

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

**PETITIONER CYNTHIA A. BIBB'S MOTION FOR DETERMINATION
THAT THE BANKRUPTCY STAY DOES NOT APPLY TO HER
LITIGATION AGAINST THE BOARD OF TRUSTEES OF THE
CITY OF DETROIT GENERAL RETIREMENT SYSTEM**

Petitioner Cynthia A. Bibb, by her attorneys Sterling Attorneys at Law, P.C., for her Motion for Determination that the Bankruptcy Stay Does Not Apply to Her Litigation Against the Board of Trustees of the City of Detroit General Retirement System, submits the following:

1. On April 23, 2013, Cynthia A. Bibb filed a Complaint for declaratory relief and damages in Wayne County Circuit Court against two defendants – (1) the City of Detroit (the “City”) and (2) the Board of Trustees of the City of Detroit General Retirement System (the “General Retirement System”).

2. The General Retirement System is a separately named defendant in Bibb’s Wayne County Complaint, and a separate legal entity from the City.

3. The General Retirement System has not filed for bankruptcy, and is, in fact, a creditor of the City.

4. In her Wayne County Complaint, Bibb asked the Court to declare her eligible to receive monthly retirement benefits from the General Retirement System.

5. On July 18, 2013, the City filed for bankruptcy.

6. The City's bankruptcy petition automatically stayed litigation against the City, but not the General Retirement System.

7. On July 26, 2013, Wayne County Circuit Court Presiding Judge Jeanne Stempien administratively stayed all cases naming the City of Detroit as a defendant, and instructed parties to file motions for relief from the stay as to any non-City defendants.

8. On November 22, 2013, Bibb filed a motion for relief from the administrative stay as to the defendant General Retirement System, only.

9. On December 6, 2013, Wayne County Circuit Court Judge Maria L. Oxholm denied Bibb's motion, and stated that plaintiff should "go to the Bankruptcy Court and ask them to allow you to proceed in the Circuit Court on this action."

10. The City has not responded to Bibb's February 2014 requests to present a stipulation to this Court permitting her action to proceed against the General Retirement System, nor has the City responded to Bibb's July 2014 request for concurrence.

11. The City's bankruptcy filing has not stayed the General Retirement System's routine processing of retirement applications or routine payment of retiree benefits.

12. Bibb's lawsuit against the General Retirement System will allow the Wayne County Circuit Court to determine whether the General Retirement System should have approved Bibb's 2010 and 2012 retirement applications.

13. Bibb respectfully moves this Court for a determination that the bankruptcy stay does not apply to her Wayne County Circuit Court lawsuit against the Board of Trustees of the City of Detroit General Retirement System.

14. This Court has jurisdiction to hear this motion pursuant to 28 USC 157(b)(1),(2)(G) and equitable authority to issue the relief requested under 11 USC 105(a).

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Raymond J. Sterling
Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
Attorneys for Petitioner
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304
(248) 644-1500

Dated: July 25, 2014

EXHIBIT 1

PROPOSED ORDER

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
PETITIONER CYNTHIA A. BIBB'S MOTION FOR DETERMINATION
THAT THE BANKRUPTCY STAY DOES NOT APPLY TO HER
LITIGATION AGAINST THE BOARD OF TRUSTEES OF THE CITY
OF DETROIT GENERAL RETIREMENT SYSTEM**

This matter coming before the Court on Petitioner Cynthia A. Bibb's Motion for Determination that the Bankruptcy Stay Does Not Apply to Her Litigation Against the Board of Trustees of the City of Detroit General Retirement System and the Court having determined that the legal and factual bases set forth in the motion establish just cause for the relief granted herein;

1. The Petitioner's motion is GRANTED; and,
2. The bankruptcy stay does not apply to the defendant Board of Trustees of the City of Detroit General Retirement System in the litigation *Bibb v City of Detroit, et al.*, Wayne County Circuit Court docket number 13-005321-CK.

Dated: _____

HON. STEVEN W. RHODES

EXHIBIT 2

NOTICE OF MOTION AND OPPORTUNITY TO OBJECT

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

**NOTICE UNDER LBR 9014-1 OF MOTION TO LIFT WAYNE COUNTY
CIRCUIT COURT ADMINISTRATIVE STAY & OPPORTUNITY TO OBJECT**

Petitioner Cynthia A. Bibb has filed papers with the court for a determination that the bankruptcy stay does not apply to defendant Board of Trustees of the City of Detroit General Retirement System in the litigation *Bibb v. City of Detroit, et al.*, docket number 13-005321-CK.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to determine that the bankruptcy does not apply to defendant Board of Trustees of the City of Detroit Retirement System in the litigation *Bibb v. City of Detroit, et al.*, docket number 13-005321-CK, or if you want the court to consider your views on the Motion, within fourteen (14) days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:¹

United States
Bankruptcy Court
211 West Fort Street
Detroit, MI 48226

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

¹ Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e)

You must also mail a copy to:

Christine A. Hopkins
Sterling Attorneys at Law, PC
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304

2. If a response or answer 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.

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 or objection and may enter an order granting that relief.

Date: July 25, 2014

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Raymond J. Sterling

Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
Attorneys for Petitioner
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304
(248) 644-1500

Dated: July 25, 2014

EXHIBIT 3

BRIEF IN SUPPORT OF MOTION

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

**BRIEF IN SUPPORT OF
PETITIONER CYNTHIA A. BIBB'S MOTION FOR DETERMINATION
THAT THE BANKRUPTCY STAY DOES NOT APPLY TO HER
LITIGATION AGAINST THE BOARD OF TRUSTEES OF THE CITY
OF DETROIT GENERAL RETIREMENT SYSTEM**

**A benefit eligibility determination for one individual
retiree will not interfere with the bankruptcy proceedings**

Cynthia A. Bibb is a 67 year old woman who resides in Kansas. She last worked for the City of Detroit in 1980. In 2013, she filed a civil action in Wayne County Circuit Court against two defendants, (1) the City of Detroit and (2) the Board of Trustees of the City of Detroit General Retirement System after the General Retirement System twice denied her requests for retirement benefits (**Ex 6(A)**, Bibb Complaint).

Wayne County Circuit Court administratively stayed all cases naming the City of Detroit upon the filing of the City's bankruptcy petition (**Ex 6(B)**, Stempien Letter). Wayne County Circuit Court Judge Maria L. Oxholm denied Bibb's request to lift the stay as to the General Retirement System (**Ex 6(C)**, Motion to Lift Stay & Brief), stating that plaintiff should seek relief from the bankruptcy court (**Ex 6(D)**, Transcript).

The City's bankruptcy proceedings should not prevent judicial review of the General Retirement System's eligibility determinations. The General Retirement System has not filed for bankruptcy, is a separate legal entity from the City, and, in fact, is a *creditor* of the City. The City paid its contributions to the General Retirement System on Bibb's behalf back in the 1970s. The General Retirement System, not the City, decides if individual members like Bibb qualify for retirement benefits. The City's bankruptcy has not stopped the General Retirement System's routine processing of retirement applications and routine payment of retirement benefits. The City's bankruptcy has not halted judicial review of other retirement eligibility cases. *Rhoades v Bd of Trustees of Gen Ret Sys of City of Detroit*, 2014 WL 2753674 (Mich App).

If Bibb prevails in her action against the General Retirement System, she will begin receiving retirement benefits from the System just like all other City retirees. Any bankruptcy plan or order that alters benefit levels will impact Bibb the same as all other City retirees. The state court's review of Bibb's *individual* eligibility for benefits will not interfere with the bankruptcy proceedings.

Bankruptcy stays apply to the debtor, not creditors

The City's bankruptcy stay does not insulate the General Retirement System from Bibb's declaratory relief action. The United States Bankruptcy Code "stays any actions against the *debtor*." *Patton v Bearden*, 8 F3d 343, 348-49 (6th Cir 1993); 11 USC 362(a)(1). The General Retirement System is not a debtor in bankruptcy. The General Retirement System, in fact, is the City of Detroit's largest *creditor* (**Ex 6(E)**, List of Creditors). There is no doubt that a relationship exists between the City and the General Retirement System. But, generally, bankruptcy stays do "not extend...to separate legal entities such as corporate affiliates, partners in debtor partnerships or to codefendants in pending litigation." 2 Collier

on Bankruptcy ¶362.04 (15th ed 1993); *Parry v Mohawk Motors of Michigan, Inc*, 236 F3d 299, 314-15 (6th Cir 2000) (lower court improperly extended bankruptcy stay to a separate entity that had a contractual relationship with the debtor).

On July 25, 2013, this Court entered an order extending the City's automatic stay to its Emergency Manager, the Governor, non-officer employees of the City, City agents, and City representatives (**Ex 6(F)**, Order Extending Chapter 9 Stay). The order did *not* extend the stay to separate legal entities or creditors. Indeed, the City's motion to extend the stay *never* requested that the extension apply to separate legal entities or creditors, generally, nor the General Retirement System specifically. The General Retirement System is not an employee, agent, or representative of the City. The City and the General Retirement System stand as two distinct legal entities with different governing bodies, different legal interests and responsibilities, different staff, and distinct financial operations. The extended stay does not reach the General Retirement System.

The General Retirement System is a distinct legal entity from the City of Detroit

As evidenced by numerous lawsuits by the General Retirement System against the City (and vice versa), the General Retirement System can sue and be sued, independent from the City.² The General Retirement System has the right to retain and compensate its own independent legal counsel to defend against Bibb's claims. *Bd of Trustees of Policemen & Firemen Ret Sys of City of Detroit v City of Detroit*, 143 Mich App 651, 653-56 (1985) (Detroit's retirement systems "may retain independent legal counsel when necessary for the conduct of the affairs of the system.") The General Retirement System holds its own assets, and Michigan's Public Employee Retirement System Investment Act gives the General Retirement System sole authority over those assets. MCL 38.1132a, 38.1133. The City's

² This brief references three such cases: *Bd of Trustees of Policemen & Firemen Ret Sys of City of Detroit v City of Detroit*, 143 Mich App 651 (1985), *Bd of Trustees of Detroit Gen Ret Sys v City of Detroit*, 2006 WL 2061403 (Mich App), and *Bd of Trustees of Gen Ret Sys of City of Detroit v City of Detroit*, 2005 WL 1224736 (Mich App).

retirement systems also “act as independent employers, separate from their incorporating cities” and have the right “to hire, direct, and fix the compensation of their employees.” *Bd of Trustees of Detroit Gen Ret Sys v City of Detroit*, 2006 WL 2061403 at 5 (Mich App) (**Ex 6(G)**).

The City’s concurrent employment of some Board members does not entitle the General Retirement System to a stay

Individual members of the General Retirement System’s Board of Trustees can hold concurrent employment with the City. *Bd of Trustees of Gen Ret Sys of City of Detroit v City of Detroit*, 2005 WL 1224736 at 2 (Mich App) (**Ex 6(H)**). Bibb, however, has not sued any individual Board members, and her suit has nothing to do with any individual Board member’s concurrent employment by the City of Detroit. Bibb has instead sued the *Board of Trustees* as a governing body that has a fiduciary responsibility to *her and other retirees*. The System’s Board of Trustees does *not* act as an agent or representative of the City. This becomes apparent when reviewing the actions the Board of Trustees has taken to fight the City’s bankruptcy filing. The General Retirement System, through its own legal counsel and pursuant to its Board’s directives, itself sued to block the City’s bankruptcy petition on constitutional grounds before the petition was ever filed (**Ex 6(I)**, Ingham County Court Complaint). The General Retirement System continues to oppose the bankruptcy on a number of grounds, including the City’s failure to engage in good faith pre-filing negotiations with the General Retirement System (**Ex 6(J)**, Eligibility Objection).

Individual retirement benefit claims are exempt from the claims filing process

On January 24, 2014, this Court entered an order specifying the types of claims subject to the bankruptcy claims filing process (**Ex 6(K)**, Order Establishing Bar Dates for Filing Proofs of Claim). This Court exempted “any claim by present or potential future beneficiaries of the City’s two pension systems, the General Retirement System and the 13-53846-swr Doc 6259 Filed 07/25/14 ¹⁰Entered 07/25/14 14:26:56 Page 10 of 14

Police and Fire Retirement System, for pension benefits or unfunded pension liabilities (any such claim, a ‘Pension Liability Claim’).” Bibb’s declaratory relief action against the General Retirement System fits squarely in this category of exempted claims, and should be resolved through the regular process of state court judicial review.

