reviewed the financial forecast prepared by

Ernst & Young, that the situation was indeed very serious and he agreed with my recommendation that we immediately formulate a strategy to preserve the City's cash flow.").

Accordingly, to preserve sufficient liquidity to make payments related to basic municipal services and payroll, the City had no choice but to withhold payment on certain debts that were currently due and owing. See Buckfire Deposition, at 52:9-12 (stating, with respect to the City's decision to defer payment on pension contributions, "it was our conclusion that the City had no cash and could not afford to make this payment and therefore should not make the payment."). Indeed, with respect to its decision to withhold the $40 million payment on the COPs in June of 2013, the City was forced to make that decision despite the fact that such non-payment would constitute an event of default under its swap-related obligations (and thus threaten the City's ability to pay for even the most basic public services). See Buckfire Deposition, at 68:12-24 (characterizing "[t]he decision whether or not to make the $40 million payment to our [COPs] bond holders on June 15" as "the most important recommendation" made to the Emergency Manager "[b]ecause that would trigger an event of default on the part of the City which would immediately trigger other consequences related to the swap collateral agreement, which was a direct threat to the City's ability to operate in the ordinary course.").

These are not the actions of an entity manufacturing a cosmetic cash insolvency. They are the actions of an entity already deep in the throes of the real thing. Nor do these non-payments amount to "a few payments comprising a relatively small part of the City's budget." In June of 2013, the City withheld payment on approximately $150 million in currently owing debts (i.e., approximately $110 million of pension contributions and $40 million of debt related to the COPs) while simultaneously declaring a moratorium on principal and interest payments on all unsecured debt. AFSCME's attempt to characterize these defaults as non-material is belied by the basic facts of the matter.[14]

AFSCME's suggestion that the City "deliberately budgeted itself into insolvency" is likewise contradicted by evidence. AFSCME's argument on this point generally consists of an attack on the supposed unreliability of the evidence put forth in the Prior Submissions and suggests that the City's presentation with respect to its insolvency "relies on unaudited and unfounded assumptions, unsupported statements and a complete lack of expert opinion." That is, unable to (A) demonstrate the City's alleged solvency based on its own financial analysis

[14] Moreover, AFSCME's argument appears to suggest that section 109(c)(3) of the Bankruptcy Code required the City to withhold the filing of its bankruptcy petition until it was essentially operating without any available cash whatsoever. The City – which has the obligation to provide for the public health and safety of its citizens and meet current payroll – has no such obligation, and AFSCME cites to no authority in support of any such implicit requirement.

supported by evidence (expert or otherwise)[15] or (B) avoid the ineluctable conclusion of insolvency demonstrated by the City presentation, AFSCME can do little else but resort to impugning the integrity of the City's data and methodology. The attempt fails.

First, the testimony of Gaurav Malhotra establishes the reliability of the data used by Ernst & Young, as financial advisor to the City, in creating the cash flow forecasts described in the Prior Submissions (which forecasts conclusively demonstrate insolvency). First, Mr. Malhotra's testimony makes clear that the 2012 CAFR – one of the sources upon which Ernst & Young relied in creating its assumptions and forecasts – is, in fact, an audited document. See Transcript of Deposition of Gaurav Malhotra, dated September 20, 2013, Case No. 13-53846 (the "Malhotra Deposition"),[16] at 111:2-15 ("Q: Was the CAFR audited? A: Yes. Q: Audited by who? A: KPMG…. KPMG is the city's auditor and it is another Big 4 accounting firm…. Q: Comparable to E&Y in terms of what it does? A: Yes.")

Second, Mr. Malhotra makes clear that, to the extent Ernst & Young received financial data directly from the City, it did not accept that data at face

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[15] No Objector, including AFSCME, has provided the Court with any financial analysis and/or data that might suggest solvency on the part of the City.

[16] Excerpts from the Malhotra Deposition containing all testimony cited herein are attached hereto as Exhibit D.

value. Rather, Ernst & Young undertook an independent evaluation of such data to ensure its reliability.

> Q: … Did Ernst & Young do anything to ensure that the information that Ernst & Young evaluated and relied upon as received from the City was accurate information that you could draw assumptions from?
>
> A: EY did – our team based on the data that was received did go through the information to make sure that the assumptions were reasonable…. [I]f we were receiving some information, we would try and review what other documentation may or may not be available to support any trends from a historical perspective and whether the information was consistent, and if it was not consistent, if there were any major outliers, speak to the team at the City to try and understand what changes might be happening. So, I'm comfortable that we undertook … an analysis of the information that was presented by the City after asking questions that we were using reasonable assumptions…. [T]his was generally an iterative and collaborative process of exchanging information and assumptions back and forth….
>
> Q: Can you give me one example of any instance where Ernst & Young challenged the information received and went back to any department in the City where the information came from to verify or better understand a problem with the information received?
>
> A: There were instances when we were receiving reports on cash collections that were not appropriately categorized and which – and which we went back and, you know, further evaluated as to, you know, what the – where those cash receipts really actually belonged in terms of income taxes or property taxes. They were – that's one example. There were questions with respect to the amount of accounts payable outstanding that the City was reporting and, you know, if there were more invoices that were actually entered into the system or not. So,

> there have been a variety of back-and-forth conversations on different topics which is part of what we actually are helping at the City with is to try and get our arms around reasonable assumptions around the data that is available. (Malhotra Deposition, at 65:16-68:11)
>
> ….
>
> Q: You took the historical data directly from the City?
>
> A: The City's historical data, we took the data that the City gave us and then made sure that … data was reasonable, how we would actually look at the assumptions and that historical data. So we had to look at the data, look at what the assumptions were with respect to how that data was classified, how that data was categorized to make sure that we could actually use that data. *So there wasn't just a raw data dump in which we could use that data in its original form without having to analyze it further*. (Malhotra Deposition, at 107:20-108:7) (emphasis added).[17]

Third, AFSCME's attempt to characterize the City's estimation of the true extent of the underfunding of the Retirement Systems as unreliable is also belied by the evidence produced through discovery. According to AFSCME, because the City has not yet produced its own independent actuarial valuation of the Retirement Systems' underfunding (which work is in process and hampered by the Retirement Systems' recalcitrance in responding to the City's information requests),

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[17] Kenneth Buckfire, the City's lead investment banker, also provided testimony regarding the integrity of the financial data underlying the City's demonstration of insolvency. See Buckfire Deposition, at 40:25-41:2 (noting that the City's demonstration of insolvency "is based on the work of Ernst & Young and Conway McKenzie. I have no reason to doubt their accuracy.").

preliminary work performed by Milliman to estimate the amount of that underfunding using the Retirement Systems' data and new assumptions that would more realistically reflect a market valuation thereof is inadequate to establish insolvency. Essentially, AFSCME suggests that, because the City's estimation of its pension underfunding is not as precise as it will be following the completion of the City's independent actuarial valuation, its current estimation is worthless. Moreover, AFSCME suggests that Milliman's valuation of the City's pension underfunding is compromised by the fact that the assumptions adopted by Milliman in performing its analyses "were directly dictated by the City." Amended AFSCME Objection, at ¶ 56.[18]

However, observing – correctly – that the City asked Milliman to perform its calculations based on certain assumptions is not at all the same thing as demonstrating that such assumptions were improper. Indeed, relevant discovery reveals not only that the City's assumptions are warranted (and, thus, its estimation

[18] Notably, AFSCME does nothing to establish that the City's approach to estimating the amount of its pension underfunding obligation is presumptively unreliable, nor does it attempt to undermine the qualifications of Milliman to perform such work (which are unassailable). Nor does AFSCME cite to any evidence or present any financial analyses demonstrating that, even if the City were to adopt what it believes are the radically understated estimates of underfunding developed by the Retirement Systems' actuary, that the City would thus be rendered solvent (which it would not).

of its pension underfunding reliable), but that the assumptions used by the Retirement Systems' current actuary are unwarranted.

For example, asked his opinion with respect to whether the respective assumed rates of return used by the Retirement Systems for their pension assets were "above the top end of your reasonable range," Mr. Glenn Bowen, a principal and consulting actuary at Milliman, testified that "[w]hen we calculated the – using the specific investment policy provided by the City, we developed the expected return and a best estimate range, and the top of that range was below the 7.9 and the 8 percent used in the [Retirement Systems'] valuations…. I would not recommend a rate outside of our best estimate range to any of my clients." Transcript of Deposition of Glenn Bowen, dated September 24, 2013, Case No. 13-53846 (the "Bowen Deposition"),[19] at 33:19 – 34:3; 36:10-12. Indeed, based on its capital market assumptions, Milliman recommended assumed rates of return of 6.3% and 6.57% for the GRS and PFRS, respectively; i.e., rates *lower* than the 7.0% assumed rate used by the City to arrive at its $3.5 billion estimate of underfunding. See Letter from Glenn Bowen and Katharine A. Warren to Evan Miller, dated June 4, 2013 (Bates Numbers DTMI00066292-6307) (the "Milliman GRS Letter") (analysis of GRS underfunding), at 2; Letter from Glenn Bowen and

[19] Excerpts from the Bowen Deposition containing all testimony cited herein are attached hereto as Exhibit E.

Katharine A. Warren to Evan Miller, dated June 4, 2013 (Bates Numbers DTMI00066176-6190) (the "Milliman PFRS Letter") (analysis of PFRS underfunding), at 2.

Mr. Bowen further testified that, although the Retirement Systems' 30-year amortization periods are not uncommon in public sector pension plans, "30 years is shorthand for a lot of different types of amortization methods. So … the particulars of this 30-year amortization method lead to an increasing debt each year, and that was what we felt was important to point out, the functioning of this particular methodology." Id. at 40:10-18. Amortization periods adopted by Milliman were substantially shorter, generally ranging from 15 to 20 years. See Milliman GRS Letter, at 2-5; Milliman PFRS Letter, at 2-5.[20]

AFSCME's suggestion that, in asking Milliman to estimate the City's pension underfunding consistent with these differing, and substantially more conservative, assumptions, the City intended to overstate the City's pension underfunding for the ulterior purpose of demonstrating insolvency is self-serving and easily dispatched. A city with $14.5 billion in debt in the absence of pension underfunding has little need to inflate its underfunding obligation to demonstrate insolvency. What the City *did* need – for the dual purpose of understanding the

[20] Mr. Bowen further testified that the Retirement Systems' use of a seven year period for "smoothing" returns was "not a standard number" and that "[f]ive is the most common." Id. at 44:11-13.

extent of its obligations and presenting an accurate picture of those obligations to its creditor constituency – was a realistic, market-based estimate of the extent of that underfunding. As Mr. Bowen testified, "only the market value of assets really exists and is available to pay benefits with." Bowen Deposition, at 176:2-4.

AFSCME's further assertion that the City either had access to available funds, or avoided asset transactions, that might have resolved the City's insolvency prior to the Petition Date cannot be credited. See Amended AFSCME Objection, at ¶¶ 233, 235, 237. First, contrary to AFSCME's assertion, the City's General Fund does not have access to revenues generated by its water and sewer department, the use of which is governed by the ordinances and indentures governing the special revenue debt issued by such funds. See Amended and Restated Bond Ordinance No. 01-05, at §§ 12(B), 13(F); Amended and Restated Bond Ordinance No. 18-01, at §§ 12(B), 13(F); Trust Indenture among The City of Detroit, Detroit Water and Sewerage Department and U.S. Bank National Association as Trustee (Sewage Disposal System), dated February 1, 2013 (the "Sewer Indenture"), at § 2.10; Trust Indenture among The City of Detroit, Detroit Water and Sewerage Department and U.S. Bank National Association as Trustee (Water Supply System), dated February 1, 2013 (the "Water Indenture"), at § 2.10 (generally providing that any "surplus funds" generated by water and

sewer systems are to be used for systems purposes only);[21] Malhotra Deposition, at 45:12-46:1 ("A: … The City has multiple funds outside the general fund. The main one is the water and sewer…. My understanding is that those funds are not necessarily available to the general fund…. It would be available to the City for the purposes those funds were raised for, which is generally maintenance and capital improvements on the water and sewer side.").

Second, AFSCME's suggestion that the City might have easily disposed of its "prized artwork collection" currently exhibited and/or stored at the Detroit Institute of Arts in order to resolve its insolvency (A) underestimates the likelihood of contentious disputes with various constituencies should the City propose such a sale (and thus overestimates the City's ability to effect such a sale expeditiously) and (B) ignores that (1) the City must retain certain assets (including culturally significant assets) to effect a sustainable restructuring and (2) applicable case law does not require a municipality to sell assets (essential or non-essential) prior to commencing a chapter 9 case. E.g., In re New York City Off-Track Betting Corp., 427 B.R. 256, 282 (Bankr. S.D.N.Y. 2010) ("Even assuming [the debtor] could have theoretically done more to avoid bankruptcy, courts do not require chapter 9 debtors to exhaust every possible option before filing for chapter 9 protection.").

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[21] Relevant portions of the Sewer Indenture and Water Indenture are attached hereto as Exhibit F.

Third, the City actually has attempted to realize value from the leasing of Belle Isle (identified by AFSCME as a monetizable asset). However, (A) these efforts have been frustrated by the City Council and (B) the amount of cost savings to be realized from the proposed lease transaction (approximately $6 million annually), while welcome, would not materially impact the City's solvency.

Fourth, AFSCME suggests that increased tax collection efforts by the City may be available to alleviate the City's insolvency. See Amended AFSCME Objection, at ¶ 225. However, as demonstrated by the testimony of Ken Buckfire, "the ability of the City to collect a material amount of these delinquent taxes is low…. For two reasons. Number one, I think many of the people who have not paid have no capacity to pay. We can't find them, or we simply have no ability to enforce a judgment. And, secondly, the City ability administratively to collect taxes has been proven to be quite low…. [The City] had only one accountant working on the corporate sector…." Buckfire Deposition, at 121:16-122:2; 124:6-7. Accordingly, the City's alleged ability to address its insolvency through increased tax collection is illusory.

Fifth, AFSCME contends that the City's agreement with its swap counterparties to allow for a reduced payment in satisfaction of the City's termination liabilities "potentially freed up significant cash and did not make the filing imminent." Amended AFSCME Objection, at ¶ 237. Of course, the City's

settlement of its swap-related liabilities did not "free up" any cash. Rather, it merely preserved access to the City's gaming revenues (which might have been seized in the event of a termination of the swaps). The swap settlement generated no additional cash for the City; it simply avoided instant cash insolvency in the event access to the City's gaming revenue stream were lost.[22]

Finally, AFSCME contends that "[i]t is telling (and should be shocking to all citizens of Detroit and Michigan) that … the City fails to offer even one person to stand up as an *expert* and testify to the City's insolvency." Amended AFSCME Objection, at ¶ 231 (emphasis in original). Citing to several avoidance action proceedings, AFSCME suggests (without actually stating) that the evidence of insolvency offered by the City is inadequate without expert testimony. Id. Even in the context of such avoidance actions, however, courts – including the Second Circuit in one of the decisions cited by AFSCME – do not require expert testimony to find insolvency. See Lawson v. Ford Motor Co. (In re Roblin Indus., Inc.), 78 F.3d 30, 38 (2d Cir. 1996) (preference action; affirming finding of insolvency notwithstanding the absence of appraisals or expert testimony); Gray v. Chace (In re Boston Publ'g Co.), 209 B.R. 157, 172-73 (Bankr. D. Mass. 1997) (preference

[22] Moreover, the June 14 Creditor Proposal expressly contemplated that creditors would see recoveries in the event of material asset dispositions. See June 14 Creditor Proposal (attached as Exhibit A to the Orr Declaration), at 106-08.

action; finding insolvency was supported by multifaceted evidence provided by debtor notwithstanding absence of appraisals or expert testimony); French v. Nardolillo (In re Perry), 158 B.R. 694, 697 (Bankr. N.D. Ohio 1993) (preference action; concluding that debtor was insolvent on a balance-sheet basis without reference to expert testimony).

Indeed, the insolvency of several large chapter 9 debtors has been established on the basis of evidence other than expert testimony. See, e.g., Int'l Ass'n of Firefighters, Local 1186 v. City of Vallejo (In re City of Vallejo), 408 B.R. 280, 291-93 (B.A.P. 9th Cir. 2009) (affirming bankruptcy court's finding of insolvency notwithstanding absence of expert testimony); In re City of San Bernardino, No. 6:12-bk-28006, Court's Statement of Uncontroverted Facts and Conclusions of Law (Bankr. C.D. Cal. Sept. 17, 2013) (finding debtor insolvent solely on basis of statement of qualifications supported by declaration where insolvency uncontroverted); In re City of Stockton, 493 B.R. 772, 787, 798 (Bankr. E.D. Cal. 2013) (finding insolvency based upon documentary evidence provided by the City without reference to expert testimony).

AFSCME neither (A) offers any explanation of why expert testimony is to be accorded talismanic significance when determining municipal insolvency under section 109(c)(3) of the Bankruptcy Code, (B) demonstrates any lack of qualification on the part of the experienced professionals employed by the City nor

(C) materially undermines the reliability of the data utilized, projections made or conclusions reached by such professionals (as demonstrated above). The City should not be – and is not – required to supplement the wealth of competent evidence on insolvency it has provided with unnecessary expert testimony.

Accordingly, the City has established, and the Objectors have failed to refute, that the City is insolvent within the meaning of section 109(c)(3) of the Bankruptcy Code.

IV. THE CITY SATISFIES SECTION 109(c)(4) OF THE BANKRUPTCY CODE BECAUSE IT DESIRES TO EFFECT A PLAN TO ADJUST ITS DEBTS

The record establishes that the City desires to effect a plan to adjust its debts and, therefore, satisfies section 109(c)(4) of the Bankruptcy Code. See 11 U.S.C. § 109(c)(4) (requiring that a municipality demonstrate that it "desires to effect a plan to adjust [its] debts"). "[N]o bright line test for determining whether a debtor desires to effect a plan" exists because of the "highly subjective nature of the inquiry." New York City Off-Track Betting, 427 B.R. at 272 (quoting Vallejo, 408 B.R. at 295). A putative debtor need only show that the "purpose of the filing of the chapter 9 petition [is] not simply … to buy time or evade creditors." Vallejo, 408 B.R. at 295 (quoting 2 COLLIER ON BANKRUPTCY ¶ 109.04[3][d] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.)); New York City Off-Track Betting, 427 B.R. at 272 (same). A municipality may meet the

subjective eligibility requirement of section 109(c)(4) of the Bankruptcy Code by attempting to resolve claims, submitting a draft plan or producing other direct or circumstantial evidence customarily submitted to show intent. Vallejo, 408 B.R. at 294-95.

In the Eligibility Memorandum, the City referenced the ample evidence of its desire to effect a chapter 9 plan. Eligibility Memorandum, at 35-39. In particular, the City pointed to its efforts to restructure its debts prior to the commencement of this chapter 9 case, including the two-hour June 14 Meeting with approximately 150 representatives of all of the City's creditor groups regarding the 128-page June 14 Creditor Proposal, which described in detail the economic circumstances that resulted in Detroit's current predicament and proposed a thorough overhaul and restructuring of the City's operations, finances and, importantly, existing capital structure. Id. at 36-38. In addition, the fact that the City's cash reserves would have been depleted by the end of the calendar year absent the intervention of this chapter 9 case supported the City's intent to effectuate a plan of adjustment. See Stockton, 493 B.R. at 792 (finding that the debtor had "little choice but to effect a plan" to adjust its debts where a dismissal of the proceeding would have left the debtor in worse financial condition than existed in chapter 9). The City also demonstrated its intent to effect a plan to adjust its debts through its submission of its Statement of Qualifications. See Vallejo,

408 B.R. at 295 (finding that the debtor's submission of a statement of qualifications that was certified under oath by the Vallejo city manager was evidence supporting the subjective inquiry into the debtor's desire to effect a plan of adjustment).

The Amended UAW Objection argues that the City does not "desire to effect a plan" within the meaning of section 109(c)(4) of the Bankruptcy Code because, to the extent it provides for the impairment of pension obligations, any plan the City desires to effect would be unlawful and, thus, allegedly unconfirmable under section 943(b)(4) of the Bankruptcy Code. Amended UAW Objection, at ¶¶ 46-47. This argument is misplaced, however, for at least two reasons.

First, section 943(b) of the Bankruptcy Code provides for confirmation of a chapter 9 debtor's plan of adjustment so long as, among other things, "the debtor is not prohibited by law from taking any action necessary to carry out the plan." 11 U.S.C. § 943(b)(4). The focus under section 943(b)(4) of the Bankruptcy Code is on the debtor's *post-confirmation* ability to carry out or implement the plan within the confines of applicable nonbankruptcy law. In re City of Columbia Falls, Mont., Special Improvement Dist. No. 25, 143 B.R. 750, 760 (Bankr. D. Mont. 1992) ("… Section 943(b)(4) does not prevent the debtors from proposing a plan that impairs the rights of the bondholders. This provision applies to postpetition actions after confirmation of the plan …."); see also In re Sanitary

& Improvement Dist., No. 7, 98 B.R. 970, 973-75 (Bankr. D. Neb. 1989) (distinguishing between the proper application of section 943(b)(4) to the post-confirmation implementation of a chapter 9 plan and its improper application to the impairment of claims).

> State law already requires full payment of the bonds issued prepetition and the state and the municipality are forbidden the opportunity to compromise the amounts due…. To create a federal statute based upon the theory that federal intervention was necessary to permit adjustment of a municipality's debts and then to prohibit the municipality from adjusting such debts is not, in the point of view of this Court, a logical or necessary result.

Id. at 974. The possible impairment of pension claims under the City's chapter 9 plan, therefore would not violate section 943(b)(4) of the Bankruptcy Code.

Second, even if section 943(b)(4) of the Bankruptcy Code were implicated by the proposed impairment of claims under – as opposed to the implementation of – a chapter 9 plan (which it is not), consideration of section 943(b)(4) remains irrelevant for the purpose of determining whether a municipality desires to effect a chapter 9 plan under section 109(c)(4) of the Bankruptcy Code. The Amended UAW Objection cites to no authority whatsoever in support of its argument that the prospective application of the confirmation standards of section 943 of the Bankruptcy Code should govern eligibility, and the City is aware of none. The proper time for the UAW and the Flowers Plaintiffs to test their erroneous theory that section 943(b) of the Bankruptcy Code would prohibit the impairment of

pension claims will be in connection with confirmation of a proposed plan of adjustment that seeks to impair such claims. There is no basis for the UAW and Flowers Plaintiffs' attempt to invoke section 943(b) of the Bankruptcy Code in connection with this Court's eligibility determination generally or the City's desire to effect a plan to adjust its debts under section 109(c)(4) in particular.

Accordingly, the City has established, and the Objectors have failed to refute, that the City desires to effect a plan to adjust its debts within the meaning of section 109(c)(4) of the Bankruptcy Code.

V. THE CITY SATISFIES SECTION 109(c)(5)(C) OF THE BANKRUPTCY CODE BECAUSE NEGOTIATION WITH ITS CREDITORS WAS IMPRACTICABLE

In the Prior Submissions, the City demonstrated the impracticability of conducting negotiations with its very numerous creditors and that the requirement for eligibility set forth at section 109(c)(5)(C) of the Bankruptcy Code was satisfied. Specifically, the City explained that: (A) the "impracticability" requirement was added to the Bankruptcy Code to facilitate relief under chapter 9 for major American cities (i.e., precisely this circumstance); (B) the numerosity and fragmented nature of the City's creditors made negotiations with the creditor body impracticable; (C) in many instances, the City was unable to negotiate with representatives with authority to bind creditors because there were no such representatives; and (D) the City did not have time to conduct extended creditor

negotiations. As demonstrated in the Consolidated Reply and the Reply to Committee Objection, none of the initial Objections to the entry of an Order for Relief succeeded in undermining any of the foregoing. See Eligibility Memorandum, at 40-53; Consolidated Reply, at 45-53; Reply to Committee Objection, at 20-21; Orr Declaration, at ¶¶ 105-111.

