

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

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

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**MOTION OF OBJECTORS FOR ADJOURNMENT OF THE HEARING  
REGARDING THE DEBTOR’S MOTION FOR ENTRY OF AN ORDER,  
PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 9019, APPROVING A SETTLEMENT AND PLAN  
SUPPORT AGREEMENT AND GRANTING RELATED RELIEF**

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The Objectors<sup>1</sup> submit this motion (the “Motion to Adjourn”) for an adjournment of the hearing on the *Corrected Motion of the Debtor for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving a Settlement and Plan Support Agreement and Granting Related Relief*, [Docket No. 2806] (the “Settlement Motion”) pursuant to Local Bankruptcy Rule 5071-1. In support of their motion, the Objectors respectfully state as follows:

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<sup>1</sup> The instant motion is being filed by Syncora Guarantee and Syncora Capital Assurance (“Syncora”), Hypothekenbank Frankfurt AG, Hypothekenbank Frankfurt International S.A., and Erste Europäische Pfandbrief- und Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A. (collectively “ECPK”), FMS Wertmanagement, Wilmington Trust, National Association, Interested Party David Sole, and Dexia Crédit Local & Dexia Holdings, Inc.

## **BACKGROUND**

1. On March 3, 2014, the City of Detroit (the “City”) filed the Settlement Motion, requesting approval from the Court for a settlement and plan support agreement (the “Settlement Agreement”) that purports to, among other things, settle and release all claims between the City and UBS AG and Bank of America Merrill Lynch (collectively the “Swap Counterparties”) in connection with certain Swap Agreements (the “Swaps”). Concurrently with the Settlement Motion, the City filed an *ex parte* motion seeking to expedite the hearing on the Settlement Motion [Doc. No. 2807].

2. The Court held a status conference on the Settlement Motion on March 5, 2014. At the status conference, the City suggested that it would only require a limited amount of time and testimony to supplement the prior hearings on the City’s efforts to approve a settlement with the Swap Counterparties. (March 5, 2014 Hr’g Tr. at 76:7–77:6.) Following this status conference, the Court entered an order scheduling deadlines to file objections to the Settlement Motion and setting a hearing date for the Settlement Motion for April 3, 2014 at 9:00 a.m. [Doc. No. 2913].

3. On March 17, 2014, the City filed a motion requesting an order extending the deadline set by the Court to complete depositions in connection with the Settlement Motion [Doc. No. 3047]. The Court granted this order, [Doc. No.

3055], and depositions in connection with the Settlement Motion are scheduled to occur on March 31, 2014.

4. On March 13, 2014 the Official Committee of Retirees filed document requests asking the City to provide further information regarding the Settlement Agreement. After the City stated that it would not produce the requested documents, the Official Committee of Retirees filed a motion to compel and a hearing was held on March 20, 2014. The Court ordered that the City produce certain of the documents requested [Doc. No. 3098].

5. On March 26, 2014, over three weeks after it filed its Settlement Motion, the City filed a supplement to its motion that contains an amended proposed order (the “Proposed Order”) and the unsigned form of the Settlement Agreement [Doc. No. 3234]. The following day, on March 27, 2014, the City produced certain documents and a privilege log pursuant to the Court’s order. Additionally, on March 27, 2014 the City filed a second supplement to the Settlement Motion with a second set of technical changes to the Settlement Agreement [Doc. No. 3257]. The City produced 97 documents spanning a total of 516 pages.

## **JURISDICTION**

6. The Court has jurisdiction over this matter pursuant to 38 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

## **RELIEF REQUESTED**

7. The Objectors respectfully request the entry of an order adjourning the hearing on the Settlement Motion to a date around the hearing on the Disclosure Statement, currently scheduled for April 14, 2014, pursuant to Local Bankruptcy Rule 5071-1.