Further delay of Bibb’s eligibility determination does not benefit anyone

Considering her modest rate of pay in the 1970s and her relatively low number of credits in the System, Bibb’s eligibility determination will be a very small drop in the overall bucket of pension liabilities. Even so, leaving individual eligibility determinations up in the air during the bankruptcy proceedings only creates further uncertainty and doubt about the amount of unfunded liabilities and whether plans of adjustment will work to bridge the gap.

Bibb respectfully asks this Court for an order declaring that the bankruptcy stay does not apply to her action against the General Retirement System. The requested order will allow judicial review of the denial of Bibb’s retirement benefits to proceed now.

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Raymond J. Sterling
Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
Attorneys for Petitioner
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304
(248) 644-1500

Dated: July 25, 2014

EXHIBIT 4

CERTIFICATE OF SERVICE THROUGH ELECTRONIC FILING

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

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I, Raymond J. Sterling, certify that on July 25, 2014, I electronically filed *Motion for Determination that the Bankruptcy Stay Does Not Apply to Her Litigation Against the Board of Trustees of the City of Detroit General Retirement System*, along with a Summary of Attached Exhibits and Exhibits **A-K** (as listed on the Summary), with the Clerk of the Court using the ECF system which will send notification of such filing to ECF participants in this matter.

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Raymond J. Sterling

Raymond J. Sterling (P34456)

Christine A. Hopkins (P76264)

Attorneys for Petitioner

33 Bloomfield Hills Pkwy., Ste. 250

Bloomfield Hills, MI 48304

(248) 644-1500

Dated: July 25, 2014

EXHIBIT 5

AFFIDAVITS TO MOTION

[NO AFFIDAVITS FILED SPECIFIC TO THIS MOTION]

EXHIBIT 6

ATTACHMENTS

- A Bibb's Wayne County Circuit Court Complaint
- B Judge Stempien Letter re: Administrative Stay
- C Bibb's Wayne County Circuit Court Motion to Lift Stay
- D Transcript of 12/6/13 Wayne County Circuit Court Hearing
- E City of Detroit's List of Creditors
- F Order Pursuant to Section 105(a) of the Bankruptcy Code Extending the Chapter 9 Stay to Ceertain (A) State Entities, (B) Non Officer Employees and (C) Agents and Representatives of the Debtor
- G *Bd of Trustees of Detroit Gen Ret Sys v City of Detroit*, 2006 WL 2061403 at 5 (Mich App)
- H *Bd of Trustees of Gen Ret Sys of City of Detroit v City of Detroit*, 2005 WL 1224736 at 2 (Mich App)
- I General Retirement System's Ingham County Circuit Court Complaint
- J Objection of the Detroit Retirement Systems to the Eligibility of the City of Detroit, Michigan to Be a Debtor Under Chapter 9 of the Bankruptcy Code
- K Order Pursuant to Section 105, 501, and 503 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c), Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof

EXHIBIT 6(A)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CYNTHIA A. BIBB,

Plaintiff,

Case No. 13- -CK
Hon.

vs.

CITY OF DETROIT and the BOARD
OF TRUSTEES OF THE CITY OF
DETROIT GENERAL RETIREMENT
SYSTEM, jointly and severally,

Defendants.

13-005321-CK
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WAYNE COUNTY CLERK
4/23/2013 12:26:30 PM
CATHY M. GARRETT

Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
Attorneys for Plaintiff
STERLING ATTORNEYS AT LAW, P.C.
33 Bloomfield Hills Pkwy., Ste. 250
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(248) 644-1500

**There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in this
Complaint.**

**COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF
AND JURY DEMAND**

Plaintiff Cynthia A. Bibb, by her attorneys Sterling Attorneys at Law, P.C., for her
Complaint against defendants, state as follows:

GENERAL ALLEGATIONS AND JURISDICTION

1. Plaintiff Cynthia A. Bibb ("Bibb") is an individual residing in Lenexa,
Kansas.
2. Defendant City of Detroit is a Michigan municipal corporation located in
Wayne County.

EXHIBIT 6(A)

3. Defendant Board of Trustees of the City of Detroit General Retirement System is the governing body of the City of Detroit General Retirement System.

4. The City of Detroit General Retirement System (the "Retirement System") was established through a 1938 amendment to the Detroit City Charter of 1918.

5. The Retirement System and its Board have a legal obligation and fiduciary duty to oversee the retirement plan assets and coverage of certain employees of the City of Detroit.

6. The amount in controversy exceeds \$25,000, exclusive of interest and costs.

7. The events giving rise to this case occurred in Wayne County.

Bibb qualifies for a monthly retirement allowance

8. Cynthia A. Bibb was born on June 11, 1947.

9. Bibb is now 65 years old

10. Between 1968 and 1980, Bibb earned 10 years and 6 months of service credits in the Retirement System by working for the City of Detroit.

11. Between 1968 and 1980, the City of Detroit made contributions to the Retirement System on behalf of Bibb.

12. Bibb's 10 years and 6 months of service credits qualify her for retirement benefits under Chapter 47-2-4(b)(10) and/or Chapter 47-2-4(d)(2)(A) of the Detroit City Code.

13. Bibb meets all eligibility requirements to receive a retirement benefit from the Retirement System under Chapters 47-2-4(b)(10) and/or 47-2-4(d)(2)(A) of the Detroit City Code.

EXHIBIT 6(A)

14. Chapters 47-2-4(b)(10) and 47-2-4(d)(2)(A) of the Detroit City Code allow former employees to collect the retirement allowance regardless of whether they separate from City service prior to the date benefits become payable.

15. The retirement benefits under Chapter 42-2-4(b)(10) become payable once the former employee turns 60 years old.

16. The retirement allowance under Chapter 47-2-4(d) becomes payable once the former employee submits a retirement application or turns 60 years old, whichever is earlier.

17. Bibb was entitled to receive monthly retirement benefits starting on her 60th birthday – June 11, 2007.

The City refuses to provide Bibb her vested benefits

18. In 2010, Bibb contacted the Retirement System to request her retirement benefits.

19. On October 10, 2010, the Retirement System sent Bibb a letter stating she was ineligible for benefits.

20. The October 10, 2010 letter contained inaccurate information regarding the provisions of the retirement plan.

21. The October 10, 2010 letter contained false information regarding Bibb's eligibility for benefits.

22. On November 15, 2012, Bibb again demanded her retirement benefits from the Retirement System.

23. The Retirement System again denied Bibb's request for benefits.

24. The Retirement System's act of denying Bibb her vested pension benefits violates the City Code and the terms of the retirement plan.

EXHIBIT 6(A)

COUNT I - REQUEST FOR DECLARATORY RELIEF

25. Bibb incorporates the preceding paragraphs by reference.
26. City Ordinance 47-4-3 authorizes Bibb to bring a civil action for relief against any act or practice which violates the City Code or the terms of the retirement plan.
27. Bibb requests an expedited judicial hearing and decree pursuant to MCR 2.605(D) declaring that:
 - A. Bibb is eligible for a monthly retirement benefit from the City of Detroit General Retirement System under Chapter 47-2-4(b)(10).
 - B. Bibb is eligible for a monthly retirement benefit from the City of Detroit General Retirement System under the formula set forth in Chapter 47-2-4(d)(2)(A) of the City Code.
 - C. The system has an obligation to pay Bibb retroactive monthly retirement benefits starting on her sixtieth birthday, June 11, 2007 plus interest, as well as ongoing monthly benefits.
 - D. All similarly-situated members of the system are eligible for monthly retirement benefits regardless of whether they separated from City service prior to their benefit eligibility date.

COUNT II – BREACH OF CONTRACT

28. Bibb incorporates the preceding paragraphs by reference.
29. The Michigan State Constitution Article 9, Section 24 imposes a contractual obligation on political subdivisions of the state to honor the accrued financial benefits of their pension plans.
30. Defendants have a contractual obligation to pay Bibb the benefits owed.
31. Defendants breached their contractual obligation to Bibb by denying her the benefits due under the terms of its pension plan.

COUNT III - UNJUST ENRICHMENT

32. Bibb incorporates the preceding paragraphs by reference.

EXHIBIT 6(A)

33. The Retirement System has financially benefitted from its retention of Bibb's monthly retirement benefits since July 11, 2007.

34. The Retirement System will continue to financially benefit from its retention of Bibb's future monthly retirement benefits.

35. Bibb earned her monthly retirement benefits by working for the City of Detroit for over 10 years.

36. The Retirement System will be unjustly enriched if allowed to retain the past and future monthly retirement benefits rightfully due and payable to Bibb.

37. Justice and equity require that the system pay Bibb her earned and vested retirement benefits.

WHEREFORE, Bibb respectfully requests this Court enter judgment against defendants in the amount of One Hundred Eighty Thousand Dollars (\$180,000), or whatever other amount this Court deems to be fair, just, and appropriate compensation for her injuries, together with consequential and exemplary damages, interest, costs, attorney fees, and appropriate equitable and declaratory relief.

JURY DEMAND

Plaintiff Cynthia A. Bibb, by her attorneys Sterling Attorneys at Law, P.C., requests a trial by jury.

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Raymond J. Sterling
Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
Attorneys for Plaintiff
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304
(248) 644-1500

Dated: April 23, 2013

EXHIBIT 6(B)



**THIRD JUDICIAL CIRCUIT
OF MICHIGAN**

JEANNE STEMPIEN
PRESIDING JUDGE
CIVIL DIVISION

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE
DETROIT, MICHIGAN 48226-3413

(313) 224-5207

July 26, 2013

Dear Counsel / Party,

On July 17, 2013, the City of Detroit filed a bankruptcy petition under Chapter 9 of the Bankruptcy Code and an automatic stay is in effect by operation of federal law. Therefore, your case is administratively stayed.

The stay is in effect until further order of the Federal Court as to the City of Detroit. If you believe that you or your client is not subject to the stay, you may file a motion with the judge assigned to your case to obtain relief from the stay as to other parties.

Very truly yours,

A handwritten signature in cursive script that reads "Jeanne Stempien".

Jeanne Stempien
Presiding Judge, Civil Division



EXHIBIT 6(C)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CYNTHIA A. BIBB,

Plaintiff,

Case No. 13-005321-CK
Hon. Maria L. Oxholm

13-005321-CK

vs.

CITY OF DETROIT and the BOARD
OF TRUSTEES OF THE CITY OF
DETROIT GENERAL RETIREMENT
SYSTEM, jointly and severally,

Defendants.

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WAYNE COUNTY CLERK
11/22/2013 2:32:15 PM
CATHY M. GARRETT

Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
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Michael J. VanOverbeke (P46787)
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Attorneys for Defendants
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**PLAINTIFF'S MOTION TO LIFT THE
ADMINISTRATIVE STAY OF HER CLAIMS AGAINST
DEFENDANT GENERAL RETIREMENT SYSTEM ONLY**

Plaintiff Cynthia A. Bibb, by her attorneys Sterling Attorneys at Law, P.C., for her Motion to Lift the Administrative Stay of Her Claims Against Defendant General Retirement System Only, submits the following:

1. On April 23, 2013, plaintiff filed her Complaint for declaratory relief and damages against two defendants – (1) the City of Detroit (the “City”) and (2) the Board of Trustees of the City of Detroit General Retirement System (the “General Retirement System”).
2. On July 18, 2013, the City filed for bankruptcy in the United States Bankruptcy Court for the Eastern District of Michigan.

EXHIBIT 6(C)

3. The City's bankruptcy petition automatically stayed litigation against the City.

4. On July 26, 2013, Wayne County Circuit Court Presiding Judge Jeanne Stempien administratively stayed all litigation naming the City of Detroit as a defendant, and instructed parties to file motions for relief from stay with their case's assigned Judge as to any non-City defendants.