The Amended Objections likewise do nothing to undermine the City's showing of impracticability. The Amended AFSCME Objection and the Amended Committee Objection rehearse previous arguments that the City could have negotiated with its retirees and/or bondholders, despite the facts that (A) the City cannot restructure key terms of its bond debt absent the unanimous consent of the thousands of holders of such debt and the lack of any representatives with authority to bind all such bondholders (see Eligibility Memorandum, at 46-47; Consolidated Reply, at 45-46), (B) the various unaffiliated retiree associations (which purport to represent only 70% of the City's retirees) do not constitute a unified, natural bargaining representative of the City's retirees and lack the legal authority to bind such retirees in any event (see Consolidated Reply, at 47-49) and (C) the majority of the Unions either (1) expressly indicated unwillingness or legal inability to represent retirees or (2) neither agreed nor refused to represent retirees (see

Consolidated Reply, at 50-52).[23] The Objectors' repackaging of these flawed arguments is insufficient to overcome the City's showing of impracticability.[24]

Moreover, the unwillingness of the overwhelming majority of the City's Unions to negotiate on behalf of their retirees fatally undermines AFSCME's attempt to demonstrate the practicability of negotiations with retirees by reference to previous circumstances where the City and its Unions successfully reached tentative (but never implemented) labor agreements. See Amended AFSCME Objection, at ¶¶ 50-52. It cannot be the case, however, that, because an unspecified coalition of Unions was, at some point in the past, willing to negotiate

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[23] The Amended AFSCME Objection's argument (at ¶ 211, note 14) that the City was not entitled to rely on AFSCME's representation in a letter from Edward L. MacNeil, Special Assistant to the President of AFSCME, to Brian Easley of Jones Day that AFSCME "has no authority in which to renegotiate the Pension or Medical Benefits that members of our Union currently receive" because (a) the letter was dated three weeks prior to the commencement of good faith negotiations and (b) AFSCME might have negotiated an agreement binding such retirees anyway is frivolous on its face and should be rejected.

[24] The Amended AFSCME Objection asserts that "the City ignores that serious bargaining and negotiations with bond trustees (even where bondholders could not have been bound 100%) and the City's unions could have yielded the major deals necessary to prevent the crash landing in chapter 9 that occurred." Amended AFSCME Objection, at ¶ 211. Even assuming that the City could have negotiated with AFSCME's hypothetical "bond trustees" (as set forth in the Prior Submissions, U.S. Bank generally serves solely as a paying agent and not as a traditional trustee for GO debt), AFSCME offers no suggestion as to precisely how these results might have been obtained despite the threshold obstacles to negotiation set forth above (and discussed in detail in the Prior Submissions).

with the City with respect to benefit changes that impacted certain retirees, prepetition negotiations were somehow rendered practicable under circumstances where the majority of Unions were *unwilling* to negotiate on behalf of their retirees.

The arguments made in the Amended Committee Objection likewise fail to overcome the City's showing of impracticability. First, the Retiree Committee simply invents the notion that section 109(c)(5)(C) of the Bankruptcy Code cannot be satisfied in the absence of the City's proposal of a comprehensive plan of adjustment (as contemplated by section 941 of the Bankruptcy Code) and, unsurprisingly, finds that the City does not satisfy this heretofore unknown requirement.

The Retiree Committee concedes that "other bankruptcy courts have decided this issue differently"[25] and should have further conceded, consistent with its lack of relevant citation, that no bankruptcy court has *ever* decided it similarly. The Retiree Committee argues, inscrutably, that section 109(c)(5)(C) of the Bankruptcy Code is informed by the alleged requirement that good faith negotiations under section 109(c)(5)(B) of the Bankruptcy Code require the proposal of a plan of adjustment. This interpretation of the statute is strained past the point of breaking.

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[25] Amended Committee Objection, at 9 n.6 (citing Vallejo, 408 B.R. 280, and In re Valley Health Sys., 383 B.R. 156, 161-62 (Bankr. C.D. Cal. 2008)). In the face of these adverse decisions, the Retiree Committee argues that this Court is not bound by Vallejo and Valley Health and champions the "textual accuracy" of its *sui generis* reading of section 109(c)(5)(C).

As the Valley Health court observed, the two subsections are plainly disjunctive, and the court specifically rejected the notion that the requirements of section 109(c)(5)(B) are to be imported into section 109(c)(5)(C). See Valley Health, 383 B.R. at 162-63 ("Because § 109(c)(5) is written in the disjunctive, a debtor has four options to satisfy the requirement for negotiation…. There is nothing in the language of § 109(c)(5)(C) that requires a debtor to either engage in good faith pre-petition negotiations with its creditors to an impasse …."). Further, it strains credulity to suggest that an inquiry into whether negotiations are practicable as a threshold matter would look to the potential subject matter of those negotiations (in this case, a proposed plan of adjustment) as being relevant to – to say nothing of dispositive of – the threshold question.

The Retiree Committee's further argument that the City cannot satisfy section 109(c)(5)(C) of the Bankruptcy Code because it failed to negotiate in good faith with retirees (see Amended Committee Objection, at ¶¶ 93-96) fails for multiple reasons of both fact and law. First, the Committee improperly conflates the good faith of the City's negotiation effort (addressed by section 109(c)(5)(B) of the Bankruptcy Code) with the impracticability of those negotiations (separately addressed by section 109(c)(5)(C) of the Bankruptcy Code), an error previously addressed at length by the City at pages 51-52 of the Consolidated Reply. Second, as demonstrated in the Prior Submissions, contrary to the Retiree Committee's

assertion, negotiations with the City's retiree constituency were impracticable for a host of reasons. See, e.g., Consolidated Reply, at 47-49. An argument founded solely upon the practicability of such negotiations must therefore fail. Third, as set forth at pages 46-47 of the Consolidated Reply, courts have consistently determined that the "impracticability" requirement of section 109(c)(5)(C) of the Bankruptcy Code is satisfied where negotiations with *any* significant creditor constituency is impracticable. See In re Vills. at Castle Rock Metro. Dist. No. 4, 145 B.R. 76, 85 (Bankr. D. Colo. 1990) (holding that negotiations were impracticable for purposes of 109(c)(5)(C) of the Bankruptcy Code where negotiations with single class of bondholders holding one-third of the debtor's total bond debt would have been futile). Finally, as is the case with respect to its argument that section 109(c)(5)(C) of the Bankruptcy Code contemplates the proposal of a plan of adjustment, the Retiree Committee cites to absolutely no authority in support of its newly-minted test for impracticability.[26]

For all of the foregoing reasons (and those set forth in the Prior Submissions), the City has satisfied the requirements of section 109(c)(5)(C) of the Bankruptcy Code.

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[26] Similar arguments set forth at paragraphs 207 to 209 of the Amended AFSCME Objection, which likewise reference the requirement of good faith negotiation set forth at section 109(c)(5)(B) of the Bankruptcy Code and the City's alleged failure to negotiate with certain constituencies, should be rejected for the same reasons.

VI. THE CITY'S GOOD FAITH NEGOTIATIONS WITH ITS CREDITORS SATISFY SECTION 109(c)(5)(B) OF THE BANKRUPTCY CODE

As set forth in the Prior Submissions, the City has carried its burden of demonstrating that it negotiated in good faith with those of its creditors who were both organized and willing to engage the City (despite the impracticability of such negotiations). Specifically, (A) the City convened the June 14 Meeting (attended by representatives of each of the various classes of creditors that may be impaired under a plan of adjustment), at which it engaged its creditors with respect to a comprehensive – and consensual – restructuring of the City's obligations, (B) engaged in a significant number of follow-up negotiation sessions with discrete creditor constituencies, often meeting with particular constituencies multiple times and (C) conveyed and otherwise made available to creditors (e.g., through the Data Room) significant amounts of financial and other information. See Orr Declaration, at ¶¶ 79-104; Eligibility Memorandum, at 53-61; Consolidated Reply, at 53-59; Reply to Committee Objection, at 18-20. Despite the City's good faith efforts, however, it was unable to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that the City intended to impair under a plan of adjustment.

The Amended Objections repeat arguments made in many of the initial Objections, including that the City's restructuring proposals were presented to

creditor constituencies at non-interactive meetings on a "take it or leave it" basis that precluded any prospect of actual "negotiation."[27] The Amended Objections, however, ignore the evidence (set forth in the Prior Submissions) that the City (A) actively sought continuing dialogue with, *and counter-proposals from*, its counterparties but (B) *received no concrete proposal or comprehensive feedback* from any Objector prior to the commencement of this case.[28]

The Amended Objections further ignore relevant deposition testimony that confirms the City's characterization of its various meetings with its creditor constituencies as good faith negotiations within the meaning of section 109(c)(5)(B) of the Bankruptcy Code. For example, the testimony of Lamont Satchel, director of labor relations for the City, directly contradicts the Objectors' characterization of the meetings held with creditor constituencies in the weeks preceding the Petition Date as one-sided, non-interactive, take-it-or-leave-it affairs. Speaking of a meeting between the City and Unions that he personally attended on June 20, 2013, Mr. Satchel testified as follows:

> Q: Do you recall what Mr. Miller [counsel to the City] said as to what feedback attendees would – they were expecting from attendees if any?

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27 See Amended AFSCME Objection, at ¶¶ 188-90; Amended UAW Objection, at 49.

28 See Orr Declaration, at ¶¶ 108-11; Eligibility Memorandum, at 55-59; Consolidated Reply, at 53-58.

A: I think it was both before and after the proposal was made and even during it when questions were taken, Mr. Miller made it clear that the City would welcome and in fact had solicited input or suggestions from the – those in attendance with respect to the items that were discussed in the deck.

Q: Did Mr. Miller say that this meeting was a negotiation session?

A: I don't recall him making those – stating those exact words, but it was – it had all the trappings of a negotiation, it just wasn't labor negotiation in the traditional sense of a labor negotiation over a collective bargaining agreement, but it had all the trappings of it, of a negotiation, to me.

Q: Can you just – what perhaps did it have that gave you that impression?

A: You had two or more parties engaged in the discussion of a proposal that had been made, we had the solicitation of a response to that proposal, a willingness to cooperate and welcome any input from the other party. There was also an offer of information to be provided to the parties to the extent that they wanted – I think there was some discussion about a data room that had been set up with the parties. The only thing missing was folk screaming at me.

….

Q: Did the City indicate there was any flexibility as to what changes might need to be made to the pension, the pension plan?

A: Yeah, that was the whole purpose of it. They were engaging the unions and representatives from the various pension boards and their advisors to get – solicit input from them with respect to that topic. The City had made a proposal and wanted to know if anyone had a proposal

that – or counterproposal they would like to offer in that regard.

….

Q: So did the City invite unions or employees to speak up at the meeting and express their views on the proposal?

A: Yeah, there was an opportunity for those in attendance to speak too and many of them did…. I believe that may have been the meeting where folk filled out cards and a good number of them spoke even without the card….

Q: So people would fill out cards and they would be submitted to the City and read aloud; is that correct?

A: Yeah, the City would have them and read them and would respond and if someone who submitted the question would – if they wanted to pose a question or had a follow-up or some clarity with respect to that question, they did. You had others who just raised their hand and spoke out.

Q: Would someone from the City call on someone who's raising their hand or would they just speak without being asked?

A: You had a little of both. Some people raise their hand, others may have just blurted out something.

….

Q: Did the City indicate it was prepared to negotiate over the pension?

A: As I said before, it was the City both at the beginning, at the end and even throughout answering questions made it clear that they were soliciting responses from the union with respect to their proposal in terms of in this case pension they thought were the issues and soliciting

> from the unions their proposal with respect to solving any pension issues that the City had in terms of funding.

Transcript of Deposition of Lamont Satchel, dated September 19, 2013, Case No. 13-53846 (the "Satchel Deposition"), at 60:18-61:21; 62:16-25; 70:5-71:4; 71:17-72:2.[29]

Despite the character of the June 20th meeting (as described by Mr. Satchel), many objectors seek to elevate form over substance by arguing that the City's reluctance to expressly characterize its discrete creditor meetings as "negotiations" confirms that they were never intended as such. E.g., Amended AFSCME Objection, at ¶ 186; Amended Public Safety Unions Objection, Brief, at 14. However, as set forth in the Consolidated Reply (at 55-56), the City avoided characterizing its meetings and discussions with its unions as formal "bargaining negotiations" to avoid any argument that it had triggered obligations to collectively bargain under Michigan law that are currently suspended by PA 436. This reason for the City's circumspection on this point was confirmed by testimony given by the Emergency Manager. See Transcript of Deposition of Kevyn D. Orr, dated September 16, 2013, Case No. 13-53846 (the "Orr Deposition"), at 261:24-262:21 (Q: … Let me ask you the same question for the June 20th and July 11th [meetings]. Do you recall at that – at those meetings saying anything to the effect

[29] Excerpts from the Satchel Deposition containing all testimony cited herein are attached hereto as Exhibit G.

of this is not a negotiation? A: I may have. As I've said several times today, you know, bargaining negotiation is suspended for five years so I may have said that, but I don't recall…. I think generally, when I would go to these meetings, say we're having discussions and exchange, but I would try – if I said this is not a negotiation, I would try to make sure that I did not waive the suspension of bargaining under [PA] 436, so I may have said that, yes.").[30]

AFSCME alleges that the City could not have engaged in good faith negotiations with creditors because "the City had already made a determination as early as the beginning of July 2013 that it would be filing for chapter 9 protection on or about July 19, 2013." Amended AFSCME Objection, at ¶ 37.[31] In support of

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[30] Excerpts from the Orr Deposition containing all testimony cited herein are attached hereto as Exhibit H. References to the Orr Deposition also include the continued deposition testimony provided by the Emergency Manager on October 4, 2013.

[31] At page 54 n.48 of the Consolidated Reply, the City criticized AFSCME's (and other Objectors') flagrant misuse of statements made by the Emergency Manager in connection with the issuance of his "Financial and Operating Plan," dated May 12, 2013, to the effect that "[t]his isn't a plebiscite, we are not, like, negotiating the terms of the plan. It's what I'm obligated to do." As the City noted, the "Financial and Operating Plan" is required by PA 436, was issued a month prior to the June 14 Creditor Meeting, does not address the specific treatment of creditor claims against the City and is completely unrelated to the good faith negotiations commenced by the City on June 14, 2013. Undeterred, the Amended AFSCME Objection doubles down, now characterizing the Financial and Operating Plan as "a predecessor to [the City's] ultimate Restructuring Plan." Amended AFSCME Objection, at ¶ 38. This is false.

its argument, AFSCME references, in bold and underlined text, a "Chapter 9 Communications Rollout" prepared by the City that suggests a potential date of commencement for a chapter 9 case of July 19, 2013, that supposedly evidences the predetermined nature of the filing. Id. at ¶ 46.

Yet AFSCME has demonstrated no more than that the City was preparing a chapter 9 filing in parallel to its efforts at good faith negotiation, as every debtor must. Indeed, later in its Objection, AFSCME cites approvingly to Westamerica Bank v. Mendocino Coast Recreation & Park Dist. (In re Mendocino Recreation & Park Dist.), No. 12-cv-02591, 2013 WL 5423788 (N.D. Cal. Sept. 27, 2013), for the alleged proposition that the City would be unable to satisfy section 109(c)(5)(B) of the Bankruptcy Code if it were *not* preparing a chapter 9 case and negotiating over the terms of a plan of adjustment to be filed in an *imminent* bankruptcy. See Mendocino, 2013 WL 5423788, at *6 (stating that section 109(c)(5)(B) of the Bankruptcy Code requires that an "imminent bankruptcy plan cannot be absent from the conversation"). AFSCME's argument that section 109(c)(5)(B) of the Bankruptcy Code obliges the City both to negotiate over the terms of a fully-formed – and imminent – plan of adjustment while at the same time refraining from any chapter 9 planning must, therefore, be rejected.[32]

[32] Indeed, as set forth in the Consolidated Reply (at 65-66), the Objectors are aware that the Emergency Manager had always indicated that the

Moreover, the Emergency Manager's testimony demonstrates that, although the City was preparing its chapter 9 filing in the event that its good faith negotiations should ultimately prove fruitless, the filing of the City's Petition was never set in stone (its planning documents notwithstanding).

> A: … I don't want to give you the wrong impression because I think based upon what I've seen from some of the briefing and some of the interrogatories the impression is that [the chapter 9 filing] was predetermined and that's not true. The reality is that there was much discussion about what the alternatives would be and the need to bring something that would bring order and efficiency to the process given the number of interests that were involved.
>
> ……..
>
> Q: Was there ever a plan to file [the Petition] on the 19th? Setting aside what the media reported, was there a plan to file [the Petition] on the 19th?
>
> A: No, my plan was to have the permission, the authority to file [the Petition] and make that call at some point after I transmitted my [recommendation] letter of July 16.

See Orr Deposition, at 40:6-14; 301:3-8.

AFSCME further cites to an annotated copy of a document prepared by Jones Day (the "Jones Day Presentation") – and distributed to various City and

(continued…)

> commencement of a chapter 9 case was an option for the City if its negotiations with creditors regarding an out-of-court restructuring proved impracticable or fruitless.

State personnel at a meeting held on January 29, 2013 (the "January 29 Meeting") at which Jones Day presented its qualifications to serve the City as lead restructuring counsel – as evidence that the City's eventual chapter 9 filing was a foregone conclusion. See Amended AFSCME Objection, at ¶¶ 3-4, 31-32.

AFSCME distorts the Jones Day Presentation through selective quotation. At no point does the Jones Day Presentation state that the City should adopt a strategy with the intended result of a chapter 9 filing. Indeed, it says *precisely the opposite*. Prior to any mention of chapter 9, the Jones Day Presentation states plainly, in 24-point font, that "Out of Court Solutions are Preferred" and further notes the "Benefits of Well Planned Out-Of-Court Restructuring." Jones Day Presentation, at 13; see also id. at 19 ("*If Chapter 9 Needed*, Planning Is Key") (emphasis added). AFSCME further ignores that the overwhelming majority of the Jones Day Presentation addresses topics other than a potential chapter 9 filing. See, e.g., Jones Day Presentation, at 22 ("Establish Long-Term Goals and Promote Inclusiveness"; addressing out of court negotiations with no reference to chapter 9); 24, 26 ("Multi-Year Budget" and "Prepare to Defend the Budget"; no reference to chapter 9); 30 ("Exploring Creditor Recoveries"; no reference to chapter 9); 32 ("Equitable Shared Sacrifice Among Creditor Groups"; no reference to chapter 9). In light of the foregoing, the fact that the Jones Day Presentation also acknowledges the possibility of a chapter 9 filing – and suggests steps that might

prudently be taken in contemplation of that possibility – is hardly evidence of any predetermined strategy to commence a chapter 9 case, and AFSCME's suggestion to the contrary is a flagrant mischaracterization of the document.

Moreover, AFSCME fails to observe that the copy of the Jones Day Presentation to which it refers (and which includes the supposedly offending language) was a "speaker notes" – i.e., annotated – copy that was not distributed to any attendee at the January 29 Meeting. Rather, it was a document created solely for Jones Day's internal use. See Orr Deposition, at 363:17-364:2 ("Q: So what we have as Exhibit 21 [i.e., the Jones Day Presentation] was the – the internal – at least this was the internal version of the pitch book; in other words, were there speaker notes? A: Yes … the speaker notes were not presented to … the review team."). It is unlikely that the attendees at the January 29 Meeting were influenced by a document they never saw. This is especially significant where, as the Emergency Manager testified, (A) Jones Day spent almost no time discussing the Jones Day Presentation at the January 29 Meeting and (B) neither chapter 9 nor Jones Day's experience with chapter 9 cases were substantial portions of Jones Day's presentation at the January 29 Meeting.

> A: As I recall, [at the January 29 Meeting] we did not – there weren't PowerPoint capabilities, so we intended to work off the document … but the discussion, within a minute or two, veered away from the document and more was a dialogue….

….

> Q: And was there any discussion specifically of the possibility of a Chapter 9 filing at [the January 29 Meeting]?
>
> A: I don't think so. I don't recall … and the reason I say I don't recall is there – no, wait a minute. I don't know if there was a discussion about the City. There was a discussion about other Chapter 9 cases, other cities.
>
> Q: And what specifically do you recall being said about the chapter 9 filings in the other cases? Let me put it this way. Did Jones Day refer to experience it had in doing other chapter 9 filings?
>
> A: Yes, yes, various members of the team referred to that experience, yes.
>
> Q: And is it fair to say that the Chapter 9 experience was a substantial part of the pitch that Jones Day was making to this committee?
>
> A: No. … It was a component of the presentation.

See Orr Declaration, at 21:7 – 22:1; 363:10-16. Accordingly, the Jones Day Presentation does not evidence any intention or desire by the City (or Jones Day) to commence chapter 9 proceedings.

Finally, the Retiree Committee's argument that the City is incapable of satisfying section 109(c)(5)(B) of the Bankruptcy Code because it has failed to "set forth what is, in substance, a plan of adjustment under Section 941 [of the Bankruptcy Code]" is contradicted by both relevant cases (including the Mendocino and New York City Off-Track Betting opinions cited by the Retiree Committee) and the substance of the June 14 Creditor Proposal.

Although it is true that the New York City Off-Track Betting court found a debtor to have satisfied section 109(c)(5)(B) of the Bankruptcy Code where it had "engaged in negotiations with creditors regarding the possible terms of a reorganization plan prior to filing" (New York City Off-Track Betting, 427 B.R. at 274), at no point did that court require that an actual draft of a ready-to-file plan of adjustment was a prerequisite to those negotiations being conducted in good faith. Indeed, the court found precisely the opposite and stated that "talks need not involve a formal plan to satisfy section 109(c)(5)(B)'s negotiation requirement." Id. at 275. This finding is consistent with the conclusions of the bankruptcy appellate panel in Vallejo, which required that a debtor must "negotiat[e] with creditors revolving around a proposed plan, *at least in concept*…. [that] designates classes of creditors and their treatment" (Vallejo, 408 B.R. at 297 (emphasis added)), and which opinion is cited by the Mendocino court as following the "restrictive view" with respect to the necessity of negotiation over a plan of adjustment. See Mendocino, 2013 WL 5423788, at *2.

The Mendocino opinion, which affirmed the bankruptcy court's finding that section 109(c)(5)(B) was satisfied even though the proposal put forth by the debtor "did not mention any other creditors, designate classes of creditors, or describe their treatment in a proposed bankruptcy plan" (id. at *1), is not to the contrary. Mendocino expressly subscribes to the "restrictive view" espoused by the Vallejo

panel, which test is plainly satisfied by the June 14 Creditor Proposal (which identifies each of the City's various creditor classes, quantifies the amount of the claims within each such class and describes their treatment pursuant to a comprehensive scheme of debt adjustment). Id. at **6, 8 ("The Court sees good reasons to adopt the Vallejo rule as an extremely useful indicium of whether parties negotiated in good faith regarding a bankruptcy plan. …. This Court does not mean to undermine Vallejo's requirement that municipalities provide an outline of classes of creditors and their treatment. In any negotiation, it is a requirement whose absence will defeat a municipality's claim to have negotiated in good faith over the terms of a bankruptcy plan."). Even under the "restrictive view" espoused by the Vallejo and Mendocino courts, the City satisfies the requirements of section 109(c)(5)(B).

Accordingly, for the reasons set forth above and in the Prior Submissions, the City has satisfied the requirements of section 109(c)(5)(B) of the Bankruptcy Code.

VII. THE CITY FILED ITS PETITION IN GOOD FAITH WITHIN THE MEANING OF SECTION 921(c) OF THE BANKRUPTCY CODE

In its Prior Submissions, the City conclusively demonstrated that its Petition was filed in "good faith" within the meaning of section 921(c) of the Bankruptcy Code. Specifically, the City established that (A) its purposes for seeking relief

under chapter 9 – i.e., to adjust approximately $18 billion in debt and resolve intractable and disabling liquidity crises threatening its ability to provide residents with basic municipal services – were consistent with the rehabilitative purposes of the Bankruptcy Code, (B) chapter 9 relief was sought only after the City engaged in exhaustive prepetition efforts to address its financial and operational problems and explore alternatives to bankruptcy;[33] and (C) the prejudice that would result to City residents in the event the Petition were dismissed. See Consolidated Reply, at 62-69; Stockton, 493 B.R. at 794 (finding that "[r]elevant considerations in the comprehensive analysis for § 921 good faith include whether the City's financial problems are of a nature contemplated by chapter 9, whether the reasons for filing are consistent with chapter 9, the extent of the City's prepetition efforts to address the issues, the extent that alternatives to chapter 9 were considered, and whether the City's residents would be prejudiced by denying chapter 9 relief.").

