

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

**DEBTOR'S *EX PARTE* MOTION FOR AN ORDER SHORTENING  
NOTICE WITH RESPECT TO NOTICE OF PRESENTMENT OF  
PROPOSED SCHEDULING ORDER**

The City of Detroit hereby moves *ex parte* for the entry of an order pursuant to Rules 9006(c)(1) and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9006-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Michigan (the "Local Rules") (a) shortening the notice period with respect to the Notice of Presentment of Order Pursuant to L.B.R. 9021-1(a)(4) (the "Notice of Presentment") filed with respect to the City's proposed scheduling order (the "Proposed Scheduling Order") so that objections to the Proposed Scheduling Order, if any, must be filed no later than December 9, 2013 at 4:00

p.m. Eastern Time. In support of this *Ex Parte* Motion, the City respectfully states as follows:

**Jurisdiction and Venue**

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

**Relief Requested**

2. The City filed the Notice of Presentment contemporaneously with the filing of the instant *Ex Parte* Motion. The Proposed Scheduling Order presented therein outlines the dates, deadlines and process that were provided to the Court by Debtor’s counsel at the November 27, 2013, hearing.

3. By this *Ex Parte* Motion, the City seeks an order (a) shortening the notice period with respect to the Notice of Presentment of the Proposed Scheduling Order so that objections to the Proposed Scheduling Order, if any, must be filed no later than December 9, 2013 at 4:00 p.m. Eastern Time.

**Basis for Relief**

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

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

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

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

7. At the conclusion of the hearing held on November 27, 2013, after the parties in attendance conferred during a the lunch recess, Debtor’s counsel represented to the Court that an agreement in principle had been reached regarding deadlines and dates related to discovery associated with the City’s Assumption Motion [Dkts. #17, #157] and Motion to Approve Post-Petition Financing [Dkt. #1520] (together, the “City’s Motions”). The Court asked that parties operate under the agreement in principle until the Court entered a scheduling order and the parties agreed to do so.<sup>1</sup>

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<sup>1</sup> The parties have largely complied with the Court’s request. On Monday, December 2, 2013, objectors to the City’s Motions identified witnesses for the December 17 – 19 evidentiary hearing. On Wednesday, December 4, 2013, the

8. On Monday, December 2, 2013, Debtor’s counsel emailed a copy of the Proposed Scheduling Order to counsel for the Retirement Systems that memorialized the agreement in principle reached at the November 27, 2013 hearing. Having not received a complete response to the Proposed Scheduling Order, Debtor’s counsel again emailed counsel for the Retirement Systems on Wednesday, December 4, 2013. Over 24 hours later, on Thursday, December 5, 2013, counsel for the Retirement Systems responded to Debtor’s counsel with proposed edits to the scheduling order. Despite having the Proposed Scheduling Order for three days, counsel for the Retirement Systems and the other parties objecting to the City’s Motions had not come to an agreement regarding edits and reserved the right to “make further comments/edits.” A true and correct copy of the email correspondence discussed in this paragraph is attached as Exhibit 2.

9. Within hours of receiving comments to the proposed scheduling order on December 5, 2013, Debtor’s counsel responded by email and accepted a majority of the proposed edits. *See* Ex. 2. The only rejected edits related to additional disclosures regarding expert witnesses—deadlines and dates that were not part of or contemplated by the agreement in principle reached and announced at the November 27, 2013, hearing.

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Debtor provided objectors to the City’s Motions with Proposed Joint Statement of Facts in addition to the Debtor’s proposed exhibit list related to the City’s Motions.

10. Debtor's counsel's December 5, 2013, email also informed the objectors that it intended to file the Proposed Scheduling Order on Friday, December 6, 2013. *See* Ex. 2. As of the filing of this *Ex Parte* Motion Debtor's counsel has not received any response to its most recent email from any objector.

11. The evidentiary hearing related to the City's Motions is a little more than a week away. Time is of the essence because dates and deadlines that were agreed to and announced at the November 27, 2013, hearing are approaching or, in some instances, have already passed. Since there does not appear to be any forthcoming response to the Debtor's latest correspondence, the Debtor is forced to file the Proposed Scheduling Order through the Notice of Presentment without stipulation. Too much time has already passed for the entry of a simple scheduling order, the terms of which were already announced to the Court.

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

13. For these reasons, the City submits that cause exists to shorten the notice period on the Notice of Presentment so that objections are due December 9, 2013 at 4:00 p.m. Eastern Time.

WHEREFORE, the City respectfully requests that the Court enter an order, substantially in the form attached as Exhibit 1, granting the relief requested

in this *Ex Parte* Motion and granting such further relief as the Court deems appropriate.