## **BASIS FOR RELIEF**

8. Local Bankruptcy Rule 5071-1 provides that “The court will consider an adjournment of an evidentiary hearing or a trial only on a motion supported by an affidavit establishing good cause submitted at least 3 Business Days before the hearing or trial. The motion shall state whether opposing counsel concurs in the requested adjournment.” The Objectors attach the Affidavit of Stephen C. Hackney, counsel to Syncora, to this Motion to Adjourn. (Ex. 5.)

9. The City has repeatedly stated that it requires approval of the Settlement Agreement on an expedited basis. (Hr’g Tr. 85:3–5, *Ex Parte* Motion, Doc. No. 2807, ¶¶ 3–5.) The City has stated that setting the hearing on an expedited basis is appropriate because, among other things: “[T]hrough the four-day evidentiary hearing and closing argument and more than a half-dozen pre-trial

hearings and status conferences on the Forbearance and Optional Termination Agreement . . . this Court and all parties in interest are already familiar with all material issues relating to the Motion.” (*Ex Parte* Motion, Doc. No. 2807, ¶ 5.)

10. However, as the Objectors have pointed out in their respective objections, the Settlement Agreement that the City asks this Court to approve involves a significant number of novel issues for the Objectors and the Court to consider, and is a materially different agreement from the Forbearance and Optional Termination Agreement that the City attempts to use to justify an expedited process. Additionally, the negotiation and deliberation attendant to the Settlement Agreement occurred entirely after and separately from the negotiations of the Forbearance Agreement.

11. Adding to the need for an adjournment is the fact City did not provide the actual 25-page Settlement Agreement, nor the final form of the Proposed Order, nor the documents relevant to City’s Settlement Motion, until over three weeks after filing its Settlement Motion. The new Proposed Order and Settlement Agreement contain material differences from the initial proposed order submitted by the City and the term sheet attached to its Settlement Motion.

12. For example, the new Settlement Agreement and Proposed Order contain a new provision permitting the City to treat the Swap Counterparties’ claims in accordance with a “Specified Plan,” a concept and requirement

completely absent from the term sheet and the old proposed order. (Settlement Agreement at 5–6.) The Settlement Agreement also diminishes the City’s obligations as compared to the Term Sheet; under the Settlement Agreement, the City must use “best efforts” to make payments under the Swaps. (Settlement Agreement § 4.1.) In contrast, the Term Sheet obligated the City to make these payments. (Term Sheet at 1.) These changes, among many others, materially alter the settlement being proposed by the City and require careful review by the Objectors.

13. Under the current schedule, the Objectors only have seven days to review the material changes to the amended Proposed Order, the newly submitted 25-page Settlement Agreement, and the more than 500 pages of documents produced by the City. Additionally, multiple documents that the City produced are incomplete because they lack attachments that were part of the original emails. On March 28, 2014, counsel for the City declined to produce these attachments.

14. The Objectors respectfully submit that a short one to two week adjournment to prepare for the hearing on the Settlement Motion would benefit all the parties to this proceeding by allowing sufficient time to review the documents and exhibits submitted by the City, as well as transcripts from the depositions of Kevyn D. Orr and Gaurav Malhotra that will occur on March 31, 2014. Adjourning the hearing on the Settlement Motion to a time on or around the date of

the hearing on the Disclosure Statement objections, currently scheduled for April 14, 2014 will promote efficiency and provide for a more ordered hearing on the Settlement Motion.

15. A majority of the objectors to the Settlement Motion join in and support the relief requested in this Motion. Moreover, the other few parties, if any, that objected to the Settlement Motion but did not join this Motion, have not indicated any opposition to the relief requested in this Motion.

16. Concurrently with the filing of this Motion to Adjourn, the Objectors will file an *ex parte* motion seeking expedited consideration of this Motion to Adjourn for April 2, 2014.

#### **STATEMENT OF CONCURRENCE**

17. Counsel for Syncora requested concurrence in the Motion to Adjourn from counsel for the City on March 28, 2014. Counsel for the City declined to concur in the Objectors' Motion to Adjourn.