Certain of the Amended Objections argue that the Petition cannot have been filed in good faith where the filing of the City's chapter 9 case was allegedly "predetermined," with the possibility of "unlawfully" impairing the City's pension

[33] See Orr Declaration, at ¶¶ 58-73 (describing various measures taken by the City during the 16 months preceding the Petition Date to address its financial challenges and avoid bankruptcy, including, but not limited to: the execution of a consent agreement with the State of Michigan and creation of a financial advisory board; employee headcount reductions; reduction of labor costs through the implementation of CETs; the increase of corporate tax rates; and the implementation of tax collection initiatives).

obligations. See Amended Committee Objection, at ¶ 99; Amended AFSCME Objection, at ¶ 220.

This argument is wrong as a matter of both fact and law. As described above, evidence adduced during discovery demonstrates that the City's chapter 9 filing was not predetermined. See Section VI *supra*. Deposition testimony further establishes – and conclusively – that the primary purpose of the filing was the comprehensive restructuring of the City's obligations and operations, *not* the impairment of pension benefits "in violation of the Michigan Constitution."

> Q: Do you recall telling the governor and his staff in general that one of the purposes, I'm not saying the only purpose, one of the purposes or intentions of the chapter 9 filing would be to allow you to cut back the pension benefits?
>
> A: Yeah, I don't want to give the misimpression that that was the singular focus. I think most of our discussions were about the need for the City to deal overall with its balance sheet and its obligations, which would include pensions.
>
> …….
>
> Q: And do you recall any discussion during those same conversations with the governor or anyone from his staff as to the impact, if any, of Article 9, chapter – Section 24 of the Michigan Constitution as regards pension benefits?
>
> A: I don't recall having discussions in that regard. No.
>
> Q: … [I]n making your bankruptcy filing, were you intending to do something that was in violation of state law? ….

> A: Here again… I was intending to aleve [sic] the City of a very dire situation and provide it with the maximum ability to restructure itself…. [having had the question read back] No.

See Orr Declaration, at 116:20-117:4; 117:13-18; 121:18-122:6.

Moreover, the Objectors fail to establish that, even if the City had always intended to commence this chapter 9 case for the express purpose of compromising its pension obligations, such an intent and purpose would constitute a lack of "good faith" within the meaning of section 921(c) of the Bankruptcy Code. Although many Objectors forcefully indicate their belief that a municipality's intent to compromise pension benefits (or any specific obligation or obligations) in chapter 9 *ought* to be considered bad faith, no Objectors offer any citation to that effect. For good reason: numerous municipalities have commenced chapter 9 cases to address a specific obligation or category of obligations without those petitions having been found to have been filed in bad faith. See, e.g., In re City of Central Falls, No. 11-13105 (Bankr. D.R.I. Aug. 1, 2011) (Docket No. 8) (memorandum in support of statement of qualifications stating that the debtor sought chapter 9 relief to address unfunded pension and healthcare obligations); In re Connector 2000 Ass'n, Inc., No. 10-04467 (Bankr. D.S.C. June 24, 2010) (Docket No. 4) (statement of qualifications attaching as Exhibit 1 a resolution of board of directors providing that the debtor sought relief under chapter 9 because

of its failure to generate sufficient toll revenue to service special revenue bonds issued for the construction of a toll road); In re Westfall Twp., No. 09-02736 (Bankr. M.D. Pa. Apr. 10, 2009) (Docket No. 1) (petition and statement of qualifications providing that the debtor sought chapter 9 relief to address a crippling monetary judgment obtained by a single creditor).

The Amended Objections further reiterate the argument that the Petition was not filed in good faith because the City filed solely to pre-empt the imminent entry of a temporary restraining order in Michigan state court. E.g., Amended Committee Objection, at ¶ 102; Amended AFSCME Objection, at ¶ 218. As the City previously demonstrated in its Consolidated Reply, however, (A) the Emergency Manager had always indicated – and the timeline for negotiation set forth in the June 14th Creditor Proposal (at 113) reinforced – that the commencement of a chapter 9 case was an option if good faith negotiations failed, (B) the process for authorizing the City's chapter 9 filing under PA 436 was set in motion days prior to the state court TRO hearing and (C) it would not have been improper even if the TRO hearing had been a factor in the timing of the City's Petition. See In re McCurtain Mun. Auth., No. 07-80363, 2007 WL 4287604, at *5 (Bankr. E.D. Okla. Dec. 4, 2007) (finding chapter 9 petition to have been filed in good faith where factor precipitating filing (i.e., the imminent appointment of a receiver) "was not the only reason for filing bankruptcy"). The Emergency

Manager's deposition testimony confirms that the potential entry of a temporary restraining order by the Michigan state court was not the primary motivator of the City's chapter 9 filing.

> Q: And isn't it correct that you wanted to get the bankruptcy petition filed as soon as possible because you know there was a risk that the state might rule it was illegal – the state court might rule it was illegal under state law for the bankruptcy proceeding to be filed?
>
> A: No, that wasn't the reason.
>
> ……
>
> Q: And in fact, the petition was filed just prior to the start of a TRO hearing in one of those state litigations, wasn't it?
>
> A: I was told that either that night or the following day.
>
> Q: And are you aware that certain objectors in this proceeding have stated that the bankruptcy petition was filed just before the judge in the case was to issue a TRO prohibiting the bankruptcy filing from taking place?
>
> A: I heard that after the fact, yes.

Orr Declaration, at 125:17-126:4; 124:18-125:3; see also Transcript of Deposition of Richard Snyder, dated October 9, 2013, Case No. 13-53846 (the "Snyder Deposition"),[34] at 131:14-132:12.

> Q: …. Do you know anything about why the change was made from the 19th to the 18th?

[34] Excerpts from the Snyder Deposition containing all testimony cited herein are attached hereto as Exhibit I.

A: Yes.

Q: What do you know about it? Just tell me.

A: I made the decision that I was comfortable in my conclusion that it was appropriate to file. When the letter came to me on the 16th in terms of recommending bankruptcy, I had set aside to say I wanted an extended period of time to review and to contemplate the situation. So I actually set aside enough time that would have led to the Friday morning situation to say I wanted more than one night to sleep on this because the importance of this act. And as I proceeded through the thought process to say do I concur, am I going to authorize the bankruptcy, I started discussions with my legal counsel on how we would prepare a letter, how we would go through that process and my thought process and I felt I didn't need to wait. I had made my decision, I had consulted with legal counsel, we had prepared a letter authorizing bankruptcy, and I said we should just go ahead and get this done.

Finally, the Retiree Committee's suggestion that the Petition was filed in bad faith because the City's estimates of its pension underfunding obligations were "untrue, misleading or made without a reasonable basis" must be rejected. As demonstrated above (see Section III, *supra*), the City's estimation of its pension underfunding, far from being misleading, presents a reasonable, market-based picture of the extent of the City's obligation. The disclosure of that information – i.e., the opportunity for interested parties to obtain a more focused picture of the true scope of the City's obligation – hardly represents a failure of "honesty and candor." The Retiree Committee's characterization of such disclosure as "untrue," "incomplete, misleading or outright false" is simply inflammatory.

In light of the foregoing, all available evidence demonstrates the good faith of the filing of the City's Petition, and there is no credible evidence to suggest otherwise. The arguments that the City did not file its Petition in good faith within the meaning of section 921(c) of the Bankruptcy Code should be rejected.

VIII. CONCLUSION

For the foregoing reasons, the Court should promptly enter an Order for Relief in this case.

Dated: October 17, 2013 Respectfully submitted,

/s/ Bruce Bennett

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ATTORNEYS FOR THE CITY

EXHIBIT A

Court of Appeals, State of Michigan

ORDER

Robert Davis v Roy Roberts

Docket No. 313297

Kirsten Frank Kelly
Presiding Judge

Christopher M. Murray

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to file a complaint for quo warranto is DENIED. As a result of the November 6, 2012 election, no part of 2011 Public Act 4, MCL 141.1501 *et seq.* ("PA 4") remains operative. Therefore, the section of PA 4 repealing 1990 Public Act 72, MCL 141.1201 *et seq.* ("PA 72") did not survive the referendum and has no effect. Respondent Roberts was appointed under PA 72 after PA 4 was suspended and thus lawfully holds office.

Petitioner's reliance on the anti-revival statute, MCL 8.4, is unavailing. The plain language of MCL 8.4 includes no reference to statutes that have been rejected by referendum. The statutory language refers only to statutes subject to repeal. Judicial construction is not permitted when the language is unambiguous. *Driver v Naini*, 490 Mich 239, 247; 802 NW2d 311 (2011). Accordingly, under the clear terms of the statute, MCL 8.4 does not apply to the voters' rejection, by referendum, of PA 4. Even if the rejection of PA 4 is deemed to operate as a repeal subject to MCL 8.4, the voters rejected PA 4 in its entirety by way of the referendum.

Petitioner consequently has failed to disclose sufficient apparent merit to justify further inquiry by quo warranto proceedings. *Penn School District 7 v Bd of Ed of Lewis-Cass Intermediate School Dist,* 14 Mich App 109, 118; 165 NW2d 464 (1969).

COURT OF APPEALS OF THE STATE OF MICHIGAN
TUEBOR
CIRCUMSPICE
1965

A true copy entered and certified by Larry S. Royster, Chief Clerk, on

NOV 16 2012
Date

Chief Clerk

STATE OF MICHIGAN

BILL SCHUETTE, ATTORNEY GENERAL

CONST 1963, ART 2, § 9: REFERENDUM: LOCAL GOVERNMENT AND SCHOOL DISTRICT FISCAL ACCOUNTABILITY ACT:	Revival of repealed law where right of referendum is properly invoked as to act that repealed prior law.

If 2011 PA 4 is disapproved by voters pursuant to the power of referendum under Const 1963, art 2, § 9, that law will no longer have any effect and the formerly repealed law, 1990 PA 72, is permanently revived upon certification of the November 2012 general election results.

Once the effect of 2011 PA 4, the Local Government and School District Fiscal Accountability Act, MCL 141.1501 *et seq*., was suspended under Const 1963, art 2, § 9 and MCL 168.477(2), the prior repealed law, 1990 PA 72, is revived until certification of the November 2012 general election results. Depending on the vote of the electorate, the temporary revival of 1990 PA 72 will either cease with the approval of Public Act 4, or become permanent with the Act's disapproval.

Opinion No. 7267

August 6th, 2012

Honorable Andy Dillon
State Treasurer
Treasury Building
Lansing, MI 48922

You have asked, in the event 2011 PA 4, the Local Government and School District Fiscal Accountability

Act, MCL 141.1501 *et seq*., is suspended as provided for in Const 1963, art 2, § 9, and MCL 168.477(2), whether 1990 PA 72 is temporarily revived until the results of the November 2012 general election are certified, and then permanently revived in the event 2011 PA 4 is disapproved by the voters.

On March 16, 2011, the Governor signed 2011 PA 4 into law. Public Act 4 repealed the Local Government Fiscal Responsibility Act, 1990 PA 72, MCL 141.1201 *et seq*., the prior version of Michigan's financial emergency manager law. Because Public Act 4 received immediate effect in the Legislature, the Act became effective the same day it was signed by the Governor. Const 1963, art 4, § 27.

Public Act 4 provides a process for determining whether the Governor should appoint an emergency manager because a local unit of government is in severe financial stress. Pursuant to MCL 141.1512, the Department of Treasury may conduct a preliminary review of a local government to determine if a financial crisis exists. If a finding of probable financial stress is made, a review team is appointed consisting of various statutorily provided-for members. MCL 141.1512(4). A review team performs functions such as interviewing officials of the local government, and receiving and reviewing information in order to make a recommendation to the Governor as to whether severe financial stress exists. MCL 141.1513. If the review team advises that a severe financial emergency exists, and the Governor confirms the finding, the Governor shall declare the local government in receivership and appoint an emergency manager to act for and in the place of the governing body and the office of chief administrative officer of the local government. MCL 141.1515(4).

Since its enactment, the Department of Treasury and the Governor have used the process set forth in Public Act 4 to appoint emergency managers for financially distressed local units of government around the State. These emergency managers are currently exercising powers accorded them under the Act.[1] However, Public Act 4 is the subject of a referendum as provided for in Const 1963, art 2, § 9.

The Michigan Constitution provides the people with the power to approve or reject laws enacted by the Legislature through referenda. Const 1963, art 2, § 9 provides, in part[2]:

> The people reserve to themselves . . . the power to approve or reject laws enacted by the legislature, called the referendum. . . . The power of referendum . . . must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the . . . referendum, petitions signed by a number of registered electors, not less than . . . five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

The Legislature implemented art 2, § 9 with respect to referenda in various sections of the Michigan Election Law, MCL 168.1 *et seq*. Under the Constitution and the Election Law, in order for a referendum to be placed on the general election ballot, a proponent must: (1) prepare a petition that meets the formatting requirements of MCL 168.482; (2) gather the required number of valid signatures under art 2, § 9; and (3) file the petitions timely with the Secretary of State under MCL 168.473 and art 2, § 9 (no later than 90 days following the final adjournment of the legislative session at which the law was enacted, *Michigan Farm Bureau v Secretary of State*, 379 Mich 387, 390-391; 151 NW2d 797 (1967)).

After filing, the Board of State Canvassers must review the petition to determine whether there are sufficient valid signatures under MCL 168.476, which is accomplished with the assistance of the Department of

State's Bureau of Elections.[3] Once the review is complete, the Board of State Canvassers must make an official declaration of the sufficiency or insufficiency of the referendum petition two months before the election at which the proposal is to be submitted. MCL 168.477(1).

If the Board of State Canvassers certifies the referendum for placement on the ballot, the second paragraph of Const 1963, art 2, § 9 applies, which states:

> No law as to which the power of referendum properly has been invoked *shall be effective thereafter* unless approved by a majority of the electors voting thereon at the next general election. [Emphasis added.]

MCL 168.477(2) implements art 2, § 9, and provides in part:

> For the purposes of the second paragraph of section 9 of article [2] of the state constitution of 1963, a law that is the subject of the referendum continues to be effective until the referendum is properly invoked, *which occurs when the board of state canvassers makes its official declaration of the sufficiency of the referendum petition.* [Emphasis added.]

With respect to Public Act 4, the Board of State Canvassers will soon meet to certify the referendum petition as sufficient as directed by the courts. As a result, the effect of Public Act 4 will be suspended as a matter of law until the outcome of the November 6, 2012 general election.

You ask whether 1990 PA 72, the prior emergency manager law repealed by Public Act 4, applies during the interim period of suspension, and after the general election if Public Act 4 is disapproved by the voters. Because the answer to your second question provides guidance with respect to the first, your second question will be addressed first.

In enacting Public Act 4, the Legislature repealed all of the statutory provisions of Public Act 72, MCL 141.1201 *et seq.* And by operation of art 2, § 9, the repeal of Public Act 72 has been rendered ineffective unless approved by the electors at the next election because the power of the referendum has been properly invoked. Thus, in the absence of law to the contrary, the electors' decision to eliminate the repeal reinstates Public Act 72.

Michigan's anti-revival statute, which creates an exception to the revival doctrine, addresses the repeal of a statute by a subsequent statute, not the nullification of a statute by a referendum. MCL 8.4 provides: "Whenever a statute, or any part thereof shall be repealed by a subsequent statute, such statute, or any part thereof, so repealed, shall not be revived by the *repeal* of such subsequent repealing statute." (Emphasis added.) When a term is not defined in the statute, with certain exceptions for technical terms, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. MCL 8.3a; *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). Giving the word "repeal" its ordinary meaning and in context with MCL 8.4, which concerns legislative action, it means "to revoke or annul (a law, tax, duty, etc) by express *legislative enactment*." *The American College Dictionary* (1961) (emphasis added). The disapproval of an act by referendum does not constitute a "legislative enactment" but rather the "disapproval" of a prior legislative enactment. Accordingly, MCL 8.4, on its face, does not apply to a referendum.

This distinction accords with common sense. In the ordinary circumstance in which the Legislature repeals a

replacement statute, it simultaneously has the opportunity to create a third new framework. That is not true here. The suspension of the replacement statute by subjection to a referendum carries with it absolutely no opportunity for the creation of a replacement statute.

Consider the example of a new sex-offender registration statute that repeals a prior sex-offender scheme and requires more or less onerous registration requirements. If a referendum suspended the operation of the successor statute without suspending the repealer provision of that statute, *no* statute would be left in place. That makes no sense where the peoples' representatives certainly wanted a sex-offender scheme of some sort to be in effect, and the proponents of the referendum on the successor statute evidenced no disgruntlement with the prior statute. (Otherwise, there would have been a similar referendum challenging the prior statute.)

The same is true here, where there have been emergency procedures to appoint management to assist troubled local entities for more than 20 years, first under PA 72, more recently under PA 4. The referendum does not attack the concept of emergency management, just the way that concept is addressed in PA 4. There is no policy reason to prevent the temporary revival of PA 72 while the referendum suspends PA 4, or a permanent revival should the voters approve the referendum and reject PA 4 at the polls.

The conclusion that the repealed statute becomes effective again where the repeal is nullified by referendum is consistent with the only Michigan appellate court that has addressed this point. In *McDonald v Grand Traverse Co Election Comm'n*, 255 Mich App 674; 662 NW2d 804 (2003), the Court of Appeals reached the same conclusion. In that case, the Court addressed a constitutional challenge to straight-ticket voting, and recounted the following history:

> Michigan has traditionally permitted a straight-ticket ballot option . . . . However, in 2001, the Michigan Legislature enacted Public Act 269, which eliminated the straight-ticket ballot option. . . . Pursuant to [the] referendum power, the Democratic Party circulated petitions and obtained enough signatures to invoke a referendum on 2001 PA 269. As a result of the referendum, Proposal 1 appeared on the general election ballot on November 5, 2002, and the people of the State of Michigan were permitted to vote on whether 2001 PA 269, which would, among other things, eliminate the straight-ticket ballot option, should go into effect. 1,775,043 voters voted not to approve 2001 PA 269, and 1,199, 236 voters voted to approve 2001 PA 269. Because 2001 PA 269 was not approved by a majority of the voters on November 5, 2002, it did not go into effect. *The law in effect before 2001 PA 269 was enacted, MCL 168.737, is thus still in effect today. Therefore, the straight-ticket ballot option is the law in Michigan.* [*Id. at* 680-681; emphasis added; footnotes omitted. [4]]

In other words, the prior statute was applicable because its repeal was undone by the rejection of the repealing statute by referendum. The same is true here.

The North Dakota Supreme Court reached this same conclusion in an analogous situation. In *Dawson v Tobin*, 24 NW2d 737 (ND 1946), the court addressed the very question presented here and concluded that the rejection of an act via a referendum resulted in the revival of the statute originally repealed by the act. In North Dakota, the Legislature amended and re-enacted a tax provision relating to the valuation of property

taxes and repealed any conflicting provisions. *Id.* at 721-722. This legislation, known as Chapter 317, was given immediate effect as emergency legislation, but was then disapproved by the voters at the vote on the referendum. *Id.* at 722. The plaintiffs argued that the prior version of the tax provision revived as a result of the disapproval, while the defendants argued that the repeal of the prior provision was unaffected by the referendum. *Id*. at 722-723.

The court's decision in favor of the plaintiffs essentially rested on two points. First, North Dakota's constitutional provision providing for the power of referendum would be undermined if the invalidated act still had an effect – the repeal of the original act – despite the act's disapproval by the voters. Second, North Dakota's analogous anti-revival statute did not apply on its face because the word "repeal" means the replacement or nullification of one statute by another, and the disapproval of an act through referendum does not result in the replacement of one act with another.

As to the first point, the court observed that North Dakota's Constitution did not exempt any enactment or portions of a legislative enactment, like the repeal provision, from the operation of the power of referendum. *Id.* at 730-732. The court noted that the defendant's argument was based solely on a statutory provision providing that "[w]henever any act of the legislative assembly which repealed a former act is repealed, such former act shall not be revived by such repeal, unless there is express provision to the contrary." *Id*., quoting N.D.R.C. 1943, Sec. 1-0216.

But the court determined that "this statute has no application to and does not affect repeal provisions in an emergency measure that is rejected at a referendum election and as a result is 'thereby repealed.'" *Id.* at 732. The court determined that to apply the statute in that way would conflict with North Dakota's Constitution and "infringe upon the power of the referendum" because it would insulate acts or portions of an act from the power of referendum. "If the contentions of the defendants are sustained it would necessarily follow that repeal provisions in an emergency measure will be withdrawn from the operation of the referendum." *Id.* Thus, the court concluded that the constitution did not permit such a construction or application of the statute.

And as to the second point, the court determined that the statute, on its face, did not apply to an act disapproved by referendum because the rejection of the act by the voters was not a "repeal" for purposes of the statute. *Id*. at 733. The court reviewed various definitions of the word "repeal" and concluded that it means "the repeal of an existing law by means of an enactment *by the lawmaking power*" – the Legislature. *Id.* at 735 (emphasis added). The court observed that the rejection of an emergency law by referendum is a legislative action, but that such "action does not result in a legislative enactment, any more than the refusal of one of the houses of the legislative assembly to approve an act passed by the other results in a legislative enactment." *Id*. Rather,

> It results in disapproval and disaffirmance of the action of the legislature, and in the recall and destruction of the law which the legislature enacted. The emergency measure is given the force and effect of law from the time of its approval; but the period of its existence is indefinite and contingent upon what may be, and is, done under the power of the referendum. The people have the last word. [*Id.* at 736.]

The court then rejected the defendants' argument that the people were required to use the power of initiative because "[t]he power of the referendum is reserved to enable that people pass final judgment on whether

laws enacted by the legislative assembly shall be approved or rejected." *Id*. at 737. Lastly, the court dismissed the defendants' argument that another case had decided the issue differently, and held:

> It necessarily follows that from the time such rejection became effective the whole emergency measure, including the repealing provision therein, was recalled and destroyed, and that the law that had been replaced and superseded by the rejected emergency measure was revived. [*Id.* at 741.]

The same analyses applies to the power of referendum under Michigan law. Like the North Dakota Constitution, Const 1963, art 2, § 9 does not except any portion of a statute from the power of referendum, and thus includes a repealing provision. "No law" subject to a referendum "shall be effective" under art 2, § 9; there is no limitation of that stricture for the repealer portion of a law subject to a referendum. An opposite conclusion would infringe on the power of referendum by giving effect to at least a portion of an act – the repealing provision – that was stuck down by the voters. It cannot be that, despite being disapproved, the repealing section of the disapproved public act remains effective. If this were true, then any public act that does nothing more than repeal another statute could be insulated from referendum by simply giving the public act immediate effect. *Dawson*, at 732. Such an interpretation would "defeat" the power of referendum. *Id*.

And as explained by the *Dawson* Court, when voting on a referendum, voters decide whether a particular public act should become the law of the State, even though the public act has been enacted, and may even have become effective before the election, like Public Act 4. If the voters disapprove the public act, their vote displaces the Legislature's and Governor's prior enactment, and the public act either does not become, or no longer is, the law of the State. *No* part of the public act, including a provision repealing a prior law, survives after disapproval at a referendum. In essence, the public act is nullified—not repealed—at that point in time.

Applying this analysis to Public Act 4, if the Act is disapproved at the November 2012 general election, it is no longer the law of the State and no part of Public Act 4 may thereafter be applied once the election results are certified. [5] This includes the provision of Public Act 4 repealing 1990 PA 72. See Enacting section 1 of 2011 PA 4. Since the repeal of 1990 PA 72 will no longer have any effect, 1990 PA 72 revives and becomes the law of the State again. *McDonald*, 255 Mich App at 680-681; *Dawson*, 24 NW2d at 741.

It is my opinion, therefore, that if 2011 PA 4 is disapproved by voters pursuant to the power of referendum under Const 1963, art 2, § 9, that law will no longer have any effect and the formerly repealed law, 1990 PA 72, is permanently revived upon certification of the November 2012 general election results.

Turning to your first question, you ask whether 1990 PA 72 is temporarily revived while the effect of Public Act 4 is suspended under Const 1963, art 2, § 9 and MCL 168.477(2).

As discussed above, once the petition was declared sufficient by the Board of State Canvassers, Public Act 4 ceased to be "effective" under Const art 2, § 9. The Michigan Supreme Court has described the status of a law subject to referral during this period as "suspended" or a "suspension" of the law. See *Michigan*

Farm Bureau, 379 Mich at 396, quoting *McBride v Kerby*, 260 P 435 (Ariz 1927); *Wolverine Golf Club v Hare*, 384 Mich 461, 463; 185 NW2d 329 (1971). See also *Reynolds v Bureau of State Lottery*, 240 Mich App 84; 610 NW2d 597 (2000), and Letter Opinion of Attorney General Frank J. Kelley to Patrick Babcock, dated March 28, 1988. Thus, Public Act 4 is not rendered "void" by the Board of State Canvassers' certification of referendum. Rather, its effect is "stayed" until the results of the election are certified.

In the absence of any Michigan court decision addressing this question,[6] there is no apparent reason why the rationale set forth above with respect to the question of a permanent revival of 1990 PA 72 does not apply equally well to the question of its temporary revival.

Const 1963, art 2, § 9 states, in part: "*No law* as to which the power of referendum properly has been invoked *shall be effective thereafter* unless approved by a majority of the electors voting thereon at the next general election." (Emphasis added.) Based on the section's plain language, "no law" is exempt from the suspension nor is any part or provision of a law exempt. Where a constitutional term is undefined, dictionary definitions may be consulted to determine its meaning. See, e.g., *National Pride At Work, Inc v Governor of Michigan*, 481 Mich 56, 69-76; 748 NW2d 524 (2008). The term "effective" may be understood to mean "in effect; operative; active." See *Webster's New World Dictionary, Third College Edition* (1988).
Thus, when a referendum is properly invoked, no part of the subject law is thereafter operative or active. Applying this interpretation to Public Act 4, once the Board of State Canvassers certified the referendum, no part of the Act remained operative, including the repeal provision. Accordingly, just as with the permanent revival upon disapproval, the suspension of Public Act 4's repeal provision results in the temporary revival of the prior repealed law – 1990 PA 72.

It is my opinion, therefore, that once the effect of 2011 PA 4 was suspended under Const 1963, art 2, § 9 and MCL 168.477(2), the prior repealed law, 1990 PA 72, is revived until certification of the November 2012 general election results. Depending on the vote of the electorate, the temporary revival of 1990 PA 72 will either cease with the approval of Public Act 4, or become permanent with the Act's disapproval.
BILL SCHUETTE
Attorney General

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[1] Information regarding the various appointed emergency managers is available on the Michigan Department of Treasury's website, see <www.michigan.gov/treasury/0,1607,7-121-1751_51556-201116--,00.html.> (accessed July 30, 2012.)

[2] Under Const 1963, art 2, § 9, acts that contain an "appropriation" are not subject to referral, see *Michigan United Conservation Clubs v Secretary of State*, 464 Mich 359; 630 NW2d 297 (2001), nor are acts enacted to meet "deficiencies in state funds," see *Kuhn v Dep't of Treasury*, 384 Mich 378; 183 NW2d 796 (1971). Public Act 4 does not contain an appropriation, nor does it appear to have been enacted to "meet deficiencies in state funds," which term has been interpreted to mean only deficiencies existing at the time of enactment, and not future or anticipated deficiencies. *Kuhn*, 384 Mich at 385. Thus, Public Act 4 was not immune from referral under art 2, § 9.

[3] The Bureau of Elections and the Board of State Canvassers must perform their canvassing duties within 60 days of the petitions being filed with the Secretary of State, MCL 168.477(2), except that one 15-day extension may be granted by the Secretary of State if necessary to complete the canvass.

[4] 2001 PA 269 was signed by the Governor on January 11, 2002. The Act was not given immediate effect, and thus became effective March 22, 2002. Const 1963, art 4, § 27. A group filed petitions in support of a referendum of 2001 PA 269 on March 21, 2002. The Board of State Canvassers certified the referendum petition as sufficient on May 14, 2002. Accordingly, the effect of 2001 PA 269 was suspended as of May 14, 2002. As a result, Public Act 69 was effective for a short period of time before its suspension. The relevant statutes were recently amended or repealed by 2012 PA 128. MCL 168.736b now provides for the straight-ticket voting option.

[5] Const 1963, art 2, § 9, provides that "[a]ny law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election *shall take effect 10 days after the date of the official declaration of the vote*." (Emphasis added.) Under MCL 168.842(1) and 168.845, the Board of State Canvassers must meet on or before the twentieth day after the election to certify the results. The twentieth day after the November 6 general election is November 26, 2012. Assuming the results are certified that day, the vote on the referendum would become effective ten days later or December 6, 2012.

[6] Attorney General Frank Kelley briefly addressed this issue in a letter opinion to Secretary of State Richard Austin, which discussed a potential referral on 1978 PA 427 regarding license fees. The Attorney General observed that "[a]t the point at which the power of referendum is properly invoked, 1978 PA 427 would cease to have any effect. Taxes and fees for license plates would then be based on the schedule in effect in the Motor Vehicle Code prior to the enactment of 1978 PA 427." (Letter Opinion of Attorney General Frank J. Kelley to Richard Austin, dated November 15, 1978). But this conclusion was never tested because no referendum was certified.

EXHIBIT B

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

CONTRACT FOR EMERGENCY FINANCIAL MANAGER SERVICES

The Local Emergency Financial Assistance Loan Board (the Board) retains and appoints Kevyn Orr as the Emergency Financial Manager (Emergency Financial Manager) for the City of Detroit (City) under Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, MCL 141.1201 *et seq*, (the Act).

The Emergency Financial Manager will provide services to the City pursuant to the terms and conditions set forth in this Contract and the Act.

The Emergency Financial Manager's role is to remedy the financial distress of the City by requiring, within available resources, prudent fiscal management and an efficient provision of municipal services by exercising the necessary authority conferred herein to take appropriate action on behalf of the City and its residents. In accepting this appointment, the Emergency Financial Manager agrees to leverage all the Emergency Financial Manager's skills and abilities to accomplish these objectives on behalf of City residents.

1. PARTIES, PURPOSE, DUTIES, AND REPORTS

1.1 Parties. The parties to this Contract are the Board and Kevyn Orr.

1.2 Purpose. The parties to this Contract agree that Kevyn Orr will act as the Emergency Financial Manager for the City. The Emergency Financial Manager's duties and responsibilities are delineated in the Act and include conducting all aspects of the operations of the City and establishing and implementing a written financial plan as required by Section 20 of the Act.

1.3 Duties. The Emergency Financial Manager shall possess all the powers and duties authorized under the Act, including those specifically related to local governments. In addition, the Emergency Financial Manager shall work cooperatively with the Office of the Governor and the State Treasurer. The Emergency Financial Manager agrees to continue to keep these officials informed of major initiatives to be undertaken in furtherance of this Contract before their public announcement. The Emergency Financial Manager shall seek the approval of the State Treasurer before entering into a new collective bargaining agreement.

1.4 Reports. The Emergency Financial Manager shall file quarterly reports with the Department of Treasury beginning on July 15, 2013, for the immediately preceding quarter and shall file the first report required by Section 21a of the Act within six months of the Emergency Financial Manager's appointment and every six months thereafter.

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www.michigan.gov/treasury • (517) 373-3200

1.5 Communications. The Emergency Financial Manager shall establish and maintain an appropriate protocol for ongoing communications with officials of the City, City residents, and the media. The communications protocol should include a variety of means, including personal interactions.

2. TERM OF CONTRACT

2.1 The Emergency Financial Manager serves at the pleasure of the Board as provided in Section 18 of the Act.

2.2 Effective Date. This contract is effective on Monday March 25, 2013 and shall terminate at midnight on Wednesday March 27, 2013.

2.3 Oath of Office. Before exercising the duties of office, the Emergency Financial Manager shall take and subscribe an oath of office administered by an official authorized to administer oaths under the laws of Michigan and file such oath with the Office of the Great Seal.

3. COMPENSATION FOR SERVICES PROVIDED

3.1 Source of Payment. The City shall pay the compensation of the Emergency Financial Manager for all services rendered under this Contract.

3.2 Salary. The Emergency Financial Manager's salary for services rendered under this Contract shall be $275,000 per year. If this Contract is terminated after the Emergency Financial Manager has provided services for a portion of a month, the Emergency Financial Manager shall be entitled, for that portion of that month, to $22,916.67 multiplied by the proportion that the number of days of the month for which services were provided bears to the number of days of the whole month. The Emergency Financial Manager shall not receive or accept any compensation from the City except as provided for in this contract.

3.3 Payment for Services. The Emergency Financial Manager shall be paid in installments consistent with the established written policies and procedures of the Michigan Department of Treasury. If requested by the State Treasurer, the Emergency Financial Manager shall provide to the Michigan Department of Treasury additional information regarding services performed pursuant to this Contract.

3.4 Reimbursement for Actual and Necessary Expenses. The actual and necessary expenses of the Emergency Financial Manager, including customary expenses related to travel, meals, and lodging which are incurred in connection with service to the City will be reimbursed by the City. The Emergency Financial Manager shall provide original copies of all receipts for meals, lodging, and travel reimbursement with any request for reimbursement. Any reimbursement for expenses under this contract shall be reviewed and approved in writing by the City's Chief Financial Officer.

4. ADDITIONAL STAFF AND CONSULTANT FEES

4.1 Staff. The Emergency Financial Manager may, as provided in the Act, appoint addi-

tional staff as necessary to fulfill the obligations of the Emergency Financial Manager's appointment and duties under this Contract. Payment of compensation for additional staff will be the obligation of the City. While authority to hire additional staff rests with the Emergency Financial Manager, the Emergency Financial Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours before extending offers of employment for positions paying $50,000.00, or more, annually. The Emergency Financial Manager shall issue a written employment contract to each individual hired pursuant to this Section, regardless of the compensation paid to that individual. The employment contract issued pursuant to this Section shall, as of the date the individual is hired by the Emergency Financial Manager, prohibit the individual from engaging in any other employment for remuneration without the express written approval of the Emergency Financial Manager. The Emergency Financial Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours before approving outside employment for any individual. A breach of this Section shall be a material breach of this Contract.

4.2 Professional Assistance. The Emergency Financial Manager may, as provided in the Act, secure professional assistance as necessary to fulfill the obligations of the Emergency Financial Manager's appointment and duties under this Contract. Payment of compensation for additional professional assistance will be the obligation of the City. The Emergency Financial Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours before authorizing professional services contracts of $50,000.00, or more, per engagement or project.

4.3 Security. The Emergency Financial Manager will be entitled to receive security protection in connection with the Emergency Financial Manager's duties under this Contract. Security personnel will be retained only upon the approval of the State Treasurer, or the designee of the State Treasurer, and only after consultation with the Director of the Michigan Department of State Police, or the designee of the Director of the Michigan Department of State Police. Payment of compensation for security personnel will be the obligation of the City.

5. REPRESENTATIONS

5.1 Qualifications. By signing this Contract, the Emergency Financial Manager, represents that the Emergency Financial Manager meets the minimum qualifications for appointment set forth in the Act. The Emergency Financial Manager shall perform the duties of that office on a full-time basis and shall not accept any other employment or engage in any other activity for remuneration without the express written approval of the State Treasurer.

5.2 Conflict of Interest. The Emergency Financial Manager represents and warrants that the Emergency Financial Manager has no personal or financial interest, and will not acquire any such interest, that would conflict in any manner or degree with the performance of this Contract.

5.3 Non-competition. The Emergency Financial Manager represents and warrants that the Emergency Financial Manager is not subject to any non-disclosure, non-competition, or similar clause with current or prior clients or employers that will interfere with the performance of this Contract. The Board will not be subject to any liability for any such claim.

5.4 Facilities and Personnel. The City will provide the Emergency Financial Manager with proper facilities and personnel to perform the services and work required to be performed pursuant to this Contract.

5.5 Records. The Emergency Financial Manager shall maintain complete records in accordance with generally accepted accounting practices and sound business practices. This requirement applies to all information maintained or stored in the computer system of the Emergency Financial Manager or computer system of the City. The State Treasurer and his designees shall have the right to inspect all records related to this Contract.

5.6 Non-Discrimination.

a) The Emergency Financial Manager shall comply with Public Act 220 of 1976, the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and all applicable federal, State, and local fair employment practices and equal opportunity laws. The Emergency Financial Manager covenants that the Emergency Financial Manager will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Emergency Financial Manager shall impose this covenant upon every subcontractor that enters into an agreement for the performance of any obligation imposed by this Contract. A breach of this covenant shall be a material breach of this Contract.

b) The Emergency Financial Manager shall comply with Public Act 453 of 1976, the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and all applicable federal, State, and local fair employment practices and equal opportunity laws. The Emergency Financial Manager covenants that the Emergency Financial Manager will not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. The Emergency Financial Manager shall impose this covenant upon every subcontractor that enters into an agreement for the performance of any obligation imposed by this Contract. A breach of this covenant shall be a material breach of this Contract.

5.7 Unfair Labor Practices. The Emergency Financial Manager shall not enter into a contract for the performance of any obligation imposed by this Contract with a subcontractor, manufacturer, or supplier whose name appears in the register prepared pursuant to Public Act 278 of 1980, MCL 423.322, of employers found in contempt of court for failure to correct unfair labor practices. The State may void this Contract if the Emergency Financial Manager, or any subcontractor, manufacturer, or supplier of the Emergency Financial Manager that is a party to a contract for the performance of any obligation imposed by this Contract, appears in the above mentioned register.

5.8 Independent Contractor. The relationship of the Emergency Financial Manager to the Board and to the City under this Contract is that of an independent contractor. Except as specifically provided in the Act, no liability, benefits, workers compensation rights or liabilities, insur-

ance rights or liabilities, or any other rights or liabilities arising out of, or related to, a contract for hire, nor employer-employee relationship, shall arise, accrue, or be implied to either party under this Contract or to an agent, subcontractor, or employee of either party under this Contract, as a result of the performance of this Contract.

6. NOTICES

6.1 The State Treasurer is the designee of this Board for this Contract unless notice of another designation is provided by the Board. All notices, correspondence, requests, inquiries, billing statements, and other documents mentioned in this Contract shall be directed to the attention of the State Treasurer, Andy Dillon, and to the following:

For the Board:

Michigan Department of Treasury
Office of Legal Affairs
Richard H. Austin Building, 430 West Allegan Street
Lansing, Michigan 48922
Phone: (517) 373-3223

For the Emergency Financial Manager:

_____
_____
_____, MI 4____

7. LIMITATION UPON LIABILITY

7.1 The Board. The Board, this State, the Treasurer, and all other State officials are not liable for any obligation of or claim against the City resulting from actions taken in accordance with the Act or this Contract.

7.2 The Emergency Financial Manager. Pursuant to the Act, in performing this Contract the Emergency Financial Manager is engaging in a governmental function and is immune from liability for any action taken which the Emergency Financial Manager reasonably believes to be within the scope of the Emergency Financial Manager's authority granted by the Act or by this Contract.

8. INSURANCE

8.1 General. The Emergency Financial Manager may procure and maintain, at the expense of the City, health, worker's compensation, general liability, professional liability, and motor vehicle insurance for the Emergency Financial Manager and any employee, agent, appointee, or contractor of the Emergency Financial Manager as may be provided to elected officials, appointed officials, or employees of the City. The insurance procured and maintained by the Emergency Financial Manager may extend to any claim, demand, or lawsuit asserted or costs recovered against the Emergency Financial Manager and any employee, agent, appointee, or contractor of the

Emergency Financial Manager to the extent permitted by the Act.

8.2 Post-Contract. If, after the date that the service of the Emergency Financial Manager is concluded, the Emergency Financial Manager or any employee, agent, appointee, or contractor of the Emergency Manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of the Emergency Financial Manager, and not covered by a procured insurance policy, litigation expenses, including but not limited to attorney fees, payments in satisfaction of judgments, and payments made in settlement as specified pursuant to the Act, shall be paid by the City. If such expenses are not paid by the City, they shall be treated as a debt owed to this State pursuant to section 17a(5) of Public Act 140 of 1971, the Glenn Steil State Revenue Sharing Act of 1971, MCL 141.917a.

8.3 Additional Insurance. If the City has purchased, or otherwise obtained, an errors and omissions policy, then the Emergency Financial Manager may choose to be covered under such policy at the expense of the City.

8.4 Payment by City. All insurance required under this Contract shall be acquired at the expense of the City under valid and enforceable policies, issued by insurers of recognized responsibility. The Board reserves the right to reject as unacceptable any insurer.

9. TERMINATION OF CONTRACT AND APPOINTMENT

9.1 Termination by the Board.

a) The Board. The Emergency Financial Manager serves at the pleasure of the Board which has the power to rescind the appointment and terminate this Contract at any time, and without cause, by issuing a Notice of Termination to the Emergency Financial Manager.

9.2 Termination Process. Upon receipt of a Notice of Termination, and except as otherwise directed by the Board, the Emergency Financial Manager shall:

a) Cease work under this Contract upon the date and to the extent specified in the Notice of Termination;

b) Incur no costs beyond the date specified by the Notice of Termination;

c) Submit to the State Treasurer on the date the termination is effective all records, reports and documents as this State shall specify and carry out such directives as the State Treasurer may issue concerning the safeguarding and disposition of files and property; and

d) Submit within 30 calendar days a closing memorandum and final billing, which shall be paid within 30 days.

9.3 Termination by Emergency Financial Manager. The Emergency Financial Manager may terminate this Contract at any time, with or without cause, with 30 days written notice to the State Treasurer. Within 30 days of the Emergency Financial Manager's final day of service, the

Emergency Financial Manager shall submit a closing memorandum and final billing, which shall be paid within 30 calendar days.

10. GENERAL PROVISIONS

10.1 Governing Law and Jurisdiction. This Contract shall be subject to, and construed according to, the laws of the State of Michigan, and no action shall be commenced against this State, its agents, or employees for any matter whatsoever arising out of this Contract, in any court other than a Michigan State court.

10.2 No Waiver. A party's failure to insist on the strict performance of this Contract shall not constitute waiver of any breach of the Contract.

10.3 Other Debts. The Emergency Financial Manager represents and warrants that the Emergency Financial Manager is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

10.4 Invalidity. If any provision of this Contract or its application to any persons or circumstances shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, and each remaining provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

10.5 Headings. Section headings contained in this Contract are for convenience only and shall not be used to interpret the scope or intent of this Contract.

10.6 Entire Agreement. This Contract represents the entire and exclusive agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

10.7 Amendment. No Contract amendment will be effective and binding upon the parties to this Contract unless the amendment expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

10.8 Order of Priority. This Contract and the Act shall be read to be consistent one with the other. However, if a conflict is deemed to exist between the terms of this Contract and the Act, the Act shall supersede the terms of this Contract.

10.9 Counterparts. This Contract may be executed in separate counterparts, each of which when executed shall be deemed an original, but all of which when taken together shall constitute one and the same Contract.

IN WITNESS WHEREOF, the members of the Board, or their designees, and the Emergency Financial Manager have signed and executed this Contract.

LOCAL EMERGENCY FINANCIAL ASSISTANCE LOAN BOARD

By_____
Andy Dillon, State Treasurer

By_____
John E. Nixon, Director
Department of Technology, Management and Budget

By_____
Steve Arwood, Director
Department of Licensing and Regulatory Affairs

By_____
_____, Emergency Financial Manager

Dated: 3-14-13

STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

BRIAN CALLEY
LT. GOVERNOR

March 26, 2013

BY ELECTRONIC MAIL

Kevyn Orr
Emergency Financial Manager
City of Detroit
1126 Coleman A. Young Municipal Center
Detroit, Michigan 48226

Dear Mr. Orr:

This letter confirms your existing status as an Emergency Financial Manager, having been appointed pursuant to Section 18(1) of Public Act 72 of 1990, the Local Government Fiscal Responsibility Act and now maintained under Section 9(10) and Section 31 of Public Act 436 of 2012. Enclosed is a contract for your execution, reflecting the terms and conditions of your continuing appointment as an Emergency Manager under Public Act 436 of 2012, the Local Financial Stability and Choice Act.

Sincerely,

Rick Snyder
Governor

Enclosure

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

CONTRACT FOR EMERGENCY MANAGER SERVICES

Rick Snyder, Governor of the State of Michigan (Governor) and the Michigan Department of Treasury retain and appoint Kevyn Orr as the Emergency Manager (Emergency Manager) for the City of Detroit (City) under Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL 141.1541 *et seq,* (the Act).

The Emergency Manager will provide services to the City pursuant to the terms and conditions set forth in this Contract and the Act.

The Emergency Manager's role is to remedy the financial distress of the City by requiring, within available resources, prudent fiscal management and an efficient provision of municipal services by exercising the necessary authority conferred herein to take appropriate action on behalf of the City and its residents. In accepting this appointment, the Emergency Manager agrees to leverage all the Emergency Manager's skills and abilities to accomplish these objectives on behalf of City residents.

1. PARTIES, PURPOSE, DUTIES, AND REPORTS

1.1 Parties. The parties to this Contract are the State of Michigan by the Department of Treasury and Kevyn Orr.

1.2 Purpose. The parties to this Contract agree that Kevyn Orr will act as the Emergency Manager for the City. The Emergency Manager's duties and responsibilities are delineated in the Act and include conducting all aspects of the operations of the City and establishing and implementing a written financial plan as required by Section 11 of the Act.

1.3 Duties. The Emergency Manager shall possess all the powers and duties authorized under the Act, including those specifically related to local governments. In addition, the Emergency Manager shall work cooperatively with the Office of the Governor and the State Treasurer. The Emergency Manager agrees to continue to keep these officials informed of major initiatives to be undertaken in furtherance of this Contract before their public announcement. The Emergency Manager shall seek the approval of the State Treasurer before entering into a new collective bargaining agreement.

1.4 Reports. The Emergency Manager shall file quarterly reports with the Department of Treasury beginning on July 15, 2013, for the immediately preceding quarter and shall file the first report required by Section 17 of the Act within six months of the Emergency Manager's appointment and every three months thereafter.

1.5 Communications. The Emergency Manager shall establish and maintain an appropriate protocol for ongoing communications with officials of the City, City residents, and the media. The communications protocol should include a variety of means, including personal interactions.

2. TERM OF CONTRACT

2.1 The Emergency Manager serves at the pleasure of the Governor except as provided in Section 9(3)(d) and Section 9(6)(c) of the Act.

2.2 Effective Date. This contract is effective on Thursday March 28, 2013.

3. COMPENSATION FOR SERVICES PROVIDED

3.1 Source of Payment. The State shall pay the compensation of the Emergency Manager for all services rendered under this Contract.

3.2 Salary. The Emergency Manager's salary for services rendered under this Contract shall be $275,000 per year. If this Contract is terminated after the Emergency Manager has provided services for a portion of a month, the Emergency Manager shall be entitled, for that portion of that month, to $22,916.67 multiplied by the proportion that the number of days of the month for which services were provided bears to the number of days of the whole month. The Emergency Manager shall not receive or accept any compensation from the City or the State except as provided for in this contract.

3.3 Payment for Services. The Emergency Manager salary shall be paid in installments consistent with the established written policies and procedures of the Michigan Department of Treasury. If requested by the State Treasurer, the Emergency Manager shall provide to the Michigan Department of Treasury additional information regarding services performed pursuant to this Contract. Performance and/or any early termination payments not to exceed the annual salary amount (prorated) shall be paid as mutually agreed among the parties.

3.4 Reimbursement for Actual and Necessary Expenses. The actual and necessary expenses of the Emergency Manager, including customary expenses related to travel, meals, and lodging which are incurred in connection with service to the City will be reimbursed by the City. The Emergency Manager shall provide original copies of all receipts for meals, lodging, and travel reimbursement with any request for reimbursement. Any reimbursement for expenses, including commuting, housing, and security detail automobile expenses, under this contract shall be reviewed and approved in writing by the City's Chief Financial Officer.

4. ADDITIONAL STAFF AND CONSULTANT FEES

4.1 Staff. The Emergency Manager may, as provided in the Act, appoint additional staff as necessary to fulfill the obligations of the Emergency Manager's appointment and duties under this Contract. Payment of compensation for additional staff will be the obligation of the City. While authority to hire additional staff rests with the Emergency Manager, the Emergency Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours

before extending offers of employment for positions paying $50,000.00, or more, annually. The Emergency Manager shall issue a written employment contract to each individual hired pursuant to this Section, regardless of the compensation paid to that individual. The employment contract issued pursuant to this Section shall, as of the date the individual is hired by the Emergency Manager, prohibit the individual from engaging in any other employment for remuneration without the express written approval of the Emergency Manager. The Emergency Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours before approving outside employment for any individual. A breach of this Section shall be a material breach of this Contract.

4.2 Professional Assistance. The Emergency Manager may, as provided in the Act, secure professional assistance as necessary to fulfill the obligations of the Emergency Manager's appointment and duties under this Contract. Payment of compensation for additional professional assistance will be the obligation of the City. The Emergency Manager agrees to consult with the State Treasurer, or the designee of the State Treasurer, at least 24 hours before authorizing professional services contracts of $50,000.00, or more, per engagement or project.

4.3 Security. The Emergency Manager will be entitled to receive security protection in connection with the Emergency Manager's duties under this Contract. Security personnel will be retained only upon the approval of the State Treasurer, or the designee of the State Treasurer, and only after consultation with the Director of the Michigan Department of State Police, or the designee of the Director of the Michigan Department of State Police. Payment of compensation for security personnel will be the obligation of the City.

5. REPRESENTATIONS

5.1 Qualifications. By signing this Contract, the Emergency Manager, represents that the Emergency Manager meets the minimum qualifications for appointment set forth in the Act. The Emergency Manager shall perform the duties of that office on a full-time basis, except as otherwise approved by the State Treasurer, and shall not accept any other employment or engage in any other activity for remuneration without the express written approval of the State Treasurer.

5.2 Conflict of Interest. The Emergency Manager represents and warrants that the Emergency Manager has no personal or financial interest, and will not acquire any such interest, that would conflict in any manner or degree with the performance of this Contract.

5.3 Non-competition. The Emergency Manager represents and warrants that the Emergency Manager is not subject to any non-disclosure, non-competition, or similar clause with current or prior clients or employers that will interfere with the performance of this Contract. The State will not be subject to any liability for any such claim.

5.4 Facilities and Personnel. The City will provide the Emergency Manager with proper facilities and personnel to perform the services and work required to be performed pursuant to this Contract.

5.5 Records. The Emergency Manager shall maintain complete records in accordance with

generally accepted accounting practices and sound business practices. This requirement applies to all information maintained or stored in the computer system of the Emergency Manager or computer system of the City. The State Treasurer and his designees shall have the right to inspect all records related to this Contract.

5.6 Non-Discrimination.

a) The Emergency Manager shall comply with Public Act 220 of 1976, the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and all applicable federal, State, and local fair employment practices and equal opportunity laws. The Emergency Manager covenants that the Emergency Manager will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Emergency Manager shall impose this covenant upon every subcontractor that enters into an agreement for the performance of any obligation imposed by this Contract. A breach of this covenant shall be a material breach of this Contract.

b) The Emergency Manager shall comply with Public Act 453 of 1976, the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and all applicable federal, State, and local fair employment practices and equal opportunity laws. The Emergency Manager covenants that the Emergency Manager will not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. The Emergency Manager shall impose this covenant upon every subcontractor that enters into an agreement for the performance of any obligation imposed by this Contract. A breach of this covenant shall be a material breach of this Contract.

5.7 Unfair Labor Practices. The Emergency Manager shall not enter into a contract for the performance of any obligation imposed by this Contract with a subcontractor, manufacturer, or supplier whose name appears in the register prepared pursuant to Public Act 278 of 1980, MCL 423.322, of employers found in contempt of court for failure to correct unfair labor practices. The State may void this Contract if the Emergency Manager, or any subcontractor, manufacturer, or supplier of the Emergency Manager that is a party to a contract for the performance of any obligation imposed by this Contract, appears in the above mentioned register.

5.8 Independent Contractor. The relationship of the Emergency Manager to the State and to the City under this Contract is that of an independent contractor. Except as specifically provided in the Act, no liability, benefits, workers compensation rights or liabilities, insurance rights or liabilities, or any other rights or liabilities arising out of, or related to, a contract for hire, nor employer-employee relationship, shall arise, accrue, or be implied to either party under this Contract or to an agent, subcontractor, or employee of either party under this Contract, as a result of the performance of this Contract.

6. NOTICES

6.1 The State Treasurer is the designee for this Contract unless notice of another designation is provided by the Governor. All notices, correspondence, requests, inquiries, billing statements, and other documents mentioned in this Contract shall be directed to the attention of the State Treasurer, Andy Dillon, and to the following:

For the State:

Michigan Department of Treasury
Office of Legal Affairs
Richard H. Austin Building, 430 West Allegan Street
Lansing, Michigan 48922
Phone: (517) 373-3223

For the Emergency Manager:

Kevyn Orr
1126 Coleman A. Young Municipal Center
Detroit, Michigan 48226

7. LIMITATION UPON LIABILITY

7.1 The State. The State, the Governor, the State Treasurer, and all other State officials are not liable for any obligation of or claim against the City resulting from actions taken in accordance with the Act or this Contract.

7.2 The Emergency Manager. Pursuant to the Act, in performing this Contract the Emergency Manager is engaging in a governmental function and is immune from liability for any action taken which the Emergency Manager reasonably believes to be within the scope of the Emergency Manager's authority granted by the Act or by this Contract.

8. INSURANCE

8.1 General. The Emergency Manager may procure and maintain, at the expense of the City, health, worker's compensation, general liability, professional liability, and motor vehicle insurance for the Emergency Manager and any employee, agent, appointee, or contractor of the Emergency Manager as may be provided to elected officials, appointed officials, or employees of the City. The insurance procured and maintained by the Emergency Manager may extend to any claim, demand, or lawsuit asserted or costs recovered against the Emergency Manager and any employee, agent, appointee, or contractor of the Emergency Manager to the extent permitted by the Act.

8.2 Post-Contract. If, after the date that the service of the Emergency Manager is concluded, the Emergency Manager or any employee, agent, appointee, or contractor of the Emergency Manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of the Emergency Manager, and not covered by a procured insurance policy, litigation

expenses, including but not limited to attorney fees, payments in satisfaction of judgments, and payments made in settlement as specified pursuant to the Act, shall be paid by the City. If such expenses are not paid by the City, they shall be treated as a debt owed to this State pursuant to section 17a(5) of Public Act 140 of 1971, the Glenn Steil State Revenue Sharing Act of 1971, MCL 141.917a.

8.3 Additional Insurance. If the City has purchased, or otherwise obtained, an errors and omissions policy, then the Emergency Manager may choose to be covered under such policy at the expense of the City.

8.4 Payment by City. All insurance required under this Contract shall be acquired at the expense of the City under valid and enforceable policies, issued by insurers of recognized responsibility. The State Treasurer reserves the right to reject as unacceptable any insurer.

9. TERMINATION OF CONTRACT AND APPOINTMENT

9.1 Termination by the State.

a) The State. The Emergency Manager serves at the pleasure of the Governor except as provided in Section 9(3)(d) and Section 9(6)(c) of the Act. The Governor has the power to rescind the appointment and terminate this Contract at any time, and without cause, by issuing a Notice of Termination to the Emergency Manager.

9.2 Termination Process. Upon receipt of a Notice of Termination, and except as otherwise directed, the Emergency Manager shall:

a) Cease work under this Contract upon the date and to the extent specified in the Notice of Termination;

b) Incur no costs beyond the date specified by the Notice of Termination;

c) Submit to the State Treasurer on the date the termination is effective all records, reports and documents as this State shall specify and carry out such directives as the State Treasurer may issue concerning the safeguarding and disposition of files and property; and

d) Submit within 30 calendar days a closing memorandum and final billing, which shall be paid within 30 days.

9.3 Termination by Emergency Manager. The Emergency Manager may terminate this Contract at any time, with or without cause, with 30 days written notice to the State Treasurer. Within 30 days of the Emergency Manager's final day of service, the Emergency Manager shall submit a closing memorandum and final billing, which shall be paid within 30 calendar days.

10. GENERAL PROVISIONS

10.1 Governing Law and Jurisdiction. This Contract shall be subject to, and construed ac-

cording to, the laws of the State of Michigan, and no action shall be commenced against this State, its agents, or employees for any matter whatsoever arising out of this Contract, in any court other than a Michigan State court.

10.2 No Waiver. A party's failure to insist on the strict performance of this Contract shall not constitute waiver of any breach of the Contract.

10.3 Other Debts. The Emergency Manager represents and warrants that the Emergency Manager is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

10.4 Invalidity. If any provision of this Contract or its application to any persons or circumstances shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected, and each remaining provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

10.5 Headings. Section headings contained in this Contract are for convenience only and shall not be used to interpret the scope or intent of this Contract.

10.6 Entire Agreement. This Contract represents the entire and exclusive agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

10.7 Amendment. No Contract amendment will be effective and binding upon the parties to this Contract unless the amendment expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

10.8 Order of Priority. This Contract and the Act shall be read to be consistent one with the other. However, if a conflict is deemed to exist between the terms of this Contract and the Act, the Act shall supersede the terms of this Contract.

10.9 Counterparts. This Contract may be executed in separate counterparts, each of which when executed shall be deemed an original, but all of which when taken together shall constitute one and the same Contract.

IN WITNESS WHEREOF, the Governor and the Emergency Manager have signed and executed this Contract.

STATE OF MICHIGAN

Dated: 3/27/13

Rick Snyder, Governor

Dated: March 27th, 2013

Kevyn Orr, Emergency Manager

Approved as to form and content pursuant to Section 9(3)(e) of Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL 141.1541 *et seq.*

Dated: March 27, 2013

Andy Dillon, State treasurer

EXHIBIT C

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IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION
Case No. 13-53846; Hon. Steven W. Rhodes
----------X

In re: Chapter 9

CITY OF DETROIT, MICHIGAN,

Debtor.

----------X

DEPONENT: KENNETH A. BUCKFIRE

DATE: Friday, September 20, 2013

TIME: 8:30 a.m.

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September 20, 2013
8:33 a.m.

Deposition of KENNETH A. BUCKFIRE, held at the offices of JONES DAY, 222 East 41st Street, New York, New York pursuant to Notice before DANIELLE GRANT, a Shorthand Reporter and Notary Public of the State of New York.

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APPEARANCES:

JONES DAY
By: THOMAS CULLEN
BENJAMIN ROSENBLUM
222 East 41st Street
NEW YORK, NEW YORK 10017
Appearing on behalf of the Debtor

SALANS FMC SNR DENTON
By: CLAUDE D. MONTGOMERY
620 Fifth Avenue
New York, NY 10020.2457
212.632.8342
Appearing on behalf of Retirees Committee

COHEN WEISS AND SIMON LLP
By: THOMAS N. CIANTRA
330 West 42nd Street
New York, NY 10036.6979
212.356.0216
Appearing on behalf of UAW

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APPEARANCES (continued):

LOWENSTEIN SANDLER LLP
By:· JOHN K. SHERWOOD
65 Livingston Avenue
Roseland, NJ 07068
973.597.2374
Appearing on Behalf of AFSCME

CLARK HILL PLC
By: SHANNON L. DEEBY (appearing via Telephone)
500 Woodward Avenue, Suite 3500.
Detroit, MI 48226
313.965.8274
Appearing on behalf of Retirement Systems

WILLIAMS WILLIAMS RATTNER & PLUNKETT PC
By: NOT PRESENT, Jr.
380 N Old Woodward Ave Ste 300
Birmingham, MI 48009
248.642.0333
Appearing on behalf of FGIC

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K. Buckfire

joined the record.
A Since the founding of the firm in 2002.
Q 2002. And what is your formal position with Miller Buckfire?
A Co-president.
Q Who is the other co-president?
A Norma Corio, C-O-R-I-O.
Q Does Miss Corio have any roll in connection with the City of Detroit engagement of which you are employed?
A Yes.
Q What is her role?
A She is overseeing the process by which we are securing debtor and possession of financing for the City.
Q And what is your role in connection with the City of Detroit bankruptcy?
A I'm the senior banker at Miller Buckfire responsible for advising the emergency manager in the City of Detroit on all aspects of financial strategy and restructuring alternatives, including potential exchange offers, debt for equity conversions, and other

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K. Buckfire

potential transactions that might be required to effectuate a restructure.
Q And this current role began when, sir?
A January of 2013.
Q And I believe you indicated in your prior deposition that you had other roles in connection with the City of Detroit; is that correct?
Let me rephrase the question if you don't understand it. Prior to your current engagement, had you done work for either the City or the State in connection with the City of Detroit?
A Yes, in 2012 we had a two-month engagement with the State the Michigan to evaluate the City's financial condition.
Q Was that July 2012?
A I believe it was July.
Q Prior to that, any engagement if connection with the City of Detroit?
A No.
Q And after that was there an intermediate role prior to your current one?

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K. Buckfire

A No.
Q In January of 2013, was the scope of your engagement changed in any way?
A Yes, the scope of our engagement in January was to continue our role as evaluating the City's financial condition from a solvency perspective, and advise the City on what they might be able to do to create more liquidity or deal with their liabilities.
Q And did you reach any conclusions in connection with the solvency or how the City should deal with its liabilities?
A Not until May.
Q And did you reach any conclusions in May regarding solvency?
A Yes.
Q What was that conclusion, sir?
A That the City was insolvent.
Q And did you report that conclusion to anyone?
A Yes, I did.
Q And in what form did that report take?
A It was on oral report to the

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K. Buckfire

emergency manager.
Q And when did you give that oral report to the emergency manager?
A In early May.
Q Can you be more precise than early May?
A No.
Q Would it be before May 7, by any chance?
A It could have been, but I don't recall exactly.
Q You don't recall exactly, okay.
And did you give any advice to the emergency manager on how he should deal with his creditors in connection with your report on solvency?
A Yes, I advised him that the City's financial condition was so dire that we had to take immediate steps to preserve the City's liquidity so that it would be in jeopardy of losing essential public services, and we identified the need to negotiate with the swap counterparties, which I previously to in this case, as an immediate and urgent priority of

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K. Buckfire

the City.
Q And when you say you previously testified, are you speaking of your deposition which took place on August 29, 2013?
A Correct.
Q And in what form did your report to Mr. Orr -- let me rephrase it.
What form did your report to Mr. Orr take?
A Verbal.
Q And was is it delivered at exactly the same time as your report on solvency or at a later time?
A It was all part of the same discussion.
Q And how long did this discussion take place -- let me rephrase the question.
How long was a conversation was it?
A It was a lengthy conversation. We were not the only ones present at the time.
Q Who else was present in the room at the time?
A Representatives of Conway

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K. Buckfire

McKenzie, Ernst and Young and Jones Day.
Q Was this a report by you or an interactive conversation?
A Conversation.
Q Was counsel present?
A Jones Day.
Q So you have Conway McKenzie, Miller Buckfire Jones Day, any other organizations represented in that meeting?
A Ernst and Young.
Q Any others?
A Not that I recall.
Q Who from Ernst and Young was that?
A Gaurav Malhotra.
Q Anyone else from his shop?
A I don't recall. I'm sure there were but I can't recall who it was.
Q Anyone else from Buckfire Miller there?
A Miller Buckfire.
Q Miller Buckfire, sorry.
A You're forgiven.
Q Let me rephrase the question. Was there anyone else from your institution in that

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conversation with the emergency manager?
A Yes, Mr. James Doak, D-O-A-K.
Q Anyone else that you can recall?
A No.
Q And what was Mr. Doak's role in that conversation?
A He didn't really have much to say. It was primarily a report I was giving on behalf of the firm.
Q I think you indicated a moment ago that the conversation was interactive?
A Yes.
Q Who else participated in the conversation, specifically?
A I can't recall.
Q Did Mr. Mohatra participate in the conversation?
A I'm sure he did but I can't recall what he said.
Q Okay. Did Mr. Moore participate in the conversation?
A I'm believe he did.
Q Can you recall anything about what Mr. Moore said?

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A No.
Q Can you recall anything that Mr. Orr said during that conversation?
A Yes, he agreed, having reviewed the financial forecast provided by Ernst and Young that the situation was indeed very serious and, he agreed with my recommendation that we immediately formulate a strategy to preserve the City's cash flow.
Q Had you seen Mr. Mohatra's forecast prior to that meeting?
A No.
Q Were you able to review it during the meeting?
A Yes.
Q And what conclusions, if any, did you reach with regard to that forecast during that meeting?
A I was shocked at how much worse the situation was than I had imaged before that.
Q Now, I believe you indicated to me earlier that you were engaged to review the City's solvency?

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K. Buckfire

Q That will help.
A It's a confidential assignment for a company which in the zone of insolvency so I can't tell you which company it is, but we've been working with them on that particular engagement since last January, January of 2012.
Q And prior to January of 2012, can you recall any engagements on which you and Jones Day were on the same side?
A Well, my firm has worked with Jones Day very actively over the ten years, primarily in auto parts companies in which we are involved, as is Jones Day. I personally have not worked with Jones Day in any of those cases.
Q Thank you. We're going to switch topics now, Mr. Buckfire.
In connection with your review for Mr. Orr on the solvency of the City, did you look at a balance sheet for the City?
A Yes.
Q And do you know if that balance sheet has been produced by the City in connection with the discovery in the

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K. Buckfire

eligibility dispute?
A Well, we've produced a tremendous amount of financial information including balance sheets, both historical as audited by the City's auditors, and more recent analyzes produced by Ernst and Young.
MR. MONTGOMERY: Can you confirm that, Mr. Rosenbloom?
MR. ROSENBLOOM: I'm not aware of any balance sheet.
MR. MONTGOMERY: You're not representing the City, you're representing Mr. Buckfire; is that right. Rosenbloom?
MR. ROSENBLOOM: I'm representing the City and Mr. Buckfire. I'm not aware of any balance sheet document that we have not produced.
Q Can you recall from your memory, sir, what the asset side of that balance sheet totaled as of any date prior to your meeting with Mr. Orr?
A No.
Q Are you familiar with the June 14

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K. Buckfire

creditor proposal?
A Yes.
Q Is there a balance sheet contained in that presentation?
A Not in conformity with what you would consider generally accepted accounting principles. It's more of a market-to-market analysis of the true liabilities of the City.
Q Is there any presentation, document, or section of the report that quantifies the asset side of the City's balance sheet?
A Not that I recall.
Q But it is your testimony, Mr. Buckfire, that you have seen a document that quantifies the asset side of the City's balance sheet?
A Well, the City has produced an annual report for a hundred years, and most recent of which in 2012 is in the data room, which I reviewed.
Q Okay. Sir, are all of the City's assets of which you are aware on that balance sheet that appears in the City's data room?

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K. Buckfire

A I don't understand your question.
Q Are there any assets that the City owns of which you are aware that are not included on the balance sheet which you say is in the City's data room?
A I have to assume that the City's balance sheet as audited reports fairly the financial condition of the City and therefore incorporates all of the assets in which it owns.
MR. MONTGOMERY: I'm going to ask the court reporter to mark as Buckfire Exhibit 2, the credit proposal as it appears attached to the Orr declaration as Exhibit A, which is docket 11, Exhibit 1.
(June 14 report and proposal was marked as Buckfire Exhibit No. 2 for identification, as of this date.)
Q Mr. Buckfire, I've handed you what has been marked as Buckfire Exhibit No. 2. Have you seen this before?
A Yes.

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K. Buckfire

Q What is it, sir?
A It's the June 14 report and proposal to creditors.
Q Did you participate in its preparation?
A No.
Q Would you turn to page 118 on that document, which I believe is has a slightly different docket reference?
A Is this the page that says "A preliminary transition advisory board"?
Q No.
MR. CULLEN: Is it 118 of the document or --
MR. MONTGOMERY: Forgive me. Off the record for a moment.
(Discussion off the record.)
Q Page 113 of the document, which is also page 120 of 135.
A Calendar of contacts?
Q Yes. You see that you are identified as a contact?
A Yes.
Q Do you know why you are identified

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as a contact in connection with this document?
A Yes.
Q Please?
A To allow for creditors to call and ask me questions about the information and proposal contained within this plan.
Q Okay. So is it your testimony, Mr. Buckfire, that you played no role in the creation of this document?
A Aside from some minor stylistic changes, no.
Q Had you reviewed it prior to its submission to creditors on June 14?
A Yes.
Q When did you first see a draft of this document?
A It was about two weeks prior.
Q And you, I believe you just indicated you made some minor edits?
A That's right.
Q Can you recall what sections of the document you thought required minor editing?
A No.

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K. Buckfire

Q Does this document reflect in any way the substance of conversations you had with Mr. Orr?
A Yes.
Q How so, sir?
A I've had many conversations with Mr. Orr and the advisors to Mr. Orr over the course of our engagement, and this document reflects a consensus amongst all of us as to the condition of the City and recommendation and what to do about it.
Q So is it your testimony, sir, that you endorse or support the recommendations that are contained in this document?
A Yes.
Q Is it your testimony that to the best of your understanding the facts presented in this document are accurate?
A To my understanding, yes.
Q Is there anything in this document that you have challenged to Mr. Orr?
MR. CULLEN: Objection, foundation, form.
You can address the question if

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you understand it.
A I can't answer it.
Q Have you in any way suggested to Mr. Orr that the June 14 creditor proposal contains inaccuracies?
A No.
Q Have you in any way suggested to Mr. Orr that the June 14 creditor proposal contains omissions in your mind?
MR. CULLEN: Material omissions, is that what you mean?
MR. MONTGOMERY: Yes.
A No.
Q Now, sir, if you would look at page 7, which is also marked as page 14 of docket 11-1, I'll try to use both numbers.
A It's the page entitled "The City is insolvent"?
Q Indeed it is.
A Okay.
Q Do you believe that each of the statements that appear on this page are accurate?
A Well, it's based on the work of

K. Buckfire

Ernst and Young and Conway McKenzie. I have no reason to doubt their accuracy.

Q Other than the work by Conway McKenzie and Ernst and Young, do you have any reason to believe that the statements here are true, other than -- let me rephrase the question.

I think you just said that it's Ernst and Young and Conway McKenzie who formed -- gave you the information that forms the basis of this statement; is that correct?

A That's correct.

Q And so I'm simply asking you if you have an independent reason to believe these are accurate?

A I relied on their professional judgment and work to produce this information.

Q Okay. And I think that means you have no other reason to believe that this information is accurate.

A I don't understand the question.

MR. CULLEN: Objection to foundation and form.

Q Has Miller Buckfire done any work

K. Buckfire

to confirm the accuracy of the statements made on page 14 of docket 11-1 -- has Miller Buckfire done any work to confirm the statements that are on page 14 of docket 11-1?

MR. CULLEN: May I ask, Counsel, do you mean the actual numbers or the overall conclusion? It's a little vague.

Q I'm going to rephrase the question. You have said today that you believe the statements that are contained on page 7, which is of this document, that they are accurate. Did I understand that correctly?

A I'm relying on the work of other professional as I'm entitled to do.

Q I was not challenging your entitlement one way or the other, I was simply asking you if you had any basis other than the work of Conway McKenzie and Ernst and Young to reach the conclusion that the statements on this page are accurate?

A Are you asking if I audited their work?

Q No, I'm just asking the very

K. Buckfire

simple question, do you have any other reason to believe that these statements are correct other than the good work by Ernst and Young and Conway McKenzie?

A I am highly confident they did excellent work.

Q I'm not asking you how good the work is, I'm asking you if you have any other reason to believe these statements are accurate?

A Honestly I don't know how to answer that question, I'm sorry.

Q Okay, let's turn to the next page. You will see that there is a statement there that, "The City is not paying their debts as they come due."

Do you see that statement, sir?

A I do.

Q You believe that to be an accurate statement?

A Yes, I do.

Q You'll see that the first bullet is "The City is not making its pension contributions as they come due."

K. Buckfire

Do you believe that to be an accurate statement?

A I do.

Q You'll also see in there that there is a reference to the deferral of pension contributions?

A Yes.

Q You see that one of those statements is that, "As of May 2013, the City had deferred approximately 54 million in pension contributions related to current or prior periods and will defer approximately 50 million on June 30, 2013 for current year PFRS pension contributions."

Do you see that?

A Yes.

Q To your understanding is that a true statement?

A To my understanding, yes.

Q Okay. And what is the basis of your understanding, sir?

A Reports from Ernst and Young and Conway McKenzie.

Q Anything else?

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K. Buckfire

A No. The alternative would be for the City to make the payment as schedule and thereby render itself cash insolvent.

Q So I'm asking you how it is that a deferral increases liabilities, which is a statement you made to me.

A If debt is due, that would be a reduction of liabilities. If you don't make the payment, then that becomes an increase in liabilities.

Q Is it not correct, sir, that if you make a payment on the liabilities, you reduce the liabilities but you also reduce your assets?

A Cash.

Q That's an asset, is it not?

A That is correct.

Q If you defer a liability you do not affect either the sum of the liabilities or the sum of the assets that are available.

A That's true.

Q So I ask you again, sir, how is it that a deferral increases liabilities?

A Because the alternative would be a

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reduction of liabilities.

Q So a failure to reduce liabilities is the same as an increase in liabilities?

A Well, in the case of a requirement to make a payment, you're required to make that payment, that would be a reduction of liabilities and a reduction of cash. If you are able to defer or unilaterally not make that payment, of course the liabilities would be unchanged, that represents an increase in liabilities from what you were legally required to do.

Q You've said that a failure to timely reduce liabilities acts as an increase in liabilities. Did I hear that correctly?

A From what you are suppose to have done.

Q But the -- is it not correct that the failure or ability to defer a debt also leads the asset side of your balance sheet unchanged?

A Yes.

Q Thank you. Do you happen to know if the City actually issued notes in connection

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with these deferrals of pension obligations that are referred to on docket 11-1, page 15?

A No.

Q You will recall that as we were looking at the first bullet, the statement, "Will defer approximately 50 million on June 30, 2013 for a current year PFRS pension contributions," was made, that statement was made?

A That statement was made.

Q And I think you indicated that that was an accurate statement to your understanding?

A To my understanding.

Q Do you happen to know whether in fact the City deferred the June 30, 2013 contribution?

A No.

Q So why did you believe that the June 14 creditor proposal was accurate when it said the City will defer $50 million?

A I don't understand the question.

Q You said you don't know if they actually deferred it.

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A I assume they did.

Q You assume they did, but you don't actually know it?

A That's what I testified to.

Q And so I'm asking you, why is it that you were confident that they were going to defer it?

A Because it was our conclusion that the City had no cash and could not afford to make this payment and therefore should not make this payment.

Q Was that one of the recommendations you made to Mr. Orr?

A It wasn't my recommendation.

Q Who made that recommendation?

A It was a collective recommendation among all the advisors, but I did not individually make that recommendation.

Q Who first proffered the recommendation for which the collective body of advisors endorsed it?

A I don't know.

Q But you indicated that the collective body did endorse it?

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your conclusion that it would be prudent the treat the pension as an unsecured claim flowed from that April letter?

A No.

Q Why did you reach the conclusion that it would be prudent financially for the City not to make any cash contributions to the pension plan?

A It was part of a general review of all the City's liabilities, both funded and unfunded. That's what we were doing. Prior to the involvement of Conway McKenzie, Ernst and the Milliman, we really had no fact in which to base out analysis on what the City should do about its balance sheet and about its in ability to fund operations or to invest in quality of life.

That is why Conway, Ernst and Young and Milliman were retained, to do exactly that analysis.

Q And as precisely as you can, sir, did you make a specific recommendation to Mr. Orr that no cash be contributed ed to the pension plans as part of the City's

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K. Buckfire

restructuring proposal, and when I say you I mean you personally?

MR. CULLEN: Objection, foundation, form, asked and answered. Address it again.

A We were not singling out any particular creditor or body. Our recommendations were all about preserving cash for the City and whatever steps the City had to take to do so, it was part of a recommendation, including not paying our bond holders.

Q And you made that recommendation following the April Milliman report?

A No, I did not. I didn't testify to that. I testified we became aware of the seriousness of the issue in April. We did not form any conclusions until late May, early June.

Q When, if ever, did you make a recommendation to Mr. Orr that the City not pay any cash to the retirement system as part of the restructuring proposal? The question is when.

MR. CULLEN: Objection,

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foundation, form. You're misstating the witness' testimony.

A I just answered the question.

Q When?

A I've answered that already.

Q You said May?

A Late May, early June.

Q Okay. You don't recall specifically when?

A No.

Q Do you recall specifically who heard the recommendation?

A No.

Q Was it oral?

A Yes.

Q Was it also in writing?

A No.

Q Who was present when the oral recommendation was made?

A I don't recall.

Q Mr. Orr was present, of course?

A I believe so, but I can't be certain.

Q You can't be certain as to whether

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K. Buckfire

Mr. Orr was present when you made an oral recommendation?

A There were many, many conversations and meetings during that period of time. I can't recall who was at any particular one and when this issue came up or not. It was one of many other issues that had to be decided to perform this presentation. It's certainly not the only one and maybe not even the most important.

Q What was the most important recommendation you made?

A The decision whether or not to make the $40 million payment to our cops bond holders on June 15.

Q Why was that the most important in your judgment?

A Because that would trigger an event of default on the part of the City which would immediately trigger other consequences related to the swap collateral agreement, which was a direct threat to the City's ability to operate in its ordinary course.

Q Sir, if you would turn to -- back

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K. Buckfire

A I suggested to him we figure out how to do a better job of collecting taxes.

Q I assume there was no disagreement on that point?

A Not that I recall.

Q Do you know, Mr. Buckfire, whether there has been more than one Compuware report on the non-filers?

A No.

Q As the debtor's financial advisor, do you have any assessment as to potential value of collections from non-filers?

A Well, in my judgment, and again, speaking with my judgment, and I think that the ability of the City to collect a material amount of these delinquent payables is low.

Q Why is that, sir?

A For two reasons. Number one, I think many of the people who have not paid have no capacity to pay. We can't find them, or we simply have no ability to enforce a judgment against them.

And, secondly, the City ability administratively to collect taxes has been

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K. Buckfire

proven to be quite low. I think for those reasons, the eventual ability to collect on these receivables is low.

Q I would like to hand you another document that touches on this subject. It's a letter dated January 10, 2012, addressed to Mr. Kenneth B. Cockrill, Chair, Budget, Finance and Auditing Standing Committee, from Cheryl Johnson, Group Executive Finance Director, Office of the Mayor.

(Document, dated 1/10/12 was marked as Buckfire Exhibit No. 10 for identification, as of this date.)

Q Mark this as Buckfire Exhibit 10.

Mr. Buckfire, have you seen Deposition Exhibit Number 10 before?

A No.

Q Were you aware that the City finance department had, in fact, identified companies owing money to the City with balances in excess of two thousand dollars?

A No.

Q Had you had any conversations with Mr. Orr regarding corporate assessments of

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taxes due to the City?

A No.

Q Did you have any such conversations with Mr. Malhotra?

A No.

Q With Mr. Moore?

A About this report?

Q Yes, A, about this report.

A I've never seen this report, so clearly, I didn't have any conversations about it.

Q Did you have any conversations with either Mr. Malhotra or Mr. Moore about the City's ability to identify corporate entities that had not paid taxes to the City?

A Not specifically, no.

Q I think a few moments ago you thought that it would be difficult to identify and find people who owed money to the City.

Did I hear that correctly?

A Individuals, yes.

Q Is that true for corporations as well?

A There are fewer corporations and

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K. Buckfire

they're more visible, and it's probably a more simple task to find them right now.

But this actually notes, since you just gave it to me, that even they point out they only had one accountant working on the corporate sector, which gets to my second points, which is the City's ability to collect taxes is extremely low.

Q Will that ability change as part of the reorganization process?

A If the City's allowed to maintain its reinvestment plan, the expectation is it will.

Q And if the City's allowed to continue with its reinvestment plan and dedicates the appropriate resources, do you believe that corporate taxes will be realized by the City?

A I believe that the projections produced as part of the June 14 report, which indicate certain expected revenues in the future will be achievable.

Q Do you believe that such projections include improved tax collections?

EXHIBIT D

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IN THE 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

The videotaped deposition of GAURAV MALHOTRA, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before JULIANA F. ZAJICEK, CSR No. 84-2604, a Certified Shorthand Reporter of said State of Illinois, at the offices of Jones Day, Suite 3500, 77 West Wacker Drive, Chicago, Illinois, on September 20, 2013, at 9:30 a.m.

Page 2

APPEARANCES:

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appeared telephonically on behalf of the Detroit Retired Police and Fire Fighters Association, Detroit Retired City Employees Association, Don Taylor, individually and as president of the RDPFFA, and Shirley Lightsey, individually and as president of the DRCEA;

Page 4

APPEARANCES: (Continued)

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REPORTED BY: JULIANA F. ZAJICEK, C.S.R.
CERTIFICATE NO. 84-2604.

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excuse me, "were limited to the City's general fund," is that correct?
A. That is correct.
Q. In other words, the projections assume that there are no other funds available to the City beyond the general fund, is that correct?
A. It -- it assumes that the general fund will not have additional funds from other funds, yeah, that's generally correct.
Q. What about the City having available -- other available funds outside of the general fund?
A. The City has multiple funds outside the general fund. The main one is the water and sewer, which we did not perform a ten-year projection on the water and sewer funds. My understanding is that those funds are not necessarily available to the general fund.
Q. To the general fund that may be correct, but it would be available to the City, would it not?
MR. STEWART: Objection.
BY THE WITNESS:
A. It would be available to the City for the purposes those funds were raised for, which is generally maintenance and capital improvements on the

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water and sewer side.
BY MS. BRUNO:
Q. Let's backtrack a little bit. I think we've gone in a different direction than I'm trying to focus on.
My question to you is: The forecasts that you provided in this declaration are limited solely to the general fund, is that correct?
A. They are generally limited to the general fund, other than if they were other enterprise funds the City was subsidizing, like the Department of Transportation, those would have been included in the general fund as it is a -- a fund that the City subsidizes and has historically subsidized.
Q. So you would agree, though, that subject to your exception there that the assumptions and forecasts provided in this declaration do not take into account other funds available to the City?
MR. STEWART: Objection.
BY THE WITNESS:
A. You have to rephrase your question.
BY MS. BRUNO:
Q. The forecasts and cash flows, the projections, the information that is discussed in your

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declaration here are solely limited with the caveat that you provided to the general fund, is that correct?
MR. STEWART: Objection.
BY THE WITNESS:
A. The cash flow forecasts and the ten-year projections with respect to the receipts and disbursements and the revenues and expenses are generally reflective of the general fund and the Department of Transportation. That's the way I would characterize it.
BY MS. BRUNO:
Q. You would agree that the City does have access to other funds, correct?
MR. STEWART: Objection.
BY THE WITNESS:
A. I don't understand when you say the City has access to.
BY MS. BRUNO:
Q. There is other enterprise funds available to the City, correct?
MR. STEWART: Objection.
BY THE WITNESS:
A. Available to the City for what?

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BY MS. BRUNO:
Q. Well, if you are talking about the cash available to the City, certainly there is other sources of cash available to the City outside of the general fund, you would agree with that?
MR. STEWART: Objection.
BY THE WITNESS:
A. No. It depends on what purpose you are asking the question, the context of.
BY MS. BRUNO:
Q. You would agree with me that the general fund is not the only source of available cash to the city, would you not?
MR. STEWART: Objection.
BY THE WITNESS:
A. The general fund -- the cash that is available to the general fund is generally the only cash that is available to the City for its core operations that are not related to any other enterprise funds. So, my answer would be, that the cash flows that are reflective in here and are generally available for the general fund is the City's operating cash in general.
BY MS. BRUNO:

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noted issues and problems with the recordkeeping of the City?
MR. STEWART: Objection; the document speaks for itself. There is no evidence he wrote it.
BY THE WITNESS:
A. That's what the statement says. So, I'm not sure I fully understand what your question is.
BY MS. BRUNO:
Q. Did Ernst & Young do anything to ensure that the information that they evaluated and relied upon was accurate information to draw assumptions from?
A. Who is "they"?
Q. Ernst & Young. The question -- let me rephrase the question. That might help.
Did Ernst & Young do anything to ensure that the information that Ernst & Young evaluated and relied upon as received from the City was accurate information that you could draw assumptions from?
A. EY did -- our team based on the data that was received did go through the information to make sure that the assumptions we were using were reasonable.
Q. And what would be the process that Ernst &

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Young would go through to make sure that information used was reasonable?
A. Well, it would generally have been that if we were receiving some information, we would try and review what other documentation may or may not be available to support any trends from a historical perspective and whether the information was consistent, and if it was not consistent, if there were any major outliers, speak to the team at the City to try and understand what changes may be happening.
So, I'm comfortable that what we undertook as an analysis of the information that was presented by the City after asking questions that we were using reasonable assumptions.
Q. This process that you just outlined, can you recall any specific instances where Ernst & Young determined that the financial information received from the City contained either an outlier or an error?
A. This was generally a collaborative process. So, there was exchange of information between the City and the EY team on a regular basis. And so I can't recall something off the top of my head, but my point is that this was generally an iterative and a collaborative process of exchanging

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information and assumptions back and forth.
Q. Just to be clear, are you aware of any instance or any specific circumstance of -- at all where Ernst & Young went back to the City and said, I think there is a problem with the information you provided?
A. I am sure there were several conversations in which we were challenging and asking questions with respect to the data that we were receiving, but I don't recall of any one specific instance off the top of my head that stands out versus not.
Q. Can you give me one example of any instance where Ernst & Young challenged the information received and went back to any department in the City where the information came from to verify or better understand a problem with the information received?
MR. STEWART: Objection to form.
BY THE WITNESS:
A. There were instances when we were receiving reports on cash collections that were not appropriately categorized and which -- and which we went back and, you know, further evaluated as to, you know, what the -- where those cash receipts really

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actually belonged in terms of income taxes or property taxes. They were -- that's one example.
There were questions with respect to the amount of accounts payable outstanding that the City was reporting and, you know, if there were more invoices than that were actually entered into the system or not. So, there have been a variety of back-and-forth conversations on different topics which is part of what we actually are helping at the City with is to try and get our arms around reasonable assumptions around the data that is available.
BY MS. BRUNO:
Q. Why don't we turn back to Exhibit 4, which is the June 14 proposal. And I'll direct your attention to what is page 68 of 135 in the electronic numbering. And this relates -- the questions that I'm going to ask you relate to the restructuring and reinvesting initiatives.
Why is the City spending $1.25 billion on these initiatives?
A. I think it's in general to improve the quality of safety as well as blight removal in the City. The specifics of that as to how that number was brought about is something that should be discussed

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Q. Going back a little bit, with respect to the ten-year projections, do you recall who instructed EY to begin compiling or preparing the ten-year projections?
A. I think it was generally the former CFO and the former program management director.
Q. And they did that prior to or after the appointment of the Emergency Manager?
A. I have to recall. We started with a five-year projection that we would start figuring out whether we do a five-year or a ten-year and then we transitioned from five-year to ten-year. I don't recall specifically at what timeframe.
Q. And then why did you transition from five-year to ten-year?
A. Just from the nature of looking at the City's liabilities, having a longer term view was more relevant versus having a shorter term view.
Q. Generally speaking, the longer you project financial performance of an entity, government entity or even a private entity, does your confidence in the results shown in the projections decrease with the longer period? In other words -- I'm sorry.
Did you understand that question?

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A. I did.
Q. Okay.
A. As long as you are making reasonable assumptions for a five-year or a ten-year timeframe, the comfort along certain assumptions in the short term when they are based on recent trends is always higher than projections that are in the long term. That being said, it also depends on the reasonableness of the assumptions in terms of the comfort level.
Q. And is it true that EY did not compile the data that is included in the buildup to the ten-year projections?
A. We did not audit the data. When you say compile the data, if you can rephrase your question.
Q. You took data from other sources, for example, from the CAFR, the Comprehensive Annual Financial Report, right?
A. That was one source.
Q. Right. That's one source. And there are other sources.
And you took data that was compiled by other consultants retained by the City, for example, by Milliman, is that right?
A. For certain assumptions.

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Q. And you used information that you were able to obtain directly from the City's -- directly from the City, the different agencies and departments of the City in your ten-year projections, right?
A. Not necessarily. The City does not have any ten-year projections currently. The data that we used was based on ascertaining what historical information was available and then using those -- using that data alongside some of the assumptions that we got from the other advisers, helping pull together ten-year assumptions. I do not know of any ten-year assumptions the City had historically that we would have used as a starting point.
Q. But you didn't create the historical -- in other words, you didn't -- again, you didn't create the historical data yourself from -- from original sources, did you? You took -- did you?
A. When you -- you've got to rephrase that question.
Q. You took the historical data directly from the City?
A. The City's historical data, we took the data that the City gave us and then made sure that what data was reasonable, how we would actually look

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at the assumptions and that historical data. So we had to look at the data, look at what the assumptions were with respect to how that data was classified, how that data was categorized to make sure that we could actually use that data. So there wasn't just a raw data dump in which we could use that data in its original form without having to analyze it further.
Q. All right. See, that's where my confusion is, because I thought that you had testified earlier that you didn't really audit data?
A. That's right.
Q. And you didn't go back to --
MR. STEWART: You have to wait for a question. He is not asking you a question.
BY MR. TEELE:
Q. And you didn't, for example -- and I think you gave this example, you didn't go back to the original bond offering documents to make sure that the amounts stated in the data that you were using was correct, right?
MR. STEWART: Well, wait a minute. What's the question? That was a speech essentially. Just ask a question.
BY MR. TEELE:

Q. I'm going to move on. It's a point of confusion in my head, but I'll move on.
MR. STEWART: I think the transcript will clear it up. I think it was covered.
MR. TEELE: I don't have anything further. Thank you.
MR. STEWART: Does anyone else have questions?
MS. BRUNO: Why don't we take a short break so I can communicate with everyone on the phone.
MR. STEWART: Okay.
MS. BRUNO: And then we can come back to you.
MR. STEWART: Okay.
(WHEREUPON, a recess was had from 12:22 to 12:30 p.m.)
MS. BRUNO: We are back on.
Counsel on the phone, we are back on the record. And I believe when we went off the record, we were going through the people on the phone on a roll call to see if anyone has any questions for Mr. Malhotra.
MR. PLECHA: Ryan Plecha from the Association Parties, we do not have any questions.
MR. STEVENSON: This is John Stevenson from Clark Hill. I do not have any questions.

MS. TAUNT: Meredith Taunt on behalf of the Retired Detroit Police Members Association. We do not have any questions.
MS. BRUNO: Anyone else on the phone?
MS. KAUFMAN: This is Dana Kaufman for Financial Guaranty Insurance Company. We do not have any questions.
MR. STEWART: This is Jeff Stewart, I have just a few questions of Mr. Malhotra, from Jones Day. I represent the witness and also the City, just a few questions.

EXAMINATION

BY MR. STEWART:

Q. Mr. Malhotra, you were asked in your deposition about a document called the Comprehensive Annual Financial Report of the City of Detroit.
Do you remember being asked about that?
A. Yes.
Q. That's sometimes called a CAFR, C-A-F-R?
A. Yes.
Q. Did E&Y audit the CAFR?
A. No.
Q. Or audit the accounts that led to the creation of the CAFR?

A. No.
Q. Was the CAFR audited?
A. Yes.
Q. Audited by who?
A. KPMG.
Q. And tell us who or what is KPMG?
A. KPMG is the City's auditor and it is another Big 4 accounting firm.
Q. Is it one of the international accounting firms that is known in the United States and elsewhere?
A. Yes.
Q. Comparable to E&Y in terms of what it does?
A. Generally, yes.
MR. STEWART: Okay. That's all I have. Thank you.
MR. TEELE: I have no questions.
MR. STEWART: So is the record closed?
MS. BRUNO: It is at this time.
MR. STEWART: Okay.
(Time Noted: 12:32 p.m.)
FURTHER DEPONENT SAITH NOT.

REPORTER'S CERTIFICATE

I, JULIANA F. ZAJICEK, C.S.R. No. 84-2604, a Certified Shorthand Reporter, do hereby certify:
That previous to the commencement of the examination of the witness herein, the witness was duly sworn to testify the whole truth concerning the matters herein;
That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction and constitutes a true record of the testimony given and the proceedings had;
That the said deposition was taken before me at the time and place specified;
That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or indirectly in the outcome of this action.
IN WITNESS WHEREOF, I do hereunto set my hand on this 21st day of September, 2013.

Juliana F. Zajicek

JULIANA F. ZAJICEK, Certified Reporter

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

----------X

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

----------X

DEPOSITION of GLENN DAVID BOWEN
Washington, D.C.
Tuesday, September 24, 2013

Pages: 1 - 213
Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR, CCR, CLR, RSA
Assignment Number: 472421
File Number: 105824

September 24, 2013
9:47 a.m.

Deposition of GLENN DAVID BOWEN held at the law offices of:

Jones Day
51 Louisiana Avenue, Northwest
Washington, D.C. 20001

Pursuant to notice, before Cindy L. Sebo, Registered Merit Reporter, Certified Real-Time Reporter, Registered Professional Reporter, Certified Shorthand Reporter, Certified Court Reporter, Certified LiveNote Reporter, Real-Time Systems Administrator and a Notary Public in and for the District of Columbia.

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I'll say 60/40 was designed to be a proxy equity and fixed income. The asset allocation is more complicated with additional asset classes.

The results were roughly the same.

Q. "The results" meaning what?

A. Our -- our -- once we received the investment policy in particular and we ran it through our modeling, we developed the best estimate range based upon the particulars of the investment policies, and we developed an expected return and a best estimate range around that return, which I will characterize simply as told the same story as we had in our high-level proxy analysis in this letter (indicating).

Q. Well, is it -- is it your -- is it the -- let me ask -- start with you, yourself.

Is it your position presently that the 7.9 percent investment return expectations for the General Retirement System is above the top end of your reasonable range?

A. When we calculated the -- using the specific investment policy provided by the City, we

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developed the expected return and a best estimate range, and the top of that range was below the 7.9 and the 8 percent used in the valuations.

Q. Is it -- is it -- is that -- well, I assume that's the opinion of the Milliman firm?

A. Based on our capital market assumptions, yes.

Q. Is it -- is it the position of the Milliman firm that the 7.9 percent investment return expectation is inconsistent with Actuarial Standards of Practice?

A. We have not been asked to make an opinion on that, and I have no opinion on that.

Q. You have not been asked to make an opinion?

A. We have not.

Q. Have you been asked to make an opinion as to whether any of the actuarial assumptions that the Gabriel, Roeder, Smith firm has done are inconsistent with Actuarial Standards of Practice?

A. We have not been asked that.

Q. Would there be -- other than yourself

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at Milliman, would there be someone else that a representative of the City of Detroit would have asked that opinion for?

A. They have not asked me. As far as I know, they have not asked anyone who's been involved in the pension work. I cannot state definitively they haven't asked someone at Milliman, but I would be surprised.

Q. You would be the logical person they would ask?

A. Yes.

Q. The General Retirement System presently uses a seven-year smoothing period for its actuarial valuation of the plan's assets; is that correct?

A. Yes.

Q. All right. And is that within -- in your opinion, within Actuarial Standards of Practice?

A. We've not been asked to opine on that for the City of Detroit, merely pointed out the methodology that was being used.

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Q. Okay. Do you have an opinion on that sitting here?

A. I can't say that it's not within acceptable standards of practice.

Q. How about the earnings assumption, the 7.9 percent earnings assumption?

A. Again, we -- we have our capital market assumptions model, which develops an expected return and a range of results, which we recommend to our clients. I would not recommend a rate outside of our best estimate range to any of my clients.

Q. But -- okay.

But if the client wanted to use, say, a 7.9 percent rate, would you view that as outside of Actuarial Standards of Practice?

MR. MUTH: Object to the form.

You can go ahead and answer.

THE WITNESS: I don't know what that meant.

I would view it as outside of our best estimate range, and clients can mandate

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assumptions. They don't always listen to us.
BY MR. CIANTRA:
Q. Okay. But I guess -- help me out here. Does there come a point where, in your professional judgment, if the client says I want you to use this return assumption, where you, as a professional, would not, say, sign a report, an actuarial valuation that used a particular assumption that you mandated?
A. That's not the way that I would approach it. My understanding of Actuarial Standards or Practices that we disclose mandated assumptions, and if they're unreasonable or if they are un- -- if they are outside of what we would consider to be reasonable, we'll state that.
Q. And similarly, if -- if you don't state that in a report, one would assume that -- that -- would it be reasonable to assume that the firm's position is that it is within Actuarial Standards of Practice?
MR. MUTH: Object to the form.
Go ahead, you can answer. Yeah, I'll

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tell you if you are not supposed to answer.
THE WITNESS: Okay.
In terms of following Actuarial Standards of Practice, to the extent that there is a mandated assumption or an assumption which we think is unreasonable, which I guess would basically derive from a mandated assumption, I would state that in my report.
And to the extent that I write a report and don't state that implicitly, you could make the assumption that I believe that what I've done is within reasonable practice.
BY MR. CIANTRA:
Q. That would be a reasonable reading of that?
A. Yes.
Q. With respect to the 30-year amortization methodology that the Detroit General Retirement System uses, in your opinion, is that within reasonable actuarial standards?
MR. MUTH: Can you read that back?
- - -

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(Whereupon, the court reporter read back the pertinent part of the record.)
- - -
THE WITNESS: I'm not aware of an actuarial standard that puts a specific limit on duration of amortization periods.
BY MR. CIANTRA:
Q. So not unreasonable?
A. I didn't say that.
Q. You think it's unreasonable?
A. I didn't answer the question in that regard in terms of defining reasonableness or unreasonableness. I said I'm not aware of an Actuarial Standard of Practice that provides a definition as to what is within or without bounds for amortization periods.
Q. Okay. Would it be correct that -- that the selection of that 30-year amortization period for the unfunded liabilities is not inconsistent with Actuarial Standards of Practice?
A. I really have no way to define what is and what is in -- what is within or without

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Actuarial Standards of Practice for amortization periods.
Q. Well, is -- in your experience, is a 30-year amortization period unusual in a public sector plan?
MR. MUTH: Object to the form.
BY MR. CIANTRA:
Q. Go ahead. You can answer.
A. Thirty years is not uncommon; however, 30 years is shorthand for a lot of different types of amortization methods.
So the particular method, as I'll refer you to the top of Page 4 in this July 6th, 2012 letter, the particular -- the particulars of this 30-year amortization method lead to an increasing debt each year, and that was what we felt was important to point out, the functioning of this particular methodology.
Q. Have you seen that methodology used in other public retirement systems?
A. I've -- I will say I've seen 30-year periods; I've seen open amortization; I've seen

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level-percent-of-pay amortization.
I can't say specifically that I remember a system that had each of those three components, each one of those three being as important to me as the third [verbatim] year in terms of understanding the workings of the methodology.
Q. You said in your response "the third year."
Did you mean the 30th -- the 30 year?
A. Thirty year, yes. I apologize for my voice this morning.
Q. The -- why, in your understanding, would a -- a retirement system want to use a -- a smoothing technique to come up with the actuarial value of its assets?
A. Well, generally, the desire, as I understand it, is that market value of assets arises in a very volatile fashion year over year. A smooth value of assets is -- is, in concept, designed to arise in a smoother fashion, a less volatile fashion over time; and using that less

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volatile actuarial value of assets in the development of an employer contribution rate leads to a smoother pattern of employer contributions, which budget officers tend to prefer in funding pension plans.
Q. So for an -- an ongoing plan, does -- the sponsor might well prefer to smooth the actuarial values of the assets, rather than taking a market snapshot at a given date?
MR. MILLER: Object to form.
THE WITNESS: So I answer that?
It seems like the same question that I just answered.
So, yes, my understanding is you would prefer a smooth actuarial value of assets to develop a smoother employer contribution pattern.
BY MR. CIANTRA:
Q. Right. And in the -- I'm not a benefits lawyer, so I'm going to risk this by asking you this question.
In the world of private defined benefit pension plans, if the sponsor is going to terminate

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the plan, you -- you determine the market value of the assets as of the termination date, correct?
A. That is one step in the process, yes.
Q. One step?
A. Yes.
Q. But that's the valuation process; you wouldn't be looking to smooth the values going forward because you're projecting the termination of the plan, correct?
A. In a termination, you have the assets that you have, which is the market value of assets.
Q. Right. Okay.
So the -- so why would you, in an ongoing plan -- is there -- well, let me step back.
It would be consistent with Actuarial Standards of Practice to use smoothing in an ongoing plan, correct, so long as the -- as the -- the assumptions for that smoothing were otherwise reasonable?
A. Actuarial Standard of Practice 44 discusses asset smoothing methods for the purpose of developing employer contribution rates.

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Q. And it allows for smoothing?
A. It allows for smoothing, yes.
Q. Anything unusual with respect to the smoothing methodology that the Detroit General Retirement System has adopted in your practice -- in your -- in your experience?
A. I wouldn't say there's anything unusual.
Q. You've seen the seven-year period used before?
A. Five is the most common. I mean, seven is not a standard number, but it's two more than five.
Q. Is there -- does the General Retirement System employ a corridor above -- above or below which the actuarial value cannot vary from the market value?
A. To my understanding, they do, yes.
Q. And what is that corridor?
A. I would have to look at the valuation report to be certain, but I believe the corridor was loosened after the market crash of 2008-2009

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MR. MUTH: Object to form.
THE WITNESS: Our initial engagement was, as I've said, read this report and explain it to us, help us understand what's going on. Our resulting document was our effort to highlight things that we thought the user should be aware of.
BY MR. SHERWOOD:
Q. Do you know why the City of Detroit was asking you to provide the -- them with this assistance in reviewing the Gabriel, Roeder, Smith reports?
A. I don't know the specific cause, no.
Q. Do you know generally?
A. I could give you a typical example, but I can't guarantee it applies to this situation.
Q. I'd like to know what -- how -- how you think it came to pass that Milliman got hired by the City of Detroit in the spring or summer of 2012.
A. That I can't speculate --
MR. MILLER: Objection.

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BY MR. SHERWOOD:
Q. You haven't been instructed not to answer, so you can answer.
A. Well, in terms of how Milliman was -- was -- Milliman was contacted by the City. So that's how we came to be hired, in response to that specific question.
Their motivation for hiring us specifically in this case would be speculation on my part.
Q. If you have an understanding of why the City came and hired Milliman when it did, I'd like you to give it to me.
MR. MUTH: Objection: asked and answered.
THE WITNESS: That I don't know.
BY MR. SHERWOOD:
Q. What did you understand the state of the affairs to be with respect to the City of Detroit's pension plan in the spring of 2012?
A. I had no knowledge of the state of Detroit's pension plan in the spring of 2012.

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Q. You came to learn what it was, though, correct?
A. During the course of our assignment, in reviewing the valuation reports for the two systems, we came to some -- I'll say given that we started with no knowledge of the system, we came to some knowledge of the systems through that process.
Q. And what -- what were the major problems that you learned about?
A. In our letter, I'll point you to the comments that we made. That would be Exhibit 1.
So given the very broad assignment of read the report and explain it to us, we started on Page 2, developed the table that started with valuation report numbers. And the first item that we mentioned as -- and used the word "problems." I'm not using the word "problems." We're pointing out -- we're pointing out issues that the City should be aware of to the extent that it was not obvious to them.
But take DGRS, for example, the market value of assets was $1 billion lower than the

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smooth value of assets. And as we had discussion earlier this morning, only the market value of assets really exists and is available to pay benefit payments with. So we thought that was an important point to make.
So to the extent that users had not understood that from the valuation report, we tried to make it clear.
We offered commentary as well on what we viewed as optimism in the discount rate; potential optimism in the mortality assumption as well; and, again, very high-level comments at this point in this letter, as we have discussed earlier.
And, finally, we noted that a relatively significant portion of the actual market value of assets in the trust were based upon borrowing that the City had done, and just pointed that out so that people didn't forget, when looking at the valuation report, that a portion of the funded status is due to debt that exists elsewhere in the City's general balance sheet.
Q. So in terms of these issues, did the

EXHIBIT F

EXECUTION COPY

TRUST INDENTURE

AMONG

THE CITY OF DETROIT,

DETROIT WATER AND SEWERAGE DEPARTMENT

AND

U.S. BANK NATIONAL ASSOCIATION

as Trustee

RELATING TO THE OUTSTANDING SECURED OBLIGATIONS OF THE DETROIT WATER AND SEWERAGE DEPARTMENT (SEWAGE DISPOSAL SYSTEM)

Dated as of June 1, 2012

SECTION 2.08 Use of Money in the Rate Stabilization Fund.

The Rate Stabilization Fund may be established by the Commissioners and used for the purposes set forth in Section 15 of the Ordinance.

SECTION 2.09 Use of Money in the Improvement and Extension Fund.

Amounts in the Improvement and Extension Fund shall be used for improvements, enlargements, extensions or betterment to the System. The Department may withdraw funds from the Improvement and Extension Fund for such purposes at any time and from time to time upon written request to the Trustee therefor and may borrow funds from the Extraordinary Repair and Replacement Reserve Fund for such purposes as provided in Section 2.07b.

SECTION 2.10 Use of Money in the Surplus Fund.

Amounts from time to time on hand in the Surplus Fund may, at the option of the Department, be withdrawn upon written request to the Trustee and used for any purposes related to the System; provided, however, that, if and whenever there should be any deficit in the Operation and Maintenance Fund or in any Interest and Redemption Fund (including any Reserve Account therein), then transfers shall be made by the Trustee from the Surplus Fund to such funds in the priority and order set forth in Section 2.11 hereof to the extent of any such deficit.

SECTION 2.11 Priority of Funds and Accounts.

a. If amounts in the Receiving Fund are insufficient to provide for the current requirements of the Operation and Maintenance Fund and each Interest and Redemption Fund (including the Reserve Account, if any, therein), then any amounts or securities held in the Surplus Fund, the Improvement and Extension Fund and the Extraordinary Repair and Replacement Reserve Fund shall be credited or transferred from such Funds in the order listed, first, to the Operation and Maintenance Fund and, second, to the particular Interest and Redemption Fund to the extent of the insufficiency therein.

b. If any principal (and redemption premium, if any) of or interest on Securities of a Priority or any related Ancillary Obligations become due (whether on a stated or scheduled date, by reason of call for redemption or otherwise), and there are insufficient amounts for the payment thereof in the Interest and Redemption Fund established for such Priority of Securities and Ancillary Obligations after applying payments in any Reserve Account established for such Priority of Securities, then there shall be applied by the Trustee to such payment amounts in each Interest and Redemption Account established for each lower Priority of Securities, beginning with the lowest Priority and proceeding seriatim in ascending order of Priority, until such payments are made in full.

EXECUTION COPY

TRUST INDENTURE

AMONG

THE CITY OF DETROIT,

DETROIT WATER AND SEWERAGE DEPARTMENT

AND

U.S. BANK NATIONAL ASSOCIATION

as Trustee

RELATING TO THE OUTSTANDING SECURED OBLIGATIONS OF THE DETROIT WATER AND SEWERAGE DEPARTMENT (WATER SUPPLY SYSTEM)

Dated as of February 1, 2013

Fund not more than fifty percent (50%) in aggregate of the balance in the Extraordinary Repair and Replacement Reserve Fund on the first day of such Fiscal Year if, but only if (i) by the first day of the month in which the transfer is to be made, the full amount of the Extraordinary Repair and Replacement Minimum Requirement for each prior month in the current Fiscal Year has been deposited in this Fund and (ii) the amounts of all prior transfers from this Fund to the Improvement and Extension Fund have been restored in full.

c. For the purpose of determining the Extraordinary Repair and Replacement Fund Minimum Requirement and Maximum Requirement, no later than ten (10) days following the completion of the System's budget for each Fiscal Year, the Department shall deliver to the Trustee a certificate stating the amount budgeted by the System for operation and maintenance expense for such Fiscal Year.

SECTION 2.08 Use of Money in the Rate Stabilization Fund.

The Rate Stabilization Fund may be established by the Commissioners and used for the purposes set forth in Section 13 of the Ordinance.

SECTION 2.09 Use of Money in the Improvement and Extension Fund.

Amounts in the Improvement and Extension Fund shall be used for improvements, enlargements, extensions or betterment to the System. The Department may withdraw funds from the Improvement and Extension Fund for such purposes at any time and from time to time upon written request to the Trustee therefor and may borrow funds from the Extraordinary Repair and Replacement Reserve Fund for such purposes as provided in Section 2.07b.

SECTION 2.10 Use of Money in the Surplus Fund.

Amounts from time to time on hand in the Surplus Fund may, at the option of the Department, be withdrawn upon written request to the Trustee and used for any purposes related to the System; provided, however, that, if and whenever there should be any deficit in the Operation and Maintenance Fund or in any Interest and Redemption Fund (including any Reserve Account therein), then transfers shall be made by the Trustee from the Surplus Fund to such funds in the priority and order set forth in Section 2.11 hereof to the extent of any such deficit.

SECTION 2.11 Priority of Funds and Accounts.

a. If amounts in the Receiving Fund are insufficient to provide for the current requirements of the Operation and Maintenance Fund and each Interest and Redemption Fund (including the Reserve Account, if any, therein), then any amounts or securities held in the Surplus Fund, the Improvement and Extension Fund and the Extraordinary Repair and Replacement Reserve Fund shall be credited or transferred from such Funds in the order listed, first, to the Operation and Maintenance Fund and, second, to the particular Interest and Redemption Fund to the extent of the insufficiency therein.

EXHIBIT G

Page 1

IN THE 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
_____/

DEPONENT: LAMONT SATCHEL
DATE: Thursday, September 19, 2013
TIME: 11:00 a.m.
LOCATION: MILLER CANFIELD PADDOCK & STONE PLC
150 West Jefferson, Suite 2500
Detroit, Michigan
REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267

Page 2

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248.646.8292
Appearing on behalf of the Retiree Association Parties

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A. Not necessarily. I don't ever recall having met with Ed with counsel present.
Q. Did you run those meetings prior to the appointment of the EM?
A. Which meetings?
Q. If you met with Ed McNeil, did you run those meetings prior to the appointment of the EM?
A. Yes.
Q. And after the appointment of the EM, were those meetings run by Jones Day or somebody from the EM's office?
A. Which --
MR. MILLER: Object to form.
A. -- meetings?
MR. MILLER: Go ahead.
Q. Well, you testified, for example, that your processes changed and that outside counsel was involved.
A. For instance, if I had -- I mean, I have special conversations all the time and to this date with AFSCME so that's why I want to know what meetings. Are you talking about negotiation meetings?
Q. Negotiation meetings, meetings with regard to the proposals that were made, for example, at the June 14 -- for example, the June 14 proposal?
A. So that meeting, yeah, that meeting would have been

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handled by Jones Day, Mr. Easley.
MS. LEVINE: Okay. Thank you. I have no further questions.
MR. MILLER: Now's a good time for a break.
(A brief recess was taken.)
EXAMINATION
BY MR. ELLISON:
Q. Good afternoon, Mr. Satchel. I'm Josh Ellison, I'm the attorney representing the UAW in this matter.
A. Good afternoon.
Q. And same ground rules as you discussed with Ms. Levine. If you don't understand a question, please let me know and I'll try to rephrase. Try to keep your responses oral so that the court reporter can take them down.
A. I will.
Q. I believe you testified that you attended the meeting on June 14th, 2013 with City employees and unions; is that correct?
A. If this is the meeting on the 13th floor of K-MAC, yes. I don't know if the date is right.
Q. Okay. Do you recall who else on behalf of the City was at that meeting?
A. It would have been -- present would have been myself, I believe Wendy Brown, attorneys from Jones Day, I

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believe representatives from E&Y and from Milliman.
Q. And was the Emergency Manager present?
A. No.
Q. Aside from the attorneys from Jones Day, anyone on the Emergency Manager's team that was present do you recall?
A. Ms. Mays may have come down for a minute, but she didn't stay long. I think she came down to ask me a question, an unrelated question, and may have left.
Q. Okay. And who if anyone did the speaking for the City primarily at that meeting?
A. The presentation was made by I believe Mr. Miller.
Q. And did you discuss the meeting with anyone prior to it occurring?
A. Other than with the attorneys, no.
Q. Did you discuss it with the mayor?
A. I don't recall having a discussion with the mayor regarding that meeting.
Q. Do you know who Richard Baird is?
A. I've heard of the name. I don't know him.
Q. Did you discuss it with him?
A. No.
Q. Do you know who Mike Duggan is?
A. No.
Q. Do you know who Andy Dillon is?

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A. Yes.
Q. Did you discuss it with him?
A. No. Mike Duggan? Mike Duggan?
Q. I believe he's a mayoral candidate.
A. I know Mike, yes.
Q. Was it discussed with him prior to the meeting?
A. No.
Q. And do you recall roughly how many -- very roughly how many people attending this meeting aside from the City representatives?
A. I couldn't tell you off the top of my head.
Q. Do you recall if any UAW representatives attended?
A. Yes.
Q. Who were they?
A. I don't know who they were. There was at least one, a gentleman was there from the UAW, I believe it was an attorney.
Q. Do you recall what Mr. Miller said as to what feedback attendees would -- they were expecting from attendees if any?
A. It was I think both before and after the proposal was made and even during it when questions were taken, Mr. Miller made it clear that the City would welcome and in fact had solicited input or suggestions from the -- those in attendance with respect to the items

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that were discussed in the deck.
Q. Did Mr. Miller say that this meeting was a negotiation session?
A. I don't recall him making those -- stating those exact words, but it was -- it had all the trappings of a negotiation, it just wasn't labor negotiation in the traditional sense of a labor negotiation over a collective bargaining agreement, but it had all the trappings of it, of a negotiation, to me.
Q. Can you just -- what perhaps did it have that gave you that impression?
A. You had two or more parties engaged in the discussion of a proposal that had been made, we had the solicitation of a response to that proposal, a willingness to cooperate and welcome any input from the other party. There was also an offer of information to be provided to the parties to extent that they wanted -- I think there was some discussion about a data room that had been set up with the parties. The only thing missing was folk screaming at me.
Q. Did any of the union representatives offer a counterproposal?
A. I recall Mr. McNeil and a number of other union officials proposing that the City take a look at the

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healthcare items that were negotiated and encompassed in that purported tentative agreement.
Q. What if anything was said about pension benefits?
A. By who?
Q. By the City representatives.
A. I can't tell you exactly, but they had a -- there was a handout that the City representatives walked through with the -- with those in attendance.
Q. And did that -- and did they indicate that pension benefits would need to be reduced?
A. As I recall the discussions were around freezing the plan, going to a DC plan, there was an abundance of information, financial information, discussed with respect to the -- to the plans, but I don't recall anyone ever saying -- saying such.
Q. Did the City indicate there was any flexibility as to what changes might need to be made to the pension, the pension plan?
A. Yeah, that was the whole purpose of it. They were engaging the unions and representatives from the various pension boards and their advisors to get -- solicit input from them with respect to that topic. The City had made a proposal and wanted to know if anyone had a proposal that -- or counterproposal they would like to offer in that regard.

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Q. Did anyone from the UAW say it was representing retirees from UAW bargaining units at that meeting?
A. I did not hear.
Q. How long did the meeting take; do you recall?
A. I know it was at least an hour, if not more.
Q. Are you aware of Article 9, Section 24 of the Michigan Constitution?
A. Generally, yes.
Q. Was that discussed at this meeting?
A. By who?
Q. By -- by anyone.
A. I don't recall if anyone specifically discussed or that was a topic of discussion.
Q. Prior to the meeting do you recall any discussion of Article 9, Section 24 of the Michigan Constitution?
A. With who?
Q. With anyone.
A. With me and anyone?
Q. Yes.
MR. MILLER: Object to form.
A. I've never had those discussions with anyone with respect to --
Q. So you've never discussed Article 9, Section 24 of the Michigan Constitution with anyone from the City or the Emergency Manager's team?

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A. I've never discussed with anyone from the City -- from the Emergency Manager's team -- and when you say discuss, I mean, I've discussed with folk like in passing what the -- you know, what the claim was but I've never -- it wasn't any -- anything beyond that.
Q. Well, what what claim was?
A. Where some folk felt that there was a constitutional provision that impacted pensions throughout the State.
Q. Do you recall when the first such discussion you may have had was?
A. No, I don't. It would have been with someone -- you know, someone in my office. Like I said, it's like, you know, watercooler talk, it wasn't debate over the merits of -- I haven't looked into the issue.
Q. Now, prior to the meeting on the 14th did you discuss with anyone from the City or the Emergency Manager's team the City might need to file bankruptcy in order to restructure its pension obligations?
A. Could you restate that?
MR. ELLISON: Can you just read that back, please?
(Record read back as requested.)
A. I've never had such discussions.
Q. You didn't -- did you discuss it with Mayor Bing?
A. I never had those discussions with Mr. Bing,

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MR. MILLER: Objection, asked and answered.
A. Yeah, like I said, I would have seen this like right before the meeting, would have taken a look at it.
Q. Okay. And who if anyone was the primary spokesman for the City at this meeting?
A. I think it would have been -- I think it may have been Mr. Miller.
Q. Do you recall what he said?
A. I don't recall what he said, but it would have been consistent with -- I mean, they just walked through the slide deck, so.
Q. Did he indicate that this was a negotiation session?
MR. MILLER: Asked and answered.
MR. ELLISON: I'm talking about the meeting on the 20th, not the 14th.
A. It was the same. It was the same. It was -- it had all the trappings of a negotiation. It wasn't the traditional labor negotiation, but as I said, it had all the trappings of a negotiation.
Q. Did any of the unions offer a counterproposal?
A. At that meeting?
Q. Yes.
A. Not that I'm aware of.
Q. Was there a procedure for the unions or employees to express their view?

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A. If I'm not mistaken, City representatives after they solicited responses gave folk a contact person, I believe maybe from Jones Day, who they could contact to provide any responses to or proposals.
Q. So did the City invite unions or employees to speak up at the meeting and express their views on the proposal?
A. Yeah, there was an opportunity for those in attendance to speak too and many of them did.
Q. And how did that work?
A. I believe that may have been the meeting where folk filled out cards and a good number of them spoke even without the card or who submitted the card spoke to their card when it was read, when the question was read.
Q. So people would fill out cards and they would be submitted to the City and then read aloud; is that correct?
A. Yeah, the City would have them and read them and would respond and if someone who submitted the question would -- if they wanted to pose a question or had a follow-up or some clarity with respect to that question, they did. You had others who just raised their hand -- raised their hand and spoke out.
Q. Would someone from the City call on someone who's

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raising their hand or would they just speak without being asked?
A. You had a little of both. Some people raise their hand, others just may have blurted out something.
Q. Did any of the unions offer any counterproposals at that meeting?
A. I don't recall that any were offered at the meeting.
Q. Did Mr. Miller or anyone else from the City discuss pension benefits?
A. On the 20th? To the extent it was covered in the slide deck, they would have.
Q. Do you recall any specific statements that were made?
A. I don't recall any specific statements. I know -- I know they walked through -- point by point through this deck. I recall that. It was tedious, walked through the deck, point by point.
Q. Did the City indicate it was prepared to negotiate over the pension?
MR. MILLER: Objection, asked and answered.
A. As I said before, it was the City both at the beginning, at the end and even throughout answering questions made it clear that they were soliciting responses from the union with respect to their proposal in terms of in this case pension they thought were the issues and soliciting from the unions their

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proposal with respect to solving any pension issues that the City had in terms of funding.
Q. And do you recall if any UAW representatives said that UAW was representing retirees from the UAW locals at this meeting?
MR. MILLER: Asked and answered.
A. If they said that, I don't recall.
Q. And do you recall a meeting on July 11th, 2013 with unions?
A. Yes, there would have been meetings.
Q. And who was present for that meeting from the City or the Emergency Manager?
A. From the City it would have been I think Mr. Miller and Mr. Heiman, maybe Mr. Easley, maybe Heather Lennox may have been there, a representative from E&Y and Conway MacKenzie. I would have been there in and out of that meeting. Those are those that I can remember.
Q. Did you discuss that meeting with anyone beforehand?
A. Not that I recall, other than scheduling it, because it was scheduled in my office so I would have had -- my office would have had discussions in terms of scheduling the meeting.
Q. And do you -- was there a primary spokesman for the City at this meeting?
A. I don't recall who it would have been. Like I say, I

EXHIBIT H

Page 1

IN THE 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
_____/

VIDEOTAPED DEPOSITION

DEPONENT: KEVYN ORR
DATE: Monday, September 16, 2013
TIME: 10:08 a.m.
LOCATION: MILLER CANFIELD PADDOCK & STONE PLC
150 West Jefferson, Suite 2500
Detroit, Michigan
REPORTER: Jeanette M. Fallon, CRR/RMR/CSR-3267

Page 2

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Corp.
ALSO PRESENT: Mark Meyers, videographer

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Q. Did I -- were you done?
A. No, no, I was done, yeah.
Q. Okay. And were your credentials presented that presented you as primarily as a bankruptcy lawyer?
A. As primary as a bankruptcy and restructuring attorney, yes.
Q. And was there any discussion specifically of the possibility of a Chapter 9 filing at this presentation?
A. I don't think so. I don't recall -- I don't -- I don't -- I don't recall, and the reason I say I don't recall is there -- no, wait a minute. I don't know if there was a discussion about the City. There was a discussion about other Chapter 9 cases, other cities.
Q. And what specifically do you recall being said about the Chapter 9 filings in the other cases? Let me put it this way. Did Jones Day refer to experience it had in doing other Chapter 9 filings?
A. Yes, yes, various members of the team referred to that experience, yes.
Q. And is it fair to say that the Chapter 9 experience was a substantial part of the pitch that Jones Day was making to this committee?
A. No.
MR. SHUMAKER: Object to the form.

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A. No, it was a component of the presentation.
Q. That -- you said there was a written presentation or written material?
A. There was a book, yes, there were written materials.
Q. And do you know whether that's been produced?
A. I do not.
MR. ULLMAN: I would like to call for the production of that, please.
MR. SHUMAKER: We'll look into it. I would ask here that if you're going to ask for documents throughout the deposition, that you follow-up with a letter and email.
MR. ULLMAN: Sure.
Q. And do you recall whether there was any discussion at this presentation as to the major problems that were facing Detroit at the time?
A. I think there were discussions about Detroit's issues, various issues at the time, yes.
Q. And do you recall any discussion about the issues that Detroit was facing regarding its pension liabilities?
A. I don't recall specific discussions and -- no, I don't recall specific discussions but there may have been.
Q. Okay. And the same question for retirement benefits in general apart from pension benefits. Do you recall any discussion of that?

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A. I don't recall specific discussions, but there may have been. The discussions were more at a high level as opposed to detailed level.
Q. And do you recall at a general level there being discussion that Detroit was facing major issues regarding its pension and other retirement benefit liabilities?
A. I know, to be candid with you, the pitch book contained the information regarding employee benefits and labor attorneys. One of the attorneys on the team was a labor attorney, but I don't recall there being specific discussions in detail about those issues.
Q. Do you recall in general at the committee discussion being raised that Detroit was in fact facing substantial issues concerning its pension and other retirement benefits and needed to find a way to deal with those?
A. Here again I don't recall specific discussions. There may have been. I just don't recall.
Q. Okay. Let me show you some documents, Mr. Orr.
A. Thank you.
Q. You can't thank me until you've seen the documents.
A. It may refresh my recollection. I just don't recall.
MR. ULLMAN: Let's mark the first one as Orr 1.

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(Marked Exhibit No. 1.)
Q. Are there other copies of that? Thanks.
A. Okay.
Q. Okay, what we're marked as Orr Number 1 is an email, bears the Bates stamp ending in 113.
A. Yes.
Q. Now, these either -- there are a couple of emails on this chain from January of 30 -- January 30, 2013.
A. Yes.
Q. And the bottom one states that it's from Richard Baird to Corinne Ball. Who is Richard Baird?
A. Richard Baird is the governor's transition manager on contract to the State of Michigan.
Q. And he says -- the message is to Corinne, sorry I missed your call. Basically says, I'm inquiring about the potentiality of actually hiring a member of your team for the Detroit EM spot.
A. Yes.
Q. And is this what you were referring to before in your testimony?
A. Yes. Says, was on the phone with Steve Brogan. He can fill you in, but basically thinking about potential -- yes, that's what I was talking about.
Q. And it's your testimony that prior to this you had not had discussions with anyone from the State of Michigan

be given acknowledgment for the success. Further, it might give me the ability to come back to the firm and make up for the time that I'd lose if I did this job.

Q. The job being the Emergency Manager job?

A. Yes.

Q. Okay. Now, in the next email that's going up the chain that is on the first page you say you wouldn't do it.

A. Yes.

Q. And when you say you wouldn't do it, again, do you have -- what is the it that's being referred to? So far no one's ever really identified what nationalizing meant.

A. I'm telling you what I can think, what I meant by this writing.

Q. Okay.

A. What I meant was I wouldn't necessarily make it a national issue and I think I say it would just bring in the Demo/Republican polarization on a national scale and make Detroit a fall for the agendas of both sides, meaning that people would try to use it as an allegory for whatever their particular perception was. I go on to say that the president would have to criticize the trampling of democracy, and that's been done here, not by the president I might add, and the

Republicans would rail against any further federal bailouts and that's been said, plus if the feds did anything for Detroit, a number of other municipals would have their hands out at a time when no one's in the mood to dole out federal largess. I think I go on to say this is a morass of problems.

So my thought was there, to be clear, that I did not think it, meaning to try to give the issues of Detroit national prominence, was particularly productive.

Q. Now, in the top email you write -- or I'm sorry, Mr. Moss writes back to you and in the second paragraph he goes on to say, it seems the ideal scenario would be that Snyder and Bing both agree that the best option is simply to go through an orderly Chapter 9. And then he goes on to say that that avoids a political fight over the scope of any appointed Emergency Manager, moves the ball forward. And then he goes on to say, appointing Emergency Manager whose ability to actually do anything is questionable, would only serve to kick the can down the wrong path.

A. Yes.

Q. And can you tell me -- obviously this is -- Mr. Moss here is referring to the possibility of a Chapter 9

filing?

A. Yes.

Q. And was this something that you discussed specifically with Mr. Moss?

A. We probably did.

Q. Okay. And did you discuss the possibility -- so at this point it was understood that one possibility, one potential route of action, would be to file a Chapter 9 for Detroit if you took the Emergency Manager job; is that right?

A. Yeah, I think that since we have been reviewing background information on Detroit and the possibility of a Chapter 9 filing had been mentioned in 2005, 2006, 2009, 2011, 2012, up until this point, in fact I think it was, as I said, I testified earlier this morning, the possibility of Chapter 9s in other cities have been discussed, that the issue of a potential Chapter 9 filing for the City of Detroit was not a particularly surprising discussion. That had been discussed on many levels in the national press, in the local press, it had been recommended by a prior -- in 2005 I think it was recommended by a prior employee -- senior employee of the City, so I think that discussion was the typical type of discussion that you'd have with your colleagues.

Q. And were you in fact at this time having those types of discussions with your colleagues at Jones Day as to the possibilities of a Chapter 9 filing if you took the Emergency Manager job and how that would be implemented?

A. Yes, but I don't want to give you the wrong impression because I think based upon what I've seen from some of the briefing and some of the interrogatories the impression is that that was predetermined and that's not true. The reality is there was much discussion about what the alternatives would be and the need to bring something that would bring order and efficiency to the process given the number of interests that were involved.

Q. But it was certainly one of the possibilities that was on the table as a course that might need to be followed; is that right?

A. Oh, sure, it had been discussed for the better part of the prior decade.

Q. And in fact, Mr. Moss is recommending the simplest thing, the best option would be to have the -- Snyder and Bing, the mayor and the governor, both agree to go through an orderly Chapter 9?

MR. SHUMAKER: Object to form, calls for speculation.

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Q. Are you saying --
A. The following week, yes.
Q. When you say one of those meetings, are you sure you attended June 14th?
A. No, no, no, when I say one, I mean one of the subsequent. I'm sure I attended June 14th. June 10th was Monday, June 14th was Friday, my public meeting was Monday, June 14th was the all creditors meeting. There was subsequent due diligence meetings the following week and I recall attending at least one of those that week. That was the those I was referring to.
Q. I'm a little confused. Are you sure you attended June 14th?
A. Yes.
Q. Okay. So do you recall whether you attended June 20th?
A. I think I did, but I don't recall.
Q. Okay. What about July 11th?
A. I don't recall.
Q. Okay. So I already asked you about whether at the June 14th meeting you said anything to the effect of that this was not a negotiation. Let me ask you the same question for the June 20th and July 11th. Do you recall at that -- at those meetings saying anything to

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the effect of this is not a negotiation?
A. I may have. As I've said several times today, you know, bargaining negotiations is suspended for five years so I may have said that, but I don't recall.
Q. And again, if there were witnesses who testified they heard you say that at one or more of these meetings, would you be in a position to deny that?
A. I don't know if I would deny it or if I would confirm it. I mean, their recollection of what was said could be different than mine or what they heard.
Q. Did you attend a meeting on July 10th with creditors?
A. I may have.
Q. Same question for July 10th. Do you recall saying anything to the effect that that meeting was not a negotiation?
A. I think I generally, when I would go to these meetings, say we're having discussions and exchange, but I would try -- if I said this is not a negotiation, I would try to make sure that I did not waive the suspension of bargaining under 436, so I may have said that, yes.
Q. You may have said what?
A. This is not a negotiation, yeah, I may have said that.
Q. Okay. Apart from you there were others who attended those meetings on behalf of the City; correct?

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A. Yes, I believe so.
Q. Okay. And some of those individuals spoke?
A. Yes.
Q. Okay. Do you recall whether at any of those meetings that you attended whether any of the other individuals who were there on behalf of the City said words to the effect of this is not a negotiation?
A. Do I recall? No.
Q. At the June 20th meeting, is it true that the attendees, and by the attendees I mean the people who were not there on behalf of the City but the other people, that in order to be heard they needed to fill out a card and submit the card to someone who was running the meeting? Is that how things worked?
A. Where was the June 20th meeting?
Q. I don't know.
A. I -- I know at my June 10th meeting that we had speakers. I don't recall. I don't recall June 20.
Q. Let me clarify. Let's talk about the June 14th meeting, the one you're sure you attended.
A. Right.
Q. Was there a system in place at that meeting where for an attendee to be heard he or she had to write -- fill out a card and submit it?
A. Yes, I believe so.

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Q. Okay, and describe how -- how did that -- what was that process, how did that work?
A. That process was arranged by my staff. My understanding is that if people wanted to speak, they could fill out a card and a question would be asked and members who were on the DS on the panel would answer the question.
Q. Who would read out the card?
A. Initially it was the -- someone I believe on my staff or some of my consultant's staff, but toward the end of the meeting people just started asking questions outright.
Q. Did -- that same process of attendees having to fill out a card, did that occur at any of the other meetings? And by the other meetings I mean either June 20th, July 10th or July 11th?
A. I don't recall.
Q. It may have?
A. It may have, but I don't recall.
Q. Okay. Have you ever in your career as an attorney attended a negotiation session of any kind?
A. Yes.
Q. Have you ever been at a negotiation session where one side or the other has to fill out a card and have it read by someone else to be heard?

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pursuant to my contract and in fact I have not been seeking any benefits under that contract such as commuting expense, healthcare, malpractice insurance, directors and officers insurance. In fact, I've been subsidizing my efforts out of my own pocket.

MS. GREEN: If that situation changes and private funds are provided, I would request a standing request for supplementation to be made aware if that happens.

MR. SHUMAKER: I'm sure --

MS. GREEN: I'm directing that to your counsel. You don't have to personally let me know.

MR. SHUMAKER: We'll look into that if that would happen.

MS. GREEN: I appreciate that.

THE WITNESS: I have not asked and there is no intent or expectation in that regard.

Q. The -- I have one last question.

We talked about the draft of the petition being prepared by Jones Day. There were media reports that the City was planning to file on Friday, July 19th. Do you recall seeing those?

A. Yes.

Q. What was it that made the City -- that prompted the City to file them instead on July 18th at 4:06 p.m.?

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A. Counselor, just because they're media reports doesn't mean that that was accurate.

Q. Was there ever a plan to file them on the 19th? Setting aside what the media reported, was there a plan to file them on the 19th?

A. No, my plan was to have the permission, the authority, to file them and make that call at some point after I transmitted my letter of July 16.

Q. Were any of your conversations on the 18th or the 17th relating to the timing of the petition?

A. Outside of communications with counsel?

MR. SHUMAKER: I'm going to object to the form just -- I'm not following your question, counselor.

Q. Were any of the conversations that you had on the 17th or the 18th with, for instance, the governor, we've talked about these conversations, were any of those conversations relating to the timing of the filing itself?

MR. SHUMAKER: Again, to the extent that you're going to go into the content of the conversations where counsel was present between Mr. Orr and the governor, I'm going to instruct him not to answer.

Q. Were there any conversations that you had without

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counsel present?

A. No.

Q. And are you not willing to answer even what topics -- in broad categories of topics that were discussed?

MR. SHUMAKER: Again, to the extent that they reveal what the communications are, I'm going to instruct him not to answer.

Q. Do you know if anyone else from your team had conversations, outside of conversations with counsel, relating to the timing of the filing?

A. There may have been conversations. I'm not aware of any specific ones.

MS. GREEN: I don't have any further questions. Do you have follow-up?

MR. SHUMAKER: Thank you, counsel.

THE VIDEOGRAPHER: This concludes the deposition and we're going off the record at 6:12 p.m.

(Deposition adjourned at 6:12 p.m.)

* * *

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State of Michigan)
County of Genesee)

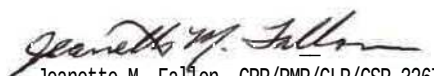
Certificate of Notary Public

I certify that this transcript is a complete, true and correct record of the testimony of the witness held in this case.

I also certify that prior to taking this deposition, the witness was duly sworn or affirmed to tell the truth.

I further certify that I am not a relative or an employee of or an attorney for a party; and that I am not financially interested, directly or indirectly, in the matter.

WITNESS my hand this 19th day of September, 2013.



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Notary Public, Genesee, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 9-19-18

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

----------X

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

----------X

CONTINUED VIDEOTAPED DEPOSITION of
KEYVN D. ORR
Volume II
Washington, D.C.
Friday, October 4, 2013

Pages: 308 - 496
Reported by: Cindy L. Sebo, RMR, CSR, RPR, CRR, CCR, CLR, RSA
Assignment Number: 14008
File Number: 105824

October 4, 2013
11:11 a.m.

Continued Videotaped Deposition of KEYVN D. ORR held at the law offices of:

Jones Day
51 Louisiana Avenue, Northwest
Washington, D.C. 20001

Pursuant to notice, before Cindy L. Sebo, Registered Merit Reporter, Certified Shorthand Reporter, Registered Professional Reporter, Certified Real-Time Reporter, Certified Court Reporter, Certified LiveNote Reporter, Real-Time Systems Administrator, a Notary Public in and for the District of Columbia.

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ASME's motion, so I'm not even certain that it's proper that Mr. Ullman be asking questions.

Secondly, this is -- Mr. Ullman can identify it, but this document is the Jones Day presentation to the City of Detroit on January 29th, 2013.

I don't see how that funnels into the request that was made to Judge Rolls -- Rhodes regarding three hours of deposition testimony concerning Mr. Orr's communications with State officials in the presence of legal counsel since his appointment as emergency manager.

That said, this document was produced after the deposition, and I'm going to let you go into it. But I am going to say --

MR. ULLMAN: I --

MR. SHUMAKER: -- within reason --

MR. ULLMAN: -- I don't -- I don't intend to dwell very long on it --

MR. SHUMAKER: Okay.

MR. ULLMAN: -- and I appreciate your recognition. This was produced after the last

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deposition.

BY MR. ULLMAN:

Q. Okay. Mr. --

THE COURT REPORTER: I have to mark it there first.

BY MR. ULLMAN:

Q. Okay. Mr. Orr, what we've marked as Exhibit 21 is entitled, Presentation to the City of Detroit; Detroit, Michigan, January 29, 2013 from Jones Day.

Can you identify this document for me, Mr. Orr?

A. Yes.

Q. Okay. And what is it, please?

A. I believe it's a slide deck presentation to the City of Detroit for a -- in response to a solicitation the firm received for representation regarding potential restructuring work on behalf of the City dated January 29th, 2013 marked confidential.

Q. Okay. And this is in connection with the presentation that you testified about last

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time; is that correct?

A. Yes, when I said the end of January. It's commonly referred to as a "pitch book."

Q. Okay. And you -- you were part of the Jones Day team, and your picture appears on Page 3 of this document; is that right?

A. Yes, I was part of the presentation team, yes.

Q. Okay. And did you have any role in the preparation of this document?

A. Yes. I mean, it -- it was a collaborative effort from a number of different attorneys in the Jones Day law firm, but I was involved in that process as well.

Q. Okay. And did you review the document -- can we refer to this as the pitch book?

A. Yes.

Q. Okay. Did you -- did you review the pitch book, Exhibit 21, before it -- before the presentation?

A. Yes.

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Q. Okay. And I just note -- I'm not going to go into my particular specifics here, but if, for example, just picking one, if you look at Page 18, there's what's called Speaker Notes, which -- I assume this was a PowerPoint presentation, so someone would be talking -- speaking orally as a slide goes on the screen; is that right?

A. Well, it was -- it -- it -- it -- it could have been a PowerPoint. As I recall, we did not -- there weren't PowerPoint capabilities, so we intended to work off the document --

Q. Um-hum.

A. -- but the discussion, within a minute or two, veered away from the document and more was a dialogue, so . . .

Q. Okay. So what we have as Exhibit 21 was the -- the internal -- at least was this internal version of the pitch book; in other words, were there speaker notes?

A. Yes, were the speaker -- this -- the -- the speaker notes were not presented to --

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Q. That's --
A. -- the review team.
Q. -- that's what I wanted to clarify.
A. Yes.
Q. Okay. And when you say that you reviewed the document before -- before it went out in its final form to the -- to the people you were pitching to at the meeting, you know, with the City, you reviewed the speaker notes as well?
A. Mr. Ullman, to be honest, I -- I reviewed -- I can't be -- this document was not generated solely by me --
Q. I understand.
A. -- it was generated by a team effort.
I think I reviewed a number of different drafts of the document. I'm not -- I -- I believe I reviewed the final draft of the pitch book that went out. I am not sure I reviewed the final draft of the draft of the speaker notes, because at that time, I think I was involved in the actual mediation of another matter. So I was doing this in between some other matters.

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But generally speaking, I'm familiar with this document.
Q. Okay. And was there -- was there anything in the document that you disagreed with?
MR. SHUMAKER: Object to the form.
THE WITNESS: Without reviewing it today, generally speaking, no.
BY MR. ULLMAN:
Q. Okay. And can you tell me were there any particular portions of Exhibit 21 that you had primary responsibility for preparing?
A. No. The -- the document evolved through -- as you are probably familiar with the pitch books for attorneys seeking legal work, the document evolves as you go through it, a number of conversations, e-mails with a number of different sources.
I don't recall being -- I don't recall looking at this document and saying, oh, I only did Pages 23 through 23 [verbatim], for instance. I may have commented and edited different pages. I may have made suggestions on

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who should be on the team, who should be on the representation team, what -- what potential legal services might be necessary.
And, for instance, at the back, you have team members, things along those lines, but -- but there was no specific section that was dedicated solely to me.
Q. Okay. I'm not asking whether it was dedicated solely to you, but whether you had primary responsibility for preparing.
A. No.
Q. Okay.
A. No.
Q. And I think you indicated that the slides themselves were given over to the City at the meeting or -- was it the City or the State? I'm trying to remember, did you --
A. It -- it was a review team composed of I think --
Q. Buckfire was there?
A. -- the -- the investment bankers were there --

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Q. Yeah.
A. -- for the City who had been retained, the City representatives were there and the State representatives were there.
Q. Okay. I'll talk -- call that the -- the review team --
A. Review team --
Q. -- is that the term you like?
Okay --
A. -- yeah.
Q. -- so as I understand what you're saying, the -- the -- the slides themselves were present -- given over to the review team as a -- a -- a bound --
A. Yes.
Q. -- volume or attached in some way?
A. Yes, the -- the -- the slide deck as the pitch book was given to the review team.
Q. Okay. And then, at the presentation, were -- how did that work? Did you -- did people sort of go through the slides orally and then -- and -- and make comments as they were going

EXHIBIT I

Page 1

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION - DETROIT

In re: Chapter 9

CITY OF DETROIT, MICHIGAN, Case No. 13-53846

Debtor, Hon. Steven W. Rhodes

V I D E O T A P E D D E P O S I T I O N O F

WITNESS: GOVERNOR RICHARD D. SNYDER

LOCATION: The Romney Building
111 S. Capitol Avenue
Lansing, Michigan

DATE: Wednesday, October 9, 2013
8:38 a.m.

APPEARANCES:
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Do you have any knowledge first or secondhand as to whether that is true or not?
A. I don't recall that.
Q. Do you recall a reason that the 19th was selected as the date that Mr. Orr would file bankruptcy?
A. One of the factors most likely was probably my schedule, because this was a major media rollout, in terms of availability.
Q. Okay.
A. At that -- the letter was coming and I wanted time to contemplate and then we would look at the schedule to say when is there a good opportunity to have good communications.
Q. Leaving aside conversations you had with your attorneys --
A. Uh-huh.
Q. -- in the days preceding the 17th say, say earlier that week --
A. Yeah.
Q. -- were you privy to any conversations where the idea was thrown out that if we have the filing on the 19th that would oust Aquilina of jurisdiction on the 22nd? Do you understand what I'm asking, or words to that effect?
A. Yeah, I don't recall it.

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Q. You don't recall?
A. And again, that would be -- this is where we're back to if there were other discussions, it would've been attorney-client privilege, but I don't recall even in that context.
Q. We know that, in fact, the filing was made on the 18th?
A. Uh-huh.
Q. Correct?
A. Correct.
Q. That would be an unusual circumstance; would it not? That is, that you put together this very detailed rollout down to what's going to happen at 11 a.m. a couple days later and what's happening at noon and 1:30. It would be rare in terms of your work as Governor for a significant event like this for the date to move at the last minute; would it not?
A. Well, this is a unique circumstance.
Q. Yeah. On that we agree.
Was the unique circumstance the fact that the litigants in the three cases were in court on the 18th in front of Judge Aquilina in the afternoon seeking emergency injunctive relief?
A. I had signed my letter prior to that.
Q. It's not what I asked you, Governor.

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A. Well, you did ask me. You said they were in the courtroom, did then I act. And I acted prior to them being in the courtroom.
Q. No. Okay. Fair enough.
A change was made between the 19th and the 18th as to the filing itself. You understand that?
A. Uh-huh.
Q. Correct?
A. Yes.
Q. And I'll represent to you that at Mr. Orr's deposition he confirmed that the typed in date of the 19th on the bankruptcy petition, the handwritten eight was his handwriting.
Do you know anything about why the change was made from the 19th to the 18th?
A. Yes.
Q. What do you know about it? Just tell me.
A. I made the decision that I was comfortable in my conclusion that it was appropriate to file.
When the letter came to me on the 16th in terms of recommending bankruptcy, I had set aside to say I wanted an extended period of time to review and to contemplate the situation. So I actually set aside enough time that would have led to the Friday morning situation to say I wanted more than one

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night to sleep on this because the importance of this act.
And as I proceeded through the thought process to say do I concur, am I going to authorize the bankruptcy, I started discussions with my legal counsel on how we would prepare a letter, how we would go through that process and my thought process, and I felt I didn't need to wait. I had made my decision, I had consulted with legal counsel, we had prepared a letter authorizing bankruptcy, and I said we should just go ahead and get this done.
Q. And as far as you know, that decision, the fact that there was -- were requests for immediate injunctive relief on that day in state court had nothing to do with moving up the time?
A. People showed up in state court after that, and what I would say is the consideration I had was the filing of -- the lawsuits being filed in the prior week or two weeks had some impact on my decision-making process.
Q. Right.
A. And the reason I said that is because I could see lawsuits being filed not only on pension issues but could be filed by other creditors, by financial