Dated: December 6, 2013

Respectfully submitted,

/s/ Deborah Kovsky-Apap  
Robert S. Hertzberg  
Deborah Kovsky-Apap  
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- and -

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**ATTORNEYS FOR THE CITY OF  
DETROIT**

**EXHIBIT 1**



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

**SOUTHERN DIVISION**

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

**ORDER GRANTING DEBTOR'S *EX PARTE* MOTION FOR AN ORDER  
SHORTENING NOTICE**

This matter coming before the Court on Debtor's *Ex Parte* Motion for an Order Shortening Notice with Respect to the Notice of Presentment of the Proposed Scheduling Order (the "Motion");<sup>2</sup> the Court having reviewed the Motion; having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Motion was sufficient under the circumstances; having determined after due deliberation that the relief requested in the Motion is

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<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

in the best interests of the Debtor and its creditors; and good and sufficient cause having been shown;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. Objections to the Proposed Scheduling Order shall be filed no later than December 9, 2013 at 4:00 p.m. (prevailing Eastern Time).

**EXHIBIT 2**

----- Original Message -----

**From:** Geoffrey S Irwin

**Sent:** 12/05/2013 10:06 PM EST

**To:** "Gordon, Robert D." <RGordon@ClarkHill.com>

**Cc:** "'Alfredo.perez@weil.com'" <Alfredo.perez@weil.com>;

"'apclawyer@sbcglobal.net'" <apclawyer@sbcglobal.net>;  
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<Carol.cohen@arentfox.com>; "'Dana.Kaufman@weil.com'" <Dana.Kaufman@weil.com>;  
"Dubrow, David L." <David.Dubrow@arentfox.com>; "'EJEssad@wvrplaw.com'"  
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<Mark.Angelov@arentfox.com>; "'MAshley@chadbourne.com'"  
<MAshley@chadbourne.com>; "'morris@silvermanmorris.com'"  
<morris@silvermanmorris.com>; "'mott@schiffhardin.com'"  
<mott@schiffhardin.com>; "'MRoitman@chadbourne.com'"  
<MRoitman@chadbourne.com>; "'mtaunt@strobllpc.com'" <mtaunt@strobllpc.com>;  
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<Ralph.Taylor@arentfox.com>; "'rfrimmer@schiffhardin.com'"  
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"'skohn@chadbourne.com'" <skohn@chadbourne.com>; "'slevine@lowenstein.com"  
<slevine@lowenstein.com>; "Summers, Matthew G. (Wilm)"  
<SummersM@ballardspahr.com>; "'swahl@schiffhardin.com'"  
<swahl@schiffhardin.com>; "Arnault, Bill" <warnault@kirkland.com>

**Subject:** RE: Detroit -- Draft scheduling order

Thanks, Bob. Attached below is a new version and a redline. We accepted some of your proposed changes but not others. We intend to file this tomorrow lest it no longer serve its purpose, so we appreciate prompt feedback. Here's where we are:

1. We can produce Kevyn Orr in Detroit on this occasion, but we note that we have been locating depositions to date around the convenience of the witnesses on both sides. Should Mr. Orr be deposed again we are not committing to make him available in Detroit. Moreover, we require agreement on deposition duration and stand by our 2-hour proposal for witnesses next week. Mr. Orr has been deposed multiple times already and absent good reason we do not intend to present him for more than 2 hours. If this is agreeable, we will make him available on Monday, in Detroit, at 1 pm. Also be aware that there is an emerging weather threat that we'll all have to watch.
2. Witnesses should only be called to testify once on direct, so we struck "by each party" from your proposed changes to paragraph 2 but accepted the others.
3. If objectors cannot provide the City with their exhibit list until Monday (will it be coordinated among objectors, and if so in what way?), it poses substantial difficulty to submit a "joint" exhibit list to the Court that same day, particularly if the expectation is that the City take ownership of that project. It also makes it impossible for the City to include objections to objectors' exhibits with that submission. We should file separate exhibit lists on Monday and agree to try and work through objections and any streamlining later in the week before the pre-trial. On a related note, can we agree to exchange pre-marked, electronic

copies of our exhibits by Tuesday at 12 noon? Oftentimes it is self-evident what document an exhibit description is referencing (esp where Bates numbers are included), but other times it is not. The City had a great deal of difficulty assessing the admissibility of certain exhibits at Eligibility, for example, because hard copies were not provided.

4. We do not believe that additional expert disclosures are required under these circumstances.

Lastly, other than Mr. Spencer (FGIC) and Mr. Davido (Syncora), we do not have any scheduling or other information from those objectors who identified hearing witnesses on Monday of this week. Please provide this information promptly. If we do not receive proposed dates and locations tomorrow morning, we will issue deposition notices on a schedule that makes the most sense to us.