WHEREFORE, for the foregoing reasons, the Objectors respectfully request that this Court enter an order adjourning the hearing on the Settlement Motion until on or around April 14, 2014 and granting any other relief the Court deems proper.

*[Remainder of this page intentionally left blank]*

Dated: March 28, 2014

Respectfully submitted,

**KIRKLAND & ELLIS LLP**

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## **Summary of Exhibits**

Exhibit 1 - Proposed Order

Exhibit 2 - Notice of Motion and Opportunity to Object

Exhibit 3 - None [Brief Not Required]

Exhibit 4 - None [Separate Certificate of Service to be Filed]

Exhibit 5 - Affidavit of Stephen C. Hackney

Exhibit 6 - Documentary Exhibits [Not Applicable]

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

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

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

---

**ORDER GRANTING MOTION OF OBJECTORS FOR ADJOURNMENT  
OF THE HEARING REGARDING THE DEBTOR’S MOTION FOR  
ENTRY OF AN ORDER, PURSUANT TO SECTION 105(a) OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING A  
SETTLEMENT AND PLAN SUPPORT AGREEMENT AND GRANTING  
RELATED RELIEF**

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This matter having come before the Court on the motion of the Objectors for adjournment of the hearing regarding the Debtor’s motion for the entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving a settlement and plan support agreement (the “Motion to Adjourn”), the Court having reviewed the Objectors’ Motion to Adjourn; and the Court having determined that the legal and factual bases set forth in the Motion to Adjourn establish just cause for the relief granted herein;

**IT IS HEREBY ORDERED THAT:**

1. The Objectors’ Motion to Adjourn is GRANTED.
2. A hearing on the Debtor’s motion for the entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving a

settlement and plan support agreement and granting related relief is set for April 14, 2014.

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

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

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

**IT IS SO ORDERED.**

---

STEVEN W. RHODES  
United States Bankruptcy Judge

**Exhibit 2**

**Notice of Motion and Opportunity to Object**



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

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

**NOTICE OF MOTION OF OBJECTORS  
FOR ADJOURNMENT OF THE HEARING REGARDING  
THE DEBTOR’S MOTION FOR ENTRY OF AN ORDER,  
PURSUANT TO SECTION 105(A) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 9019, APPROVING A SETTLEMENT AND  
PLAN SUPPORT AGREEMENT AND GRANTING RELATED RELIEF**

---

**PLEASE TAKE NOTICE** that on March 28, 2014, the Objectors filed the *Motion of Objectors for Adjournment of the Hearing Regarding the Debtor’s Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving A Settlement and Plan Support Agreement and Granting Related Relief* (the “Motion”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) seeking an adjournment of the hearing on the *Corrected Motion of the Debtor for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving a Settlement and Plan Support Agreement and Granting Related Relief*, [Docket No. 2806] pursuant to Local Bankruptcy Rule 5071-1.

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

**PLEASE TAKE FURTHER NOTICE** that if you do not want the Bankruptcy Court to grant the Objectors’ Motion or you want the Bankruptcy

Court to consider your views on the Motion, by April 11, 2014<sup>1</sup>, you or your attorney must:

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

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

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

James H.M. Sprayregen, P.C.  
Ryan Blaine Bennett  
Stephen C. Hackney  
KIRKLAND & ELLIS LLP  
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- and -

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David A. Agay  
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<sup>1</sup> Concurrently herewith, the Objectors are seeking expedited consideration and shortened notice of the Motion. If the Court grants such expedited consideration and shortened notice, the Objectors will file and serve notice of the new response deadline.

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

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

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

Dated: March 28, 2014

/s/ Stephen C. Hackney

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Ryan Blaine Bennett

Stephen C. Hackney

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

**Exhibit 3**

**None [Brief Not Required]**

**Exhibit 4**

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

**Exhibit 5**

**Affidavit of Stephen C. Hackney**

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

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

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**AFFIDAVIT OF STEPHEN C. HACKNEY IN SUPPORT OF THE  
MOTION OF THE OBJECTORS FOR ADJOURNMENT OF HEARING  
REGARDING THE DEBTOR’S MOTION FOR ENTRY OF AN ORDER,  
PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 9019, APPROVING A SETTLEMENT AND PLAN  
SUPPORT AGREEMENT AND GRANTING RELATED RELIEF**

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1. I am a partner of Kirkland & Ellis LLP, attorneys for Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (“Syncora”) in the above-captioned action. I submit this affidavit in support of the *Motion of the Objectors for Adjournment of the Hearing Regarding the Debtor’s Motion for Entry of an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving a Settlement and Plan Support Agreement and Granting Related Relief* (the “Motion to Adjourn”).

2. On March 3, 2014, the City of Detroit (the “City”) filed the Settlement Motion seeking approval from the Court for a settlement and plan support agreement (the “Settlement Agreement”). Concurrently with the

Settlement Motion, the City filed an *ex parte* motion seeking to expedite the hearing on the Settlement Motion [Doc. No. 2807].

3. The Court held a status conference on the Settlement Motion on March 5, 2014. Following this status conference, the Court entered an order scheduling deadlines to file objections to the Settlement Motion and setting a hearing date for the Settlement Motion for April 3, 2014 at 9:00 a.m. [Doc. No. 2913].

4. On March 17, 2014, the City filed a motion requesting an order extending the deadline set by the Court to complete depositions in connection with the Settlement Motion [Doc. No. 3047]. The Court granted this order [Doc. No. 3055]. The parties have agreed that the depositions of Kevyn D. Orr and Gaurav Malhotra will occur on March 31, 2014.

5. On March 26, 2014 the City filed a supplement to its Settlement Motion that contained an amended proposed order and the unsigned form of the 25-page Settlement Agreement [Doc. No. 3234]. The City submitted a corrected version of the Settlement Agreement on March 27, 2014 [Doc. No. 3257]. The proposed order contained multiple changes from the version the City filed with its original Settlement Motion.

6. On March 20, 2014, the Court ordered that the City produce certain of documents requested by the Official Retiree Committee [Doc. No. 3098]. On

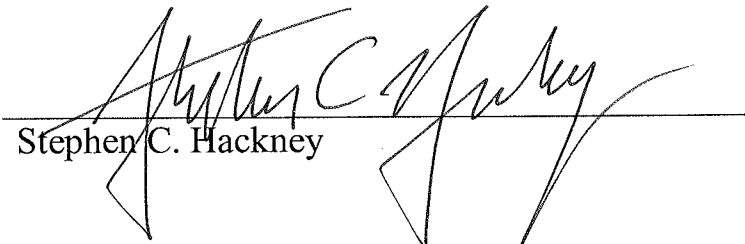


March 27, 2014, the City produced documents, a privilege log, and certain financial projections pursuant to the Court's order. The City produced 97 documents spanning a total of approximately 516 pages. Certain of the documents the City produced were emails that lacked the attachments they originally contained. On March 28, 2014, counsel for the City declined to produce these attachments.

7. On March 28, I sought concurrence from counsel for the City in the Motion to Adjourn. Counsel for the City declined to concur in the Motion to Adjourn.

I declare under penalty of perjury that the foregoing are true and correct to the best of my knowledge, information, and belief.

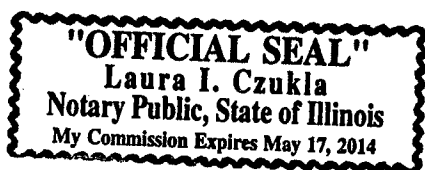
Chicago, Illinois  
Dated: March 29, 2014

  
\_\_\_\_\_  
Stephen C. Hackney

SUBSCRIBED AND SWORN TO

before me this 28<sup>th</sup> Day of March, 2014

  
\_\_\_\_\_  
Notary Public



**Exhibit 6**

**Documentary Exhibits  
[Not Applicable]**