5. The General Retirement System is a separately named defendant in this case, and a separate legal entity from the City.

6. The General Retirement System has not filed for bankruptcy, and litigation against the General Retirement System is not subject to stay.

7. Plaintiff moves the Court for an order allowing her litigation to proceed against the General Retirement System.

8. Plaintiff requested, but did not obtain, the General Retirement System's stipulation to the relief sought in this motion.

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Christine A. Hopkins

Raymond J. Sterling (P34456)

Christine A. Hopkins (P76264)

Attorneys for Plaintiff

33 Bloomfield Hills Pkwy., Ste. 250

Bloomfield Hills, MI 48304

(248) 644-1500

Dated: November 22, 2013

EXHIBIT 6(C)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CYNTHIA A. BIBB,

Plaintiff,

Case No. 13-005321-CK
Hon. Maria L. Oxholm

vs.

CITY OF DETROIT and the BOARD
OF TRUSTEES OF THE CITY OF
DETROIT GENERAL RETIREMENT
SYSTEM, jointly and severally,

Defendants.

Raymond J. Sterling (P34456)
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Aaron L. Castle (P70960)
Attorneys for Defendants
VANOVERBEKE, MICHAUD & TIMMONY, PC
79 Alfred Street
Detroit, MI 48201
(313) 578-1200

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION
TO LIFT THE ADMINISTRATIVE STAY OF HER CLAIMS
AGAINST DEFENDANT GENERAL RETIREMENT SYSTEM ONLY**

Plaintiff deserves her day in Court with the General Retirement System

Sixty-five year old Cynthia Bibb last worked for the City of Detroit (the "City") in 1980. During her employment, she earned 10.5 years of service credit in the City's General Retirement System ("General Retirement System"). The City paid contributions to the General Retirement System on behalf of Bibb and other non-safety employees. The General Retirement System has sole authority over the investment and distribution of the contributed funds. The General Retirement System, not the City, decides if individual members like Bibb qualify for retirement benefits. The *General Retirement System* then pays

EXHIBIT 6(C)

those benefits of the *system's* assets. Benefit payments to individual retirees do not come from the City's own funds or assets.

When Bibb reached retirement age, she contacted the General Retirement System to apply for her vested retirement benefits. The Board of Trustees of the General Retirement System denied Bibb her retirement benefits. In this litigation, Bibb seeks to overturn the General Retirement System's denial of her benefits. There is no reason why Bibb's litigation against the General Retirement System should not proceed. The General Retirement System has not filed for bankruptcy, and no stay exists as to litigation against the General Retirement System. Any relief granted in favor of plaintiff and against the General Retirement system will not impact the City or any City property, and will in no way interfere with the City's bankruptcy case.

Bankruptcy stays apply to the debtor, not creditors

The City of Detroit's bankruptcy stay applies only to litigation against the City, not the General Retirement System. The United States Bankruptcy Code "stays any actions against the *debtor*." *Patton v Bearden*, 8 F3d 343, 348-49 (6th Cir 1993); 11 USC 362(a)(1). The General Retirement System is not a debtor in bankruptcy. The General Retirement System, in fact, is the City of Detroit's largest *creditor* (**Ex A**, List of Creditors).

The City of Detroit's bankruptcy stay "does not extend...to separate legal entities such as corporate affiliates, partners in debtor partnerships or to codefendants in pending litigation." 2 Collier on Bankruptcy ¶362.04 (15th ed 1993). Bibb has a right to proceed with her litigation against the General Retirement System because the system and its Board constitute a separate legal entity that has not filed for bankruptcy. *Parry v Mohawk Motors of Michigan, Inc*, 236 F3d 299, 314-15 (6th Cir 2000) (lower court improperly extended bankruptcy stay to a separate entity that had a contractual relationship with the debtor).

EXHIBIT 6(C)

The General Retirement System is a distinct legal entity from the City of Detroit

As evidenced by numerous lawsuits by the General Retirement System against the City (and vice versa), the General Retirement System can sue and be sued, independent from the City.¹ The General Retirement System has the right to retain and compensate its own independent legal counsel to defend against Bibb's claims. *Bd of Trustees of Policemen & Firemen Ret Sys of City of Detroit v City of Detroit*, 143 Mich App 651, 653-56 (1985) (Detroit's retirement systems "may retain independent legal counsel when necessary for the conduct of the affairs of the system.") The General Retirement System holds its own assets, and Michigan's Public Employee Retirement System Investment Act gives the General Retirement System sole authority over those assets. MCL 38.1132a, 38.1133. The City's retirement systems also "act as independent employers, separate from their incorporating cities" and have the right "to hire, direct, and fix the compensation of their employees." *Bd of Trustees of Detroit Gen Ret Sys v City of Detroit*, 2006 WL 2061403 at 5 (Mich App) (Ex B). While the City and the General Retirement System have a contractual relationship, they stand as two distinct legal entities with different governing bodies, different legal interests and responsibilities, different staff, and distinct financial operations.

The City's concurrent employment of some Board members does not entitle the General Retirement System to a stay

Individual members of the General Retirement System's Board of Trustees can hold concurrent employment with the City. *Bd of Trustees of Gen Ret Sys of City of Detroit v City of Detroit*, 2005 WL 1224736 at 2 (Mich App) (Ex C). Bibb, however, has not sued any individual Board members, and her suit has nothing to do with any individual Board member's concurrent employment by the City of Detroit. Bibb has instead sued the *Board of*

¹ This brief references three such cases: *Bd of Trustees of Policemen & Firemen Ret Sys of City of Detroit v City of Detroit*, 143 Mich App 651 (1985), *Bd of Trustees of Detroit Gen Ret Sys v City of Detroit*, 2006 WL 2061403 (Mich App), and *Bd of Trustees of Gen Ret Sys of City of Detroit v City of Detroit*, 2005 WL 1224736 (Mich App).

EXHIBIT 6(C)

Trustees as a governing body that has a fiduciary responsibility to her, and the sole right to determine her eligibility for retirement benefits. The sole question presented by Bibb's litigation is whether the General Retirement System itself can take advantage of a stay that does not apply to the City's creditors or independently governed entities.

The General Retirement System has fought the City's bankruptcy and its stay

Nothing illustrates the chasm separating the General Retirement System from the City of Detroit than the Retirement System's position on the City's bankruptcy filing.

The General Retirement System, through its own legal counsel and pursuant to its Board's directives, itself sued to block the City's bankruptcy petition on constitutional grounds before the petition was ever filed (Ex D, Ingham County Court Complaint). The General Retirement System continues to oppose the bankruptcy on a number of grounds, including the City's failure to engage in good faith pre-filing negotiations with the General Retirement System (Ex E, Eligibility Objection).

Plaintiff's litigation can continue without approval of the bankruptcy court

Litigation against the General Retirement System is not subject to stay under the bankruptcy code or any other law. Bibb can seek to overturn the General Retirement System's denial of her benefits in this Court without prior approval of the bankruptcy court. The General Retirement System, *not* the City, will have to pay Bibb her retirement benefits if plaintiff prevails. Bibb respectfully asks the Court to allow her case to proceed against the General Retirement System.

EXHIBIT 6(C)

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Christine A. Hopkins
Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
Attorneys for Plaintiff
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304
(248) 644-1500

Dated: November 19, 2013

EXHIBIT 6(C)

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CYNTHIA A. BIBB,

Plaintiff,

Case No. 13-005321-CK
Hon. Maria L. Oxholm

vs.

CITY OF DETROIT and the BOARD
OF TRUSTEES OF THE CITY OF
DETROIT GENERAL RETIREMENT
SYSTEM, jointly and severally,

Defendants.

Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
Attorneys for Plaintiff
STERLING ATTORNEYS AT LAW, PC
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304
(248) 644-1500

Michael J. VanOverbeke (P46787)
Aaron L. Castle (P70960)
Attorneys for Defendants
VANOVERBEKE, MICHAUD & TIMMONY, PC
79 Alfred Street
Detroit, MI 48201
(313) 578-1200

NOTICE OF HEARING

Plaintiff's Motion to Lift the Administrative Stay of Her Claims Against Defendant General Retirement System Only will be heard by the Hon. Maria L. Oxholm on Friday, December 6, 2013 at 8:30 a.m.

PROOF OF SERVICE

I certify that on November 22, 2013, I filed the foregoing paper with the Clerk of the Court using the ECF system which will electronically send notification to Michael J. VanOverbeke, Esq.

/s/ Christine A. Hopkins
Sterling Attorneys at Law, P.C.
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304
(248) 644-1500

Respectfully submitted,

STERLING ATTORNEYS AT LAW, P.C.

By: /s/Christine A. Hopkins

Raymond J. Sterling (P34456)
Christine A. Hopkins (P76264)
Attorneys for Plaintiff
33 Bloomfield Hills Pkwy., Ste. 250
Bloomfield Hills, MI 48304
(248) 644-1500

EXHIBIT 6(D)

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
CIVIL DIVISION

CYNTHIA BIBB,
Plaintiff,

Case No. 13-005402-CK

vs.
GENERAL RETIREMENT SYSTEM,
Defendant.

_____ /

MOTION

BEFORE THE HONORABLE MARIA L. OX HOLM Circuit Court
Judge in Detroit, Michigan on Friday, December 6, 2013.

APPEARANCES:

For the Plaintiff: CHRISTINE HOPKINS, P76264
33 Bloomfield Hills Parkway, Suite 250
Bloomfield Hills, MI 48201
(248) 644-1500

For the Defendant: AARON L. CASTLE, P70960
79 Alfred Street
Detroit, MI 48201
(248) 578-1200

EXHIBIT 6(D)

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WITNESS:

None

EXHIBITS:

None

IDENTIFIED

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Detroit, Michigan
Friday, December 6, 2013
(Morning session)

- - -

THE COURT: Recalling 13-005321-CK. Okay, counsel, I'm denying the motion to Lift the Stay. I am very reluctant to lift the Stay because I do think that the Court's decision with regard to whether or not the client is entitled to receive benefits does affect the City of Detroit debt, and so I think the best thing to do, and I've had a couple of other cases where this has happened, that you should go to the Bankruptcy Court and ask them to allow you to proceed in the Circuit Court on this action, so I'm going to deny the motion at this time.

MS. HOPKINS: Okay, thank you, Your Honor.

MR. CASTLE: Thank you, Your Honor.
(Proceeding concluded)

EXHIBIT 6(D)

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STATE OF MICHIGAN)
) .ss
COUNTY OF WAYNE)

I do certify that this transcript consisting of these pages are a complete, true, and correct transcript of the proceeding taken in this case in the County of Wayne, State of Michigan on Friday, December 13, 2013.

Margaret Bamonte

Margaret Bamonte R-5518
Official Court Reporter
CAYMC Building
Detroit, MI 48226
(313) 224-5243

EXHIBIT 6(E)

B 4 (Official Form 4) (12/07)

UNITED STATES BANKRUPTCY COURT
Eastern District of Michigan

In re City of Detroit, Michigan,
 Debtor

Case No. 13-53846

Chapter 9

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 9 case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address, including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]¹</i>
* [General Retirement System of the City of Detroit	General Retirement System of the City of Detroit Attn: Michael J. VanOverbeke, Esq. Interim General Counsel VANOVERBEKE, MICHAUD & TIMMONY, P.C. 79 Alfred Street Detroit, Michigan 48201 Telephone: (313) 578-1200 Facsimile: (313) 578-1201 mvanoverbeke@vmtlaw.com	Estimated pension unfunded actuarial accrued liability	Contingent, unliquidated	\$2,037,000,000 ²

¹ Amounts listed for funded debt obligations reflect the total amounts outstanding, estimated as of June 30, 2013.

² Based on most recent available actuarial analysis.

EXHIBIT 6(E)

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address, including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]¹</i>
Police and Fire Retirement System of the City of Detroit	Police and Fire Retirement System of the City of Detroit Attn: Joseph E. Turner, Esq. General Counsel CLARK HILL PLC 500 Woodward Avenue Suite 3500 Detroit, Michigan 48226 Telephone: (313) 965-8300 Facsimile: (313) 965-8252 jturner@clarkhill.com	Estimated pension unfunded actuarial accrued liability	Contingent, unliquidated	\$1,437,000,000 ²
U.S. Bank N.A., as trustee and contract administrator 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	Pension-related Certificate of Participation ("COP") liabilities, Series 2006-B	Disputed	\$801,361,345
and				
Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			
U.S. Bank N.A., as trustee and contract administrator 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	COP liabilities, Series 2005-A	Disputed	\$516,496,945
and				
Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

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U.S. Bank N.A., as trustee and contract administrator, 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	COP liabilities, Series 2006-A	Disputed	\$153,358,699
and				
Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$100,000,000 Unlimited Tax General Obligation Bonds, Series 2001-A(1)		\$78,603,375
and				
Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

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U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$73,500,000 Limited Tax General Obligation Capital Improvement Bonds, Series 2005-A(1)		\$60,639,506
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$58,630,000 Unlimited Tax General Obligation Bonds, Series 2008-A		\$59,354,563
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

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U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$51,760,000 Unlimited Tax General Obligation Bonds, Series 2005-B		\$45,350,528
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$39,270,000 Unlimited Tax General Obligation Bonds, Series 2004-A(1)		\$39,778,853
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

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U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$49,715,000 Limited Tax General Obligation Capital Improvement Bonds, Series 2008-A(1)		\$38,279,555
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$53,085,000 Unlimited Tax General Obligation Refunding Bonds, Series 2004-B(1)		\$38,118,791
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

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U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$44,020,000 Unlimited Tax General Obligation Bonds, Series 2003-A		\$34,826,238
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			
Downtown Development Authority 500 Griswold Suite 2200 Detroit, MI 48226	Abby E. Wilkinson FAEGRE BAKER DANIELS LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402-3901 Telephone: (612) 766-7152 Facsimile: (612) 766-1600 abby.wilkinson@faegrebd.com	Loan payable		\$33,600,000
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$66,475,000 Unlimited Tax General Obligation Refunding Bonds, Series 2008-B(1)		\$29,891,976
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

EXHIBIT 6(E)

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<i>Name of creditor and complete mailing address, including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]¹</i>
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$25,000,000 Capital Improvement Bonds (Limited Tax), Series 2008-A(2)		\$25,047,259
and				
Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$44,100,000 Unlimited Tax General Obligation Bonds, Series 1999-A		\$18,704,347
and				
Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

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<i>Name of creditor and complete mailing address, including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]¹</i>
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$30,805,000 Unlimited Tax General Obligation Refunding Bonds, Series 2005-C		\$18,629,059
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			
U.S. Bank N.A., as bond registrar and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$62,285,000 Limited Tax General Obligation Self-Insurance Bonds, Series 2004		\$13,157,625
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

EXHIBIT 6(E)

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address, including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]¹</i>
U.S. Bank N.A., as bond registrar, transfer agent and paying agent 535 Griswold Suite 550 Detroit, MI 48226	Susan T. Brown Senior Vice President and Manager 535 Griswold Suite 550 Detroit, MI 48226 Telephone: (313) 234-4711 Facsimile: (313) 963-9428 susan.brown5@usbank.com	\$13,530,000 General Obligation Capital Improvement Bonds (Limited Tax), Series 2005-A(2)		\$11,057,563
and				
Mail Station EP-MN- WS1D 60 Livingston Ave. St. Paul, MN 55107	Susan E. Jacobsen Vice President U.S. Bank National Association Mail Station EP-MN-WS1D 60 Livingston Ave. St. Paul, MN 55107 Telephone: (651) 466-5864 Facsimile: (651) 466-7401 susan.jacobsen2@usbank.com			

Date: July 18, 2013

/s/ Kevyn D. Orr
City of Detroit, Michigan
Kevyn D. Orr
Emergency Manager

EXHIBIT 6(E)

I, Kevyn D. Orr, Emergency Manager of the City of Detroit, Michigan, declare under penalty of perjury that I have read the foregoing List of Creditors Holding 20 Largest Unsecured Claims, and that it is true and correct to the best of my information and belief.

Dated: July 18, 2013

/s/ Kevyn D. Orr

Kevyn D. Orr

Emergency Manager, City of Detroit

2013 WL 4777037
Only the Westlaw citation is currently available.
United States Bankruptcy Court,
E.D. Michigan,
Southern Division.

In re CITY OF DETROIT, MICHIGAN, Debtor.

No. 13-53846. | July 25, 2013.

Opinion

**ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE EXTENDING THE CHAPTER
9 STAY TO CERTAIN (A) STATE ENTITIES, (B)
NON OFFICER EMPLOYEES AND (C) AGENTS
AND REPRESENTATIVES OF THE DEBTOR**

STEVEN RHODES, United States Bankruptcy Judge.

*1 This matter coming before the Court on the Motion of Debtor, Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order, Extending the Chapter 9 Stay to Certain (A) State Entities, (B) Non-Officer Employees and (C) Agents and Representatives of the Debtor (the "Motion"),¹ filed by the City of Detroit, Michigan (the "City "); the Court having reviewed the Motion and the Orr Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing "); and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334,

(b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion and the Hearing was sufficient under the circumstances, (d) the unusual circumstances present in this chapter 9 case warrant extending the Chapter 9 Stay to the State Entities, the Non-Officer Employees and the City Agents and Representatives; and the Court having determined that the legal and factual bases set forth in the Motion and the Orr Declaration and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 105(a) of the Bankruptcy Code, the Chapter 9 Stay hereby is extended to apply in all respects (to the extent not otherwise applicable) to the State Entities (defined as the Governor, the State Treasurer and the members of the Loan Board, collectively with the State Treasurer and the Governor, and together with each entity's staff, agents and representatives), the Non-Officer Employees and the City Agents and Representatives.
3. For the avoidance of doubt, each of the Prepetition Lawsuits hereby is stayed, pursuant to section 105(a) of the Bankruptcy Code, pending further order of this Court.
4. This order is entered without prejudice to the right of any creditor to file a motion for relief from the stay imposed by this order using the procedures of and under the standards of 11 U.S.C. § 362(d)-(g).

Footnotes

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

EXHIBIT 6(G)

Board of Trustees of Detroit General Retirement System v....., Not Reported in...

2006 WL 2061403

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

BOARD OF TRUSTEES OF THE DETROIT
GENERAL RETIREMENT SYSTEM, and
Board of Trustees of the Detroit Policemen &
Firemen Retirement System, Plaintiffs-Appellees,

v.

CITY OF DETROIT and Detroit Chief
Financial Officer, Defendants-Appellants.

Docket No. 259592. | July 25, 2006.

Wayne Circuit Court; LC No. 04-412275-CZ.

Before: FITZGERALD, P.J., and SAAD and COOPER, JJ.

Opinion

[UNPUBLISHED]

PER CURIAM.

*1 Defendants appeal as of right from the trial court's declaratory judgment granting plaintiffs' motion for summary disposition under MCR 2.116(C)(10), denying defendants' cross motion for summary disposition, and declaring that plaintiffs' executive secretary "shall have the exclusive right to direct pension bureau employees in the performance of their duties on behalf of the General Retirement System and the Policeman and Fireman Retirement System." We affirm.

The lower court noted, and logic dictates, that the relationship between plaintiffs and defendant is necessarily adversarial at times. This adversarial posture suggests a commonsense conclusion that defendant cannot have control over the appointment and management of the executive secretary responsible for managing plaintiffs' affairs. And we find that the interplay between state law and the city charter also supports this conclusion. We hold that where, as here, a city charter conflicts with a state statute, the state statute controls in any matter that is not purely of local concern. *Bd of Trustees of the Policemen & Firemen Retirement Sys v Detroit*, 143 Mich.App 651, 655; 373 NW2d 173 (1985).

The General Retirement System ("GRS") is a retirement benefit plan for nonuniformed employees of defendant City of Detroit ("city"). The GRS is managed by plaintiff GRS board of trustees. The Policemen and Firemen Retirement System ("P & FRS") is a retirement benefit plan for uniformed employees of the city and is managed by plaintiff P & FRS board of trustees. Defendants argue that the trial court erred in determining that MCL 38.1133(4) entitles plaintiffs to hire their own executive secretary, and to become an independent employer with exclusive control over pension bureau employees.¹

A trial court's decision on a motion for summary disposition is reviewed de novo. *Maiden v. Rozwood*, 461 Mich. 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Id.* at 119. "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id.* The motion may be granted "only where the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.* (citation omitted). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. The court must examine the documentary evidence submitted by the parties and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v. Cross & Peters Co*, 451 Mich. 358, 361-362; 547 NW2d 314 (1996). Questions of statutory interpretation are also reviewed de novo. *Heinz v. Chicago Rd Investment Co*, 216 Mich.App 289, 295; 549 NW2d 47 (1996).

Central to this case is § 13(4) of the Public Employee Retirement System Investment Act (PERSIA), MCL 38.1133(4), which provides:

*2 An investment fiduciary may use a portion of the income of the system to defray the costs of investing, managing, and protecting the assets of the system; may retain investment and all other services necessary for the conduct of the affairs of the system; and may pay reasonable compensation for those services. Subject to an annual appropriation by the legislature, a deduction from the income of a state administered system resulting from the

EXHIBIT 6(G)

Board of Trustees of Detroit General Retirement System v...., Not Reported in...

payment of those costs shall be made.
[Emphasis added.]

Section 12c(1) of this act, MCL 38.1132c(1), defines an “investment fiduciary” as

“a person other than a participant directing the investment of the assets of his or her individual account in a defined contribution plan who does any of the following:

(a) Exercises any discretionary authority or control in the investment of a system's assets.

(b) Renders investment advice for a system for a fee or other direct or indirect compensation.” [Emphasis added.]

It is undisputed that the plaintiff boards of trustees have a duty to manage the GRS and the P & FRS, and both plaintiffs are clearly investment fiduciaries. Defendants also do not dispute that pension bureau employees, including the head of the pension bureau (whether titled “executive secretary” or “general manager-finance/pension”) are “necessary” for the conduct of the affairs of the GRS and the P & FRS.

In *Bd of Trustees, supra* at 656, this Court held that § 13(4) authorized the P & FRS board of trustees to retain independent legal counsel when pursuing an action against the city for unpaid contributions. The Court found that the statute was clear and unambiguous, and was not rendered ambiguous merely because it granted broad powers to an investment fiduciary. *Id.* at 654. Because an unambiguous statute must be enforced as written, the Court found that the principal issue before it was “whether independently retained legal service is necessary for the conduct of the affairs of the [P & FRS].” *Id.* at 654-655. The Court found that it was, noting that the city had repeatedly failed to make plan contributions, and that there would be an obvious conflict of interest if the P & FRS board of trustees was required to proceed while represented by the city attorney, or by someone appointed by the city attorney. *Id.*

This Court rejected the city's argument that the city charter required corporation counsel to represent all of the city's administrative agencies, noting that, “[w]here a city charter provision conflicts with general statutory law, the statute controls in all matters which are not purely local in character.” *Id.* at 655. The Court found that there was a conflict between the charter and the statute, and that the statute prevailed because the P & FRS was not a “strictly and exclusively

municipal concern.” *Id.* at 655-656. The Court also noted that § 13(1), which specifically states that “[t]he provisions of this act shall supersede any investment authority previously granted to a system under any other law of this state,” supported its conclusion. *Id.* at 656.

*3 Defendants argue that *Bd of Trustees* is a case involving a clear conflict of interest and is limited to its facts. Defendants argue that this Court should follow the position of Judge Maher's dissenting opinion in *Bd of Trustees*. See *id.* at 656-660 (Maher dissenting). We disagree.

The clear language of § 13 does not require that a conflict of interest exist before an investment fiduciary is permitted to retain necessary employees. Further, contrary to the approach taken in Judge Maher's dissent, a court may not look to the legislative history of a statute to find an ambiguity. See *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich. 638, 644; 513 NW2d 799 (1994). If the text of a statute is clear and unambiguous, this Court must apply the statute as written, and nothing may be read into it that is “not within the Legislature's intent as derived from [its] language.” *AFSCME v. Detroit*, 468 Mich. 388, 399-400; 662 NW2d 695 (2003).

Defendants correctly argue that § 13(4) does not authorize plaintiffs to fill civil service jobs, and that § 11-103 of the 1997 Detroit City Charter, which defines the composition of the GRS and the P & FRS boards, provides that “[s]taff services required by a governing body shall be provided as determined by the finance director.” The city charter grants the finance director the authority to determine and fill the staff needs of plaintiff boards, and by implication, the pension bureau, including the executive secretary or general manager position.

But Const 1963, art 7, § 22, “specifically provides that ordinances are subject to the laws of the state, i.e., statutes.” *AFSCME, supra* at 410. The Home Rule City Act, MCL 117.1 *et seq.*, is in accord. *Id.* at 410-411; see also MCL 117.4j(3). Therefore, “[w]here a city charter provision [or an ordinance] conflicts with general statutory law, the statute controls in all matters which are not purely local in character.” *Bd of Trustees, supra* at 655; see also *AFSCME, supra* at 411. As further discussed, *infra*, § 13(4) allows the GRS and the P & FRS boards to become autonomous employers. Thus, to the extent that the Detroit City Charter purports to prevent plaintiffs from selecting and directing their own employees,

EXHIBIT 6(G)

Board of Trustees of Detroit General Retirement System v...., Not Reported in...

it is in conflict with § 13(4) and must yield to the statutory scheme.

Defendants argue that plaintiffs ought not be allowed to impose the yoke of fiduciary responsibility upon pension bureau employees. We disagree. Whether a particular employee is a fiduciary depends on the nature of the relationship between the employee and the trust. See *Beaty v. Hertzberg & Golden, PC*, 456 Mich. 247, 260-261; 571 NW2d 716 (1997). We believe that it is immaterial whether pension bureau employees are employed by plaintiffs, the city, or jointly by both. Additionally, § 13(4) states that investment fiduciaries “may retain investment and *all other services* necessary for the conduct of the affairs of the system.” (Emphasis added.) Nothing in the statute supports the argument that plaintiffs may only hire *fiduciary* employees, and that all other employees remain subject to defendants' control.

*4 Defendants further complain that the funds used to pay pension bureau employees, including the executive secretary or general manager-finance/pension, come from the city. However, the statutory scheme clearly presumes this fact. Plaintiffs have fiduciary obligations, specified by the common law and § 13, that ensure that plan contributions will be used only as permitted by law. Pursuant to the city charter, § 11-103, the city has representatives on both boards who have a fiduciary duty to ensure that pension contributions are properly used.

Defendants argue that, in allowing plaintiffs to hire and pay their own employees, the trial court essentially authorized them to act as independent employers, and to “poach” city employees. Defendants claim that the trial court's decision went far beyond what the Legislature intended, and that allowing plaintiffs to become independent employers will lead to labor relation problems. We find that this is not a valid basis for failure to enforce the clear and unambiguous language of the statute. Rather, courts “must give due deference to acts of the Legislature, and ... will not inquire into the wisdom of the legislation.” *Oakland Co Bd of Co Rd Comm'rs v Michigan Prop & Cas Guaranty Ass'n*, 456 Mich. 590, 612-613; 575 NW2d 751 (1998). “[A]rguments that a statute is unwise or results in bad policy should be addressed to the Legislature.” *Id.* at 613. Thus, the trial court properly refused to consider these issues.

Whether the Legislature intended to allow boards of trustees to become autonomous employers is a question of statutory

interpretation. See *AFSCME*, *supra* at 398-399. In *AFSCME*, our Supreme Court affirmed this Court's determination that the 1996 amendments of the housing facilities act, MCL 125.651 *et seq.*, severed the city's coemployment relationship with the Detroit Housing Commission *as a matter of law*, without the need for ratification, consent, or acquiescence by the city. *Id.* at 399-401.

Before 1996, the housing facilities act allowed housing commissions to appoint their own directors and to hire other employees “as necessary,” but a commission required the approval of its appointing authority in order to fix their employees' compensation. *Id.* at 400. As amended in 1996, MCL 125.655(3) provides that “[t]he commission may employ and fix the compensation of a director ... and other employees as necessary,” and that “[t]he commission shall prescribe the duties of its officers and employees and shall transfer to its officers and director those functions and that authority that the commission has prescribed.” The Supreme Court in *AFSCME* found that the amended statute was “clear and unambiguous,” and that it granted “[h]ousing commissions the authority to employ and fix the compensation of their employees, as well as the express authority to determine the duties of their employees.” *Id.* at 401.

We believe that § 13(4) supports a similar interpretation.

*5 An *investment fiduciary* may use a portion of the income of the system to defray the costs of investing, managing, and protecting the assets of the system; *may retain investment and all other services necessary for the conduct of the affairs of the system; and may pay reasonable compensation for those services.* Subject to an annual appropriation by the legislature, a deduction from the income of a state administered system resulting from the payment of those costs shall be made.² [Emphasis added.]

We find that, by allowing plaintiffs to hire, direct, and fix the compensation of their employees, § 13(4) “explicitly authorize[s] ... [plaintiffs] to act as independent employers, separate from their incorporating cities.” *AFSCME*, *supra* at 401. While plaintiffs do not claim that § 13(4) severed the city's employment relationship with pension bureau

EXHIBIT 6(G)

Board of Trustees of Detroit General Retirement System v....., Not Reported in...

employees *as a matter of law*, we find that § 13(4) grants investment fiduciaries the *option* to become autonomous employers, and that the trial court did not err in allowing plaintiffs to exercise that option. Affirmed.

Footnotes

- 1 As a preliminary matter, there is no merit to plaintiffs' contention that this Court lacks jurisdiction to consider the trial court's July 23, 2004, judgment declaring that plaintiffs have the authority to hire their own executive secretary. In this appeal by right from the trial court's November 12, 2004, declaratory judgment, which was the final order in the case, defendants properly may seek review of any earlier interlocutory orders. *Tomkiw v. Saucedo*, 374 Mich. 381, 385; 132 NW2d 125 (1965).
- 2 We note that the last sentence, referencing a legislative appropriation, applies only to *state* administered retirement systems, not the GRS or the P & FRS.

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EXHIBIT 6(H)

Board of Trustees of General Retirement System of City..., Not Reported in...

2005 WL 1224736

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

BOARD OF TRUSTEES OF THE GENERAL
RETIREMENT SYSTEM OF THE CITY
OF DETROIT, Plaintiff-Appellant,

v.

CITY OF DETROIT and Sean
Werdlow, Defendants-Appellees.

No. 253975. | May 24, 2005.

Before: NEFF, P.J., and OWENS and FORT HOOD, JJ.

Opinion

[UNPUBLISHED]

PER CURIAM.

*1 Plaintiff appeals as of right the grant of summary disposition and declaratory judgment in favor of defendants regarding restrictions placed by the trial court on interstate travel by plaintiff's members, particularly those who are concurrently employed by the city. We vacate the portion of the judgment that placed restrictions on interstate travel.

Citing this Court's interlocutory order¹ reversing the trial court's temporary restraining order, which required court approval of any interstate travel by plaintiff's members, plaintiff first asserts that the trial court's ruling violated the law of the case doctrine. We agree.

The law of the case doctrine applies to issues previously determined in interlocutory proceedings. *Marysville v. Pate, Hirn & Bogue, Inc.*, 196 Mich.App 32, 34; 492 NW2d 481 (1992). The doctrine serves to bind lower courts and tribunals, which may not take action on remand that is inconsistent with the ruling of an appellate court's decision in the particular case. *In re TM (After Remand)*, 245 Mich.App 181, 191; 628 NW2d 570 (2001); see also, *McCormick v. McCormick*, 221 Mich.App 672, 679; 562 NW2d 504 (1997). It provides that "if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal

questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same." *Grievance Administrator v. Lopatin*, 462 Mich. 235, 259; 612 NW2d 120 (2000), quoting *CAF Investment Co v. Saginaw Twp*, 410 Mich. 428, 454; 302 NW2d 164 (1981). The issues previously raised by plaintiff involved the appropriateness of the trial court's issuance of a temporary restraining order when there was no pending claim with respect to, or evidence relating to, interstate travel before the trial court.

At the time the temporary restraining order was issued, although plaintiff mentioned travel as one in a laundry list of a trustee's duties, and defendants asserted as an affirmative defense that plaintiff's activities violated various state and municipal laws, there was no indication in the record that interstate travel was or would become an issue between the parties.² This Court appropriately found that the trial court could not require the trustees to seek prior approval before traveling out of state when neither party had sought this type of relief. An appellate court decision with respect to a preliminary injunction is law of the case with respect to a permanent injunction if the legal issue applied to both injunctions and was resolved in the first decision. *Int'l Union v. Michigan*, 211 Mich.App 20, 26-27; 535 NW2d 210 (1995).³ It therefore follows that because defendants did not revise their pleadings to seek an injunction after this Court's order, the issue did not change, and the court could not enter a permanent injunction against plaintiff.

Although "a 'final judgment may grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that relief in his or her pleadings,'" *City of Jackson v. Thompson-McCully Co, LLC*, 239 Mich.App 482, 491; 608 NW2d 531 (2000), quoting MCR 2.601(A), a court may not sua sponte amend the pleadings to add an additional claim, *City of Bronson v. American States Ins Co*, 215 Mich.App 612, 619; 546 NW2d 702 (1996). Here, the court effectively amended the pleadings by adding a counterclaim on behalf of defendants that sought to enjoin plaintiff's members from interstate travel. "While issues not raised in the pleadings may be decided if the parties consent," *id.*, plaintiff here not only did not consent, it strenuously opposed the court's consideration of the appropriateness of its interstate travel policy and procedures. Where a judgment exceeds the scope of the case, it must be vacated. *Id.* We thus vacate the portions of the trial court's judgment with respect to travel, including the portion of the judgment directing

EXHIBIT 6(H)

Board of Trustees of General Retirement System of City..., Not Reported in...

plaintiff to adopt an ethics and conflict of interest policy addressing travel.

*2 Our disposition of plaintiff's first issue renders plaintiff's remaining issues moot. Because plaintiff has not challenged the remaining portions of the judgment, the unchallenged portions of the judgment, which remain in effect, are as follows:

1. Service as a Trustee does not preclude that individual from working for the municipality as an employee.

IT IS FURTHER ORDERED AND ADJUDGED that, other than as required by this Order and terms contained in a partial

release and settlement agreement between the parties, the City retains the authority to manage individual Board members who are also members of its workforce and to require their attendance at their City position;

IT IS FURTHER ORDERED AND ADJUDGED that the remaining relief sought by Plaintiff in its Motion for Summary Disposition and its Complaint is hereby denied;

The portions of the judgment with respect to restrictions on interstate travel are vacated. We do not retain jurisdiction.

Footnotes

- 1 *Detroit General Retirement System Bd of Trustees v City of Detroit*, unpublished order of the Court of Appeals, entered October 1, 2003 (Docket No. 250066).
- 2 Plaintiff alleged in its March 21, 2003 motion for reconsideration of the trial court's denial of its motion to modify the temporary restraining order that defendant launched a media campaign against plaintiff's travel practices in response to plaintiff's filing of the instant suit. This may have been the impetus behind the trial court sua sponte raising this issue.
- 3 The holding in *Int'l Union v. Michigan*, 211 Mich.App 20, 26-27; 535 NW2d 210 (1995) was limited to its facts, *id.*, at 28; however, we find it persuasive here.

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EXHIBIT 6(I)

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

THE GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT, and THE
POLICE AND FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

Plaintiffs,

vs.

Case No. 13- 768 -CZ
Hon. **CLINTON CANADY III**

KEVYN D. ORR, in his official capacity as the
EMERGENCY MANAGER OF THE CITY OF
DETROIT, and RICHARD SNYDER, in his
official capacity as the GOVERNOR OF THE
STATE OF MICHIGAN,

Defendants.

Ronald A. King (P45088)
Aaron O. Matthews (P64744)
Michael J. Pattwell (P72419)
CLARK HILL PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
Attorneys for Plaintiffs

The following civil actions between the
above-named parties and/or other parties
arising out of the same transactions and
occurrences alleged in this Complaint have
previously been filed in this Court: (i) Case
No. 13-729-CZ assigned to Judge Aquilina;
and (ii) Case No. 13-734-CZ assigned to
Judge Canady and then reassigned to Judge
Aquilina. Those actions remain pending.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs, the General Retirement System of the City of Detroit ("GRS"), and the Police
and Fire Retirement System of the City of Detroit ("PFRS") (together, the "Retirement Systems"
or "Plaintiffs"), through their attorneys, Clark Hill PLC, allege as follows for their Complaint for
Declaratory Relief against Defendants Kevyn D. Orr, in his official capacity as the Emergency

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EXHIBIT 6(I)

Manager of the City of Detroit (the "Emergency Manager"), and Richard Snyder, in his official capacity as the Governor of the State of Michigan (the "Governor"):

I. INTRODUCTION

1. The Retirement Systems bring this action on their own behalf and on behalf of the more than 32,000 active and retired employees of the City of Detroit (the "City"), who are participants in the Retirement Systems and whose "accrued financial benefits" the Retirement Systems were created to protect.

2. Under Count I, Plaintiffs request that this Court declare that:

- a) the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541 *et seq.* ("PA 436") does not expressly grant to the *Governor* the authority to authorize the Emergency Manager to take any actions that will result in the impairment of the City of Detroit's pension debts, but rather, when read in conjunction with Article IX, section 24 and Article I, section 10 of the Michigan Constitution, requires that the *Governor* refrain from authorizing the Emergency Manager to take any action that causes the City's pension debts to be subject to impairment under Chapter 9 of the United States Bankruptcy Code, 11 USC §§ 901 *et seq.*, ("Chapter 9"); or, alternatively,
- b) if PA 436 implicitly grants to the *Governor* the authority to authorize the Emergency Manager to take actions that will result in the impairment of the City of Detroit's pension debts, then PA 436 contravenes Article IX, section 24 and Article I, section 10 of the Michigan Constitution and is of no force or effect.

3. Under Count II, Plaintiffs request that this Court declare that:

- a) PA 436 does not expressly grant to the *Emergency Manager* the authority to take actions that will result in the impairment of the City of Detroit's pension debts, but rather, when read together with Article IX, section 24 and Article I, section 10 of the Michigan Constitution, precludes the *Emergency Manager* from taking any action that causes the City's pension debts to be subject to impairment under Chapter 9; or, alternatively,
- b) if PA 436 implicitly grants to the *Emergency Manager* the authority to take actions that will result in the impairment of the City of Detroit's pension debts, then PA 436 contravenes Article IX, section 24 and Article I, section 10 of the Michigan Constitution and is of no force or effect.

EXHIBIT 6(I)

4. If, before the Court is able to grant the declaratory relief requested above, the Governor attempts to grant to the Emergency Manager an unconditional authorization to proceed under Chapter 9, Plaintiffs request that this Court immediately issue an injunction prohibiting the Emergency Manager from acting pursuant to the Governor's purported and unconstitutional Chapter 9 authorization until such time as Plaintiffs' request for declaratory relief has been fully adjudicated.

II. THE PARTIES

5. Plaintiff GRS is a municipal employee retirement system and pension plan and trust created by the City's Charter to provide retirement, disability, and survivor benefits to eligible non-uniformed City employees and their beneficiaries, as authorized by the Michigan Constitution and the Home Rule City Act of 1909, MCL 117.1 *et seq.* Among many other duties, GRS has the power and obligation to ensure that the City tenders its annual contribution to GRS and to protect the "accrued financial benefits" of its participants.

6. Plaintiff PFRS is a municipal employee retirement system and pension plan and trust created by the City's Charter to provide retirement, disability, and survivor benefits to eligible City Police and Fire Department employees and their beneficiaries, as authorized by the Michigan Constitution and the Home Rule City Act of 1909, MCL 117.1 *et seq.* Among many other duties, PFRS has the power and obligation to ensure that the City tenders its annual contribution to PFRS and to protect the "accrued financial benefits" of its participants.

7. Defendant Kevyn D. Orr is the Emergency Manager of the City.

8. Defendant Richard Snyder is the Governor of the State of Michigan.

III. JURISDICTION AND VENUE

9. This Court possesses jurisdiction over this matter pursuant to Mich Const 1963, art VI, § 13, MCL 600.601, MCL 600.605, and MCL 600.6419(4). Furthermore, this Court has

EXHIBIT 6(I)

jurisdiction to render the declaratory judgments requested herein pursuant to MCR 2.605 because there exists an actual controversy between the parties.

10. Venue in this circuit is proper pursuant to MCL 600.1615 and MCL 600.1621(a).

IV. GENERAL ALLEGATIONS

A. The Governor's Duty And Oath To Uphold The Constitution

11. Article XI, section 1 of the Michigan Constitution requires that all officers, legislative, executive and judicial in the state of Michigan must take and subscribe to the following oath:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this state, and that I will faithfully discharge the duties of the office of according to the best of my ability. [Mich Const 1963, art XI, § 1.]

12. Similarly, Article V, section 8 of the Michigan Constitution demands that "the governor shall take care that the laws be faithfully executed." Mich Const 1963, art V, § 8.

13. And, section 64 of the Michigan Election Law ("PA 116") makes clear that "[e]very person elected to the office of governor . . . before entering upon the duties of his office, shall take and subscribe to the oath as provided in section 1 of article 11 of the state constitution and deposit same with the secretary of state." MCL 168.64.

14. On December 30, 2010, the Governor did in fact swear the following oath, which was later filed with the Michigan Secretary of State: "I do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will faithfully discharge the duties of the office of Governor according to the best of my ability." This oath of office is attached as **Exhibit A**.

EXHIBIT 6(I)

B. The Emergency Manager's Duty And Oath To Uphold The Constitution

15. Pursuant to section 9 of PA 436, the Emergency Manager is a public officer and servant appointed by the Governor and serves at the Governor's pleasure. MCL 141.1549.

16. Accordingly, just like the Governor, Article XI, section 1 of the Michigan Constitution requires the Emergency Manager to take and subscribe to the following oath:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this state, and that I will faithfully discharge the duties of the office of according to the best of my ability. [Mich Const 1963, art XI, § 1.]

17. Furthermore, section 1 of the Constitutional Oath of Office Act ("PA 22") requires that: "[a]ll persons now employed, or who may be employed by the state of Michigan . . . shall, as a condition of their employment, take and subscribe to the oath or affirmation required of members of the legislature and other public officers by section 2 of article 16 of the constitution of 1908 of the state of Michigan [(i.e., the predecessor of Mich Const 1963, art 11, § 1)]." MCL 15.151.

18. On March 14, 2013, the Emergency Manager did in fact swear the following oath, which was later filed with the Michigan Secretary of State: "I do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will faithfully discharge the duties of the office of Emergency Financial Manager – City of Detroit according to the best of my ability." This oath of office is attached as **Exhibit B**.

C. The Michigan Constitution Commands That Accrued Financial Benefits Of A Pension Plan May Not Be Diminished Or Impaired

19. The first paragraph of Article IX, section 24 of the Michigan Constitution demands that "the accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." Mich Const 1963, art IX, § 24.

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20. This constitutional provision (adopted by the people of this State) is a solemn guarantee that -- absent a constitutional amendment duly adopted by the people of this State -- accrued pension benefits of each pension plan and retirement system of the state and its political subdivisions (including those of the City) shall not be impaired.

21. The second paragraph of Article IX, section 24 of the Michigan Constitution demands that "financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities." Mich Const 1963, art IX, § 24.

22. This constitutional provision (adopted by the people of this State) mandates that municipalities timely deposit with their respective public employee pension systems moneys sufficient to cover actuarial liabilities.

23. Article I, section 10 of the Michigan Constitution demands that "[n]o . . . law impairing the obligation of contract shall be enacted."

24. In accordance with the above-cited constitutional guarantees, section 12(1)(m)(ii) of PA 436 states that if appointed sole trustee of either of the Retirement Systems, "[t]he emergency manager shall fully comply with . . . section 24 of article IX of the state constitution of 1963." MCL 141.1552(1)(m)(ii).

25. Likewise, section 11(1)(d) of PA 436 requires that any financial and operating plan developed by the Emergency Manager shall provide for "[t]he timely deposit of required payments to the pension fund for the local government or in which the local government participates." MCL 141.1551(1)(d).

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D. The City Owes And Will Owe The Retirement Systems Substantial Sums For Accrued Financial Benefits The City Promised To Pay Its Employees

26. Over the last several decades, the City and its employees have entered into collective bargaining agreements wherein the City promised to provide its employees with pension benefits and accordingly make annual pension contributions to the Retirement Systems.

27. In reliance on those contractual promises, tens of thousands of City employees served the City and, thus, pursuant to their applicable collective bargaining agreements, became entitled to receive their pensions (*i.e.*, accrued financial benefits).

28. At present, the City owes the Retirement Systems tens of millions of dollars for past annual pension contributions; the present non-payment of which is in violation of, among other laws, Article IX, section 24 of the Michigan Constitution, section 20m of the Public Employee Retirement System Investment Act, 1965 PA 314 (as amended), MCL 38.1132 *et seq.* ("PA 314"), section 11(1)(d) of PA 436, and Article 11, section 101 of the City's Charter.

29. Despite these legal requirements, the Emergency Manager has made clear through his public statements and various public reports that he has no intention of causing the City to make its past annual pension contributions to the Retirement Systems.

30. If the City further and permanently evades its obligation to make its past annual pension contributions to the Retirement Systems by way of impairment of that obligation in a Chapter 9 bankruptcy proceeding or otherwise, the accrued financial benefits of the Retirement Systems and their participants will be diminished and impaired.

31. Moving forward the City also has an obligation to pay into the Retirement Systems substantial sums for accrued financial benefits.

32. If the City further and permanently evades its obligation to make its future annual pension contributions to the Retirement Systems by way of impairment in a Chapter 9

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bankruptcy proceeding or otherwise, the accrued financial benefits of the Retirement Systems and their participants will be diminished and impaired.

E. Defendants' Unlawful Plan To Impair And Diminish Plaintiffs' Accrued Financial Benefits By Way Of A Chapter 9 Bankruptcy Proceeding

33. On March 26, 2013, after having found that the City was in severe financial distress, the Governor (and the State Treasurer) caused Kevyn Orr to be appointed as the Emergency Manager of the City.

34. Michigan's contract with the Emergency Manager for emergency manager services provides that "[t]he 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."

35. The contract does not expressly authorize the Emergency Manager to take any action that would impair the accrued financial benefits of Plaintiffs.

36. Chapter 9 sets forth the process by which a municipality may file for bankruptcy and seek to have its debts adjusted. 11 USC §§ 901 *et seq.*

37. A limitation on this immense federal power is that a municipality may only become a debtor under Chapter 9 if such entity "is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter." 11 USC §§ 109(c)(2).

38. In Michigan, section 18 of PA 436 grants to the Governor the authority to authorize the Emergency Manager to initiate a Chapter 9 bankruptcy proceeding on behalf of the City:

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If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision . . . Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9. [MCL 141.1558.]

39. Along those same lines, section 26(1) of PA 436 states, *inter alia*, that “with the written approval of the governor, a local government may file a petition under Chapter 9 and exercise powers pursuant to federal bankruptcy law if the local government adopts a resolution . . . that declares a financial emergency” MCL 141.1566(1).

40. And, section 26(2) of PA 436 goes on to state, among other things, that “[t]he governor may place contingencies on a local government in order to proceed under chapter 9” and “upon receipt of the written approval and subject to this subsection, the local government may proceed under Chapter 9 and exercise powers under federal bankruptcy law.” MCL 141.1566(2).

41. Nothing in PA 436, however, expressly authorizes the Governor or Emergency Manager to seek to have municipal pension debts or the accrued financial benefits of municipal pension plans impaired under Chapter 9.

42. Nevertheless, since his appointment, the Emergency Manager has made public that he intends to do an end-run around Article IX, section 24 of the Michigan Constitution by asking the Governor to authorize an unconditional Chapter 9 proceeding wherein the Emergency

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Manager will seek to have the City's pension debts and the accrued financial benefits of the Retirement Systems impaired.

43. More specifically, the Emergency Manager has made it abundantly clear that he intends to diminish or eliminate the accrued financial benefits of the Retirement Systems and their participants by way of impairment under Chapter 9 unless such benefits are "voluntarily" diminished or impaired.

44. For example, in the May 12, 2013 Financial Operating Plan for the City of Detroit, the Emergency Manager states that:

[T]he City faces substantial unfunded OPEB obligations for retiree medical expenses, most recently estimated at \$5.7 billion, and hundreds of millions of dollars (perhaps billions based on more recent actuarial calculations with more conservative assumptions) in pension funding requirements. Recently, tens of millions of dollars of pension funding and other payments have been deferred to manage a severe liquidity crisis at the City. Even with these deferrals, the City has operated at a significant and increasing deficit. It is expected that the City will end this fiscal year with approximately \$125 million in accumulate deferred obligations and a precariously low cash position.

45. On June 14, 2013, the Emergency Manager issued his Proposal for Creditors (the "Restructuring Proposal"). In his Restructuring Proposal, the Emergency Manager states that:

- As set forth above, preliminary analysis indicates that the underfunding in the GRS and PFRS is approximately \$3.5 billion. At this level of underfunding, the City would have to contribute approximately \$200 million to \$350 million annually to fully fund currently accrued, vested benefits. Such contributions will not be made under the plan.
- Claims for the underfunding will be exchanged for a pro rata (relative to all unsecured claims) principal amount of new Notes.
- Because the amounts realized on the underfunding claims will be substantially less than the underfunding amount, there must be significant cuts in accrued, vested pension amounts for both active and currently retired person.

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46. To summarize and add clarity to the above excerpted provisions, the Emergency Manager's Restructuring Proposal takes the position that pension debts are "unsecured claims" that may be, and must be, impaired in any prospective Chapter 9 bankruptcy of the City.

47. The Emergency Manager's Restructuring Proposal further proposes to place the City's alleged approximate \$3.5 billion underfunding liability in a pool of claims comprising a total of approximately \$11.5 billion in unsecured claims, and then have those claims exchanged for a *pro rata* share of an unsecured note in the face amount of \$2.0 billion.

48. As such, the Emergency Manager's Restructuring Proposal would diminish and impair the accrued pension benefits of the participants in the Retirement Systems.

49. Notably, there has been no indication by the Emergency Manager that his Restructuring Proposal will not also serve as a template for the plan of adjustment that the Emergency Manager would propose and seek to confirm in a Chapter 9 bankruptcy proceeding. Indeed, in a June 13, 2013 interview with The Detroit Free Press, the Emergency Manager made the following statements:

Q: You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?

A: The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law.

Q: Which the 9th Circuit agrees for now.

A: It is what it is – so we said that in a soft way of saying, "Don't make us go into bankruptcy." If you think your state-vested pension rights, either as an employee or retiree – that's not going to protect you. If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism, will trump state law or negotiate. The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy. [*Detroit's Emergency*

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Manager Talks About City's Future, June 16, 2013 (The Detroit Free Press), attached as **Exhibit C.**]

50. The Governor has publically proclaimed his support for the Emergency Manager and stated that the filing of a Chapter 9 bankruptcy remains a viable option. *What Snyder, Bing said about Detroit emergency manager 45-day report*, *Detroit Free Press*, May 12, 2013, <http://www.freep.com/article/20130512/NEWS01/305120162/kevyn-orr-quotes-report-45-day-city-financial-crisis-emergency-manager>.

51. At no time has the Governor stated that he will make any Chapter 9 authorization "contingent" on the requirement that the City's pension debts not be impaired.

52. Even in a recent filing in *Flowers v Snyder*, Case No. 13-729-CZ, pending before the Ingham County Circuit Court, the Governor did not deny that he is poised to authorize the Emergency Manager to proceed under Chapter 9 without any conditions whatsoever.

53. The Emergency Manager and/or his spokesperson have stated on several occasions that a decision as to whether to file a Chapter 9 bankruptcy petition would likely be made as soon as by the end of the current week.

54. At no time has the Emergency Manager stated that he will not seek to have the City's pension debts impaired under Chapter 9, or even that his proposed Plan of Reorganization will not request that the City's pension debts be impaired.

55. Accordingly, it appears imminent that the Governor will grant to the Emergency Manager the unconditional power to proceed under Chapter 9 and the Emergency Manager will seek to have the City's pension debts impaired pursuant to Chapter 9 unless the Retirement Systems and their participants accept the Emergency Manager's unilateral imposition of significant impairments to their accrued financial benefits.

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COUNT I DECLARATORY JUDGMENT

The Governor May Not Take Any Action Which Would Cause The City's Pension Debts To Be Subject To Impairment In A Chapter 9 Bankruptcy

56. Plaintiffs incorporate paragraphs 1-55 and 81-102 of this Complaint with the same force and effect as if fully set forth herein.

57. The Governor must uphold and abide by the Michigan Constitution and may not take any action that violates same.

58. The Governor may not do indirectly what he is forbidden from doing directly.

59. Article I, section 10 of the Michigan Constitution demands that “[n]o . . . law impairing the obligation of contract shall be enacted.”

60. The Retirement Systems and their participants’ right to receive accrued financial benefits is contractually provided for by numerous collective bargaining agreements entered into with the City.

61. Article IX, section 24 of the Michigan Constitution demands that “the accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.”

62. If the Governor issues an unconditional Chapter 9 authorization to the Emergency Manager, the Emergency Manager has made clear that he will seek to have City’s pension debts impaired in Chapter 9.

63. Any such impairment of the City’s pension debts in Chapter 9 will diminish and impair the accrued financial benefits of the Retirement Systems and their participants in violation of Article IX, section 24 of the Michigan Constitution.

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64. Any such impairment of the City's pension debts in Chapter 9 will also impair the City's obligation under the collective bargaining agreements in violation of Article I, section 10 of the Michigan Constitution.

65. While section 18 and 26 of PA 436 grant to the Governor the authority to authorize the Emergency Manager to proceed under Chapter 9, nothing in PA 436 (or any Michigan law for that matter) expressly authorizes the Governor or Emergency Manager to seek to have the City's pension debts impaired under Chapter 9.

66. To the contrary, section 12(1)(m)(ii) of PA 436 states that if appointed sole trustee of the Retirement Systems "[t]he emergency manager shall fully comply with . . . section 24 of article IX of the state constitution of 1963," MCL 141.1552(1)(m)(ii), and section 11(1)(d) of PA 436 requires that any financial and operating plan developed by the Emergency Manager shall provide for "[t]he timely deposit of required payments to the pension fund for the local government or in which the local government participates," MCL 141.1551(1)(d).

67. When enacting PA 436 it must be presumed that the Legislature did not intend to violate Article IX, section 24 or Article I, section 10 of the Michigan Constitution.

68. PA 436 must be construed in such a way as to save it from being unconstitutional.

69. The only way to save PA 436 from being unconstitutional is to read section 26(2) of PA 436 as requiring that the Governor condition any Chapter 9 authorization on the contingency that the Emergency Manager (and any designee with power to take action on behalf of the City) not seek or accede to any impairment of the City's pension debts in such Chapter 9 bankruptcy proceeding.

70. Similarly, the only way for the Governor to avoid violating Article IX, section 24 and Article I, section 10 of the Michigan Constitution is to condition any Chapter 9 authorization

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on the contingency that the Emergency Manager (and any designee with power to take action on behalf of the City) not seek or accede to any impairment of the City's pension debts in such Chapter 9 bankruptcy proceeding.

71. Section 26(2) of PA 436, itself, provides that the Governor may condition his Chapter 9 authorization on "contingencies" the Emergency Manager must follow in order to proceed under Chapter 9.

72. As such, the Governor may authorize the Emergency Manager to proceed under Chapter 9, but only on the condition that the City's pension debts not be impaired in Chapter 9.

73. Because the Governor has consistently proclaimed his support for the Emergency Manager who, in turn, has made clear his intention to have the City's pension debts discharged under Chapter 9, there exists a real and imminent threat that the Governor may issue to the Emergency Manager an unconditional authorization to proceed under Chapter 9.

74. There is an actual controversy between the parties as to the constitutionality and validity of PA 436 and the ability of the Governor to issue to the Emergency Manager the unconditioned authority to proceed under Chapter 9 and seek to impair the City's pension debts.

75. The Retirement Systems have a substantial interest in safeguarding the accrued financial benefits owed by the City; in fact, the Retirement Systems were created precisely for that purpose.

76. The interest of the Retirement Systems, both directly and through their participants, in the accrued financial benefits owed by the City is different from the citizenry at large because the City does not owe accrued financial benefits to the citizenry at large and because the City did not enter into collective bargaining agreements with the citizenry at large.

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77. A present adjudication of this controversy is necessary to guide the future conduct of the parties and preserve their legal rights.

78. The declaratory relief here requested will avoid a multiplicity of actions at law.

79. This Court must therefore advise the Governor of his legal obligations under Michigan law on an expedited basis and by way of a declaratory judgment.

80. If, before the Court is able to grant the declaratory relief requested above, the Governor attempts to grant to the Emergency Manager an unconditional authorization to proceed under Chapter 9, Plaintiffs request that this Court immediately issue an injunction prohibiting the Emergency Manager from acting pursuant to the Governor's purported and unconstitutional Chapter 9 authorization until such time as Plaintiffs' request for declaratory relief has been fully adjudicated.

COUNT II DECLARATORY JUDGMENT

The Emergency Manager May Not Take Any Action Which Would Cause The City's Pension Debts To Be Subject To Impairment In A Chapter 9 Bankruptcy

81. Plaintiffs incorporate paragraphs 1-80 of this Complaint with the same force and effect as if fully set forth herein.

82. The Emergency Manager must uphold and abide by the Michigan Constitution and may not take any action that violates same.

83. The Emergency Manager may not do indirectly what he is forbidden from doing directly.

84. Article I, section 10 of the Michigan Constitution demands that "[n]o . . . law impairing the obligation of contract shall be enacted."

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85. The Retirement Systems and their participants' right to receive accrued financial benefits is contractually provided for by numerous collective bargaining agreements entered into with the City.

86. Article IX, section 24 of the Michigan Constitution demands that "the accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby."

87. If the Emergency Manager proceeds under Chapter 9 and has the City's pension debts impaired in Chapter 9, such impairment of the City's pension debts in Chapter 9 will diminish and impair the accrued financial benefits of the Retirement Systems and their participants in violation of Article IX, section 24 of the Michigan Constitution.

88. Any such impairment of the City's pension debts in Chapter 9 will also impair the City's obligation under the collective bargaining agreements in violation of Article I, section 10 of the Michigan Constitution.

89. While section 18 and 26 of PA 436 grant to the Governor the authority to authorize the Emergency Manager to proceed under Chapter 9, nothing in PA 436 (or any Michigan law for that matter) expressly authorizes the Emergency Manager to seek to have the City's pension debts impaired under Chapter 9.

90. To the contrary, section 12(1)(m)(ii) of PA 436 states that if appointed sole trustee of the Retirement Systems "[t]he emergency manager shall fully comply with . . . section 24 of article IX of the state constitution of 1963," MCL 141.1552(1)(m)(ii), and section 11(1)(d) of PA 436 requires that any financial and operating plan developed by the Emergency Manager shall

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provide for “[t]he timely deposit of required payments to the pension fund for the local government or in which the local government participates,” MCL 141.1551(1)(d).

91. When enacting PA 436 it must be presumed that the Legislature did not intend to violate Article IX, section 24 or Article I, section 10 of the Michigan Constitution.

92. PA 436 must be construed in such a way as to save it from being unconstitutional.

93. The only way to save PA 436 from being unconstitutional is to read section PA 436 as not authorizing an impairment of pension debts under Chapter 9 and conditioning any Chapter 9 authorization on the protection of accrued pension benefits.

94. Similarly, the only way for the Emergency Manager (and any designee with power to take action on behalf of the City) to avoid violating Article IX, section 24 and Article I, section 10 of the Michigan Constitution is to refrain from seeking or acceding to any impairment of the City’s pension debts in a Chapter 9 bankruptcy proceeding.

95. Because the Emergency Manager has made clear his intention to have the City’s pension debts impaired under Chapter 9, and because the Governor has stated that he would be willing to grant such authority to the Emergency Manager, there exists a real and imminent threat that the Emergency Manager may proceed under Chapter 9 in order to have the City’s pension debts impaired.

96. There is thus an actual controversy between the parties as to the constitutionality and validity of PA 436 and the ability of the Emergency Manager to proceed under Chapter 9 and have discharged the City’s pension debts.

97. The Retirement Systems have a substantial interest in safeguarding the accrued financial benefits owed by the City; in fact, the Retirement systems were created precisely for that purpose.

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98. The interest of the Retirement Systems, both directly and through their participants, in the accrued financial benefits owed by the City is different from the citizenry at large because the City does not owe accrued financial benefits to the citizenry at large and because the City did not enter into collective bargaining agreements with the citizenry at large.

99. A present adjudication of this controversy is necessary to guide the future conduct of the parties and preserve their legal rights.

100. The declaratory relief here requested will avoid a multiplicity of actions at law.

101. This Court must therefore advise the Emergency Manager of his legal obligations under Michigan law on an expedited basis and by way of a declaratory judgment.

102. If, before the Court is able to grant the declaratory relief requested above, the Governor attempts to grant to the Emergency Manager an unconditional authorization to proceed under Chapter 9, Plaintiffs request that this Court immediately issue an injunction prohibiting the Emergency Manager from acting pursuant to the Governor's purported and unconstitutional Chapter 9 authorization until such time as Plaintiffs' request for declaratory relief has been fully adjudicated.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that, on an expedited basis, this Court issue an Order:

(a) declaring that PA 436 does not expressly grant to the Governor the authority to authorize the Emergency Manager to take actions that will result in the impairment of the City of Detroit's pension debts, but rather, when read in conjunction with Article IX, section 24 and Article I, section 10 of the Michigan Constitution, requires that the Governor refrain from authorizing the Emergency Manager to take any action that causes the City's pension debts to be subject to impairment under Chapter 9 or, alternatively, that, if PA 436 implicitly grants to the Governor the authority to authorize the Emergency Manager to take actions that impair the City of Detroit's pension debts, then PA 436 contravenes Article IX, section 24 and Article I, section 10 of the Michigan Constitution and is of no force or effect;

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(b) declaring that PA 436 does not expressly grant to the Emergency Manager the authority to take actions that will result in the impairment of the City of Detroit's pension debts, but rather, when read together with Article IX, section 24 and Article I, section 10 of the Michigan Constitution, precludes the Emergency Manager from taking any action that causes the City's pension debts to be subject to impairment under Chapter 9 or, alternatively, that, if PA 436 implicitly grants to the Emergency Manager the authority to take actions that impair the City of Detroit's pension debts, then PA 436 contravenes Article IX, section 24 and Article I, section 10 of the Michigan Constitution and is of no force or effect;

(c) enjoining the Emergency Manager, if necessary, from acting pursuant to any future unconstitutional Chapter 9 authorization of the Governor; and

(d) granting to Plaintiffs any further such relief this Court deems equitable and just.

Respectfully submitted,

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Date: July 17, 2013

EXHIBIT 6(J)

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
)
_____)

**OBJECTION OF THE DETROIT RETIREMENT SYSTEMS TO
THE ELIGIBILITY OF THE CITY OF DETROIT, MICHIGAN TO BE
A DEBTOR UNDER CHAPTER 9 OF THE BANKRUPTCY CODE**

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The Police and Fire Retirement System of the City of Detroit (“PFRS”) and the General Retirement System of the City of Detroit (“GRS,” and together with PFRS, the “Retirement Systems”) object to and contest the eligibility of the City of Detroit, Michigan (the “City”) to be a debtor under Chapter 9 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”).¹

PRELIMINARY STATEMENT

In order to avail itself of the Bankruptcy Court, the City must first overcome the threshold issue of whether it is “eligible” to be a debtor under Chapter 9 of the Bankruptcy Code. The City cannot meet its burden. Pursuant to section 109(c)(2), a prospective municipal debtor must be “specifically authorized” under *state law* to become a debtor. The state law in this case—as embodied in the state’s highest legal authority, the Michigan Constitution—forbids any act that would diminish or impair accrued public pension benefits. The Governor of the State of Michigan is duty-bound to uphold this provision, and any act in violation of the Michigan Constitution is void.

Prior to and in connection with seeking authorization to file this case, the Emergency Manager made abundantly clear his intention to impair and diminish the accrued financial benefits of each of the City’s pension plans and retirement

¹ This Objection is filed subject to the reservations of rights in the Appearances filed by the undersigned counsel in this case, including the Retirement Systems’ right to argue that this Court lacks subject-matter jurisdiction.

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systems, in violation of the Michigan Constitution. However, since the Governor cannot unilaterally abrogate the constitutional protections of accrued pension benefits, he also has no power to authorize the Emergency Manager to do so pursuant to this Chapter 9 case. Therefore, by authorizing a contingency-free bankruptcy that makes no exception for the accrued pension benefits of the City's past and present employees, the Governor stepped outside the bounds of his authority, rendering his "authorization" an *ultra vires* act that is void *ab initio*. In fact, a Michigan state court has already held *exactly this*, and therefore, the City is collaterally estopped from attempting to assert otherwise in this Court.

Further, because section 109(c)(2) of the Bankruptcy Code explicitly directs this Court to apply state law, any argument by the City that Michigan law is preempted by federal law is simply wrong. Indeed, the Bankruptcy Court for the Middle District of Pennsylvania specifically held that in the context of an eligibility proceeding under section 109(c)(2), the Supremacy Clause and principles of preemption never come into play, because section 109(c)(2) expressly grants *states* the authority to decide this issue. *See In re City of Harrisburg*, 465 B.R. 744 (Bankr. M.D. Pa. 2011). Thus, the Michigan Constitution simply cannot be ignored. Under these circumstances, if section 109(c)(2) was applied in any manner to permit this Chapter 9 filing in derogation of state constitutional law,

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then that application would violate the Tenth Amendment of the U.S. Constitution and would render section 109(c)(2) itself unconstitutional.

Similarly, because section 109(c)(2) is purely a question of state law, *all* facets of Michigan law must be complied with, or the requisite “authorization” is not valid. Thus, in this case, the City’s superficial compliance with PA 436 is not sufficient for the City to meet its burden. Instead, as the Court held in *Harrisburg*, all state law must be reconciled—the authorizing statute itself as well as any other relevant laws—and if a bar exists under state law that prevents the filing, that state law must be honored and the petition must be dismissed.

Lastly, if this Court is not persuaded that the City lacks specific authorization under section 109(c)(2), the City’s petition is also barred by section 109(c)(5), because it cannot demonstrate that it negotiated with its creditors in good faith prepetition or that such negotiations were impracticable. Thus, the City cannot satisfy the eligibility requirements under section 109, and its petition must be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Retirement Systems

The residents of the City established the Retirement Systems through amendments to the City’s Charter of 1918 (effective July 1, 1938, and effective July 1, 1941, respectively) as authorized by Article VII, section 22 of the Michigan

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Constitution and sections 4i, 4j, and 21 of the Home Rule City Act, 1909 PA 267 (as amended), M.C.L. § 117.1 *et seq.* (the “Home Rule City Act”). Among other things, the Retirement Systems: (i) administer retirement, disability, and survivor benefits to eligible uniformed and non-uniformed City employees and their beneficiaries (*i.e.*, the participants); (ii) ensure that the City actually honors its collective bargaining agreements by tendering to the Retirement Systems the City’s annual and obligatory pension contributions; and (iii) protect the vested pension benefits (*i.e.*, “accrued financial benefits”) of the Retirement Systems and their participants. There are more than 32,000 active and retired employees of the City, who are participants in the Retirement Systems and whose “accrued financial benefits” the Retirement Systems must protect.

II. The Michigan Constitution

To ensure protection of public pension benefits, the Michigan Constitution states: “The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.” MICH. CONST., art. IX, § 24.

Unlike private employees, public employees—such as the City’s past and present employees—are not protected by the federal Employee Retirement Income Security Act (“ERISA”) nor by the federal Pension Benefit Guaranty Corporation (“PBGC”). *See* 29 U.S.C. § 1321(b)(2) (“This section does not apply to any

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plan . . . established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing . . .”).² ***For the City’s retirees, there is no federal “insurance program,” and their only pension “guarantee” is in the Michigan Constitution.***

Furthermore, many of the retirees are not covered by Social Security. When the Social Security Act (the “SSA”) was first adopted in 1935, it did not extend coverage to state and local government workers. *See, e.g., Bowen v. Public Agencies opposed to Soc. Sec. Entrapment*, 477 U.S. 41, 45 (1986). In 1950, Congress amended the SSA to allow states to elect coverage for certain state and local employees. *Id.* at 45. A year later, in 1951, Michigan elected to extend federal SSA benefits to state and local employees. *See* M.C.L. § 38.851. However, states can elect to extend SSA benefits to only specific “coverage groups” of workers, so police and firefighters are not automatically covered. *Bowen*, 477 U.S. at 45; *see also* 20 C.F.R. § 404.1206(a)(8), 20 C.F.R. § 404.1212.

² Congress enacted ERISA in 1974 to provide comprehensive regulation for private pension plans.” *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 214 (1986) (emphasis added). ERISA was designed “to ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits . . . Congress wanted to guarantee that if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he will actually receive it.” *Id.* (citations and quotations omitted). To achieve this goal of protecting “anticipated retirement benefits,” Congress created the PBGC, a wholly owned Government corporation, which functions as “an insurance program” for participants in pension plans. *Id.*

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As a result, a significant number of the City's retirees (in particular, the police and firefighters) have no social security benefits to fall back on, because these City employees were never added as a "covered group" and, therefore, have not accumulated SSA benefits.

III. The Municipal Code of the City of Detroit

Article 11, section 11-101 of the Municipal Code of the City of Detroit provides:

1. The City shall provide, by ordinance, for the establishment and maintenance of retirement plan coverage for city employees.
2. Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and that funding shall not be used for financing unfunded accrued liabilities.
3. The accrued financial benefits of active and retired city employees, being contractual obligations of the city, shall in no event be diminished or impaired.

IV. The Governor

On November 2, 2010, the people of the State of Michigan elected Richard D. Snyder to serve as their Governor (the "Governor"). On December 30, 2010 (as mandated by Article XI, section 1 of the Michigan Constitution and section 64 of the Michigan Election Law, 1954 P.A. 116, M.C.L. §168.1 *et seq.*), the Governor swore the following oath, which was later filed with the Michigan Secretary of

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State: *“I do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will faithfully discharge the duties of the office of Governor according to the best of my ability.”*

V. The Emergency Manager and the Restructuring Proposal

On March 14, 2013, Kevyn D. Orr was appointed as the emergency financial manager of the City pursuant to Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, M.C.L. §141.1201, *et seq.* On March 28, 2013, upon the effectiveness of Public Act 436, the Local Financial Stability and Choice Act, M.C.L. §141.1541, *et seq.* (“PA 436”), Mr. Orr became, and continues to act as, the emergency manager with respect to the City (the “Emergency Manager”).

On March 14, 2013, as mandated by Article XI, section 1 of the Michigan Constitution and section 1 of the Constitutional Oath of Office Act, 1951 PA 22, M.C.L. § 15.151 *et seq.*, (“PA 22”), the Emergency Manager swore the following oath, which was later filed with the Michigan Secretary of State: *“I do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will faithfully discharge the duties of the office of Emergency Financial Manager – City of Detroit according to the best of my ability.”*

In a June 13, 2013 interview with The Detroit Free Press, the Emergency Manager addressed the protection under Article IX, section 24 of the Michigan

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Constitution against