Thanks. Geoff



- WAI\_3152291\_v6.DOCX



- Change-Pro Redline - WAI\_3152291\_v5 and WAI\_3152291\_v6.DOCX

Geoffrey S. Irwin

Partner

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Cc: "Gregory Shumaker ([gshumaker@JonesDay.com](mailto:gshumaker@JonesDay.com))" <[gshumaker@JonesDay.com](mailto:gshumaker@JonesDay.com)>,  
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"swahl@schiffhardin.com" <[swahl@schiffhardin.com](mailto:swahl@schiffhardin.com)>, "Hackney, Stephen C." <[shackney@kirkland.com](mailto:shackney@kirkland.com)>,  
"Gartel, Lally A." <[lally.gartel@kirkland.com](mailto:lally.gartel@kirkland.com)>  
Date: 12/05/2013 03:49 PM  
Subject: RE: Detroit -- Draft scheduling order

Hi, Geoff. In the interests of time, I am sending you the attached mark-up of your proposed order concurrent with circulating it to the other parties. Accordingly, on behalf of all parties, we reserve the right to make further comments/edits to the document. As for your request for production of exhibit lists by tomorrow, that deadline is simply not workable for many of the non-City parties, so the date in the Order remains December 9. However, all parties will endeavor to deliver their lists early on the 9<sup>th</sup> to permit consolidation. As for the depositions of Orr and Buckfire next week, I do not have comments from the group, but on our own behalf, I would say: (a) as to Buckfire, no objection; (b) as to Orr, the date is fine, but we submit that, as the Emergency Manager of Detroit, and in light of (i) the compressed deposition schedule to meet the City's desired timelines and (ii) the fact that the depositions of most other witnesses are occurring in Detroit (including Buckfire), it is not acceptable to require the deposition of Mr. Orr to take place in D.C. We respectfully request that you reconsider venue at Miller Canfield, as per the other depositions. Regards,

**Robert D. Gordon**

**CLARK HILL PLC**

248.988.5882 (direct) | 248.988.2502 (fax)

**From:** Geoffrey S Irwin [mailto:gsirwin@JonesDay.com]

**Sent:** Wednesday, December 04, 2013 1:29 PM

**To:** Gordon, Robert D.

**Cc:** alfredo.perez@weil.com; Gregory Shumaker; Green, Jennifer K.; marriott@ballardspahr.com; Hackney, Stephen C.; william.arnault@kirkland.com

**Subject:** RE: Detroit -- Draft scheduling order

Bob:

Has your group had a chance to consider the proposed order further? We should probably get this on file.

Also, can we confirm the Orr and Buckfire depositions for next week? I think we're still waiting for objectors' position on duration, but we should at least nail down the dates and locations.

The City intends to depose the PPF objectors' witnesses next week as well, so can objectors provide available dates for their respective witnesses and, in the interest of efficiency, provide us with basic background information and the topics on which they intend to testify?

Lastly, we're in a position to provide objectors with our exhibit list later today along with our proposed stipulated facts, the idea being that could work toward submitting a coordinated exhibit list and resolving objections before the Monday submission of exhibit lists to the Court, but that only makes sense if we will be receiving objectors' exhibits in time to do that. We would need objectors' exhibits by Friday at noon in order to accomplish that. Another possibility would be for everyone to submit exhibit lists on their own on Monday, and to try and work through objections and streamlining next week before the Friday pre-trial, but that may be too ambitious in light of everything else that will be taking place next week. So is Friday at 12 noon acceptable to objectors?

Thanks. Geoff

Geoffrey S. Irwin

Partner

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From: Gordon, Robert D." <RGordon@ClarkHill.com>  
m:  
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Da 12/02/2013 07:16 PM  
te:  
Su RE: Detroit -- Draft scheduling order  
bjc  
ct:

By the way, I note off the top that the 12/10 deadline for the City's reply in support of the Financing Motion is missing.

**Robert D. Gordon**

**CLARK HILL PLC**

248.988.5882 (direct) | 248.988.2502 (fax)

**From:** Geoffrey S Irwin [<mailto:gsirwin@JonesDay.com>]

**Sent:** Monday, December 02, 2013 4:04 PM

**To:** Gordon, Robert D.

**Cc:** Green, Jennifer K.; [alfredo.perez@weil.com](mailto:alfredo.perez@weil.com); Hackney, Stephen C.; [william.arnault@kirkland.com](mailto:william.arnault@kirkland.com); [marriott@ballardspahr.com](mailto:marriott@ballardspahr.com); Gregory Shumaker

**Subject:** Detroit -- Draft scheduling order

Bob:

I wasn't there on Wednesday but Greg indicated that this was the control group that more or less negotiated the new schedule, so I'm attaching a draft for consideration by objectors. Could you see that it gets distributed to the right people on your end and let us know if you have comments or changes? We'd like to get this on file as soon as possible.

I also wanted to flag for you that we need to change Ken Buckfire's deposition date from Friday, December 6 to Tuesday, December 10, and that we can do it in Detroit. We can also confirm that Kevyn Orr can be deposed in Washington on Monday afternoon, December 9.

Lastly, Vince, I understand from Greg that the two of you had discussed a two hour time limit for the Orr, Buckfire and Malhotra depositions and that you would discuss it with other objectors. Do we have agreement on that?

Thanks. Geoff

Geoffrey S. Irwin  
Partner

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[attachment "Scheduling Order.docx" deleted by Geoffrey S Irwin/JonesDay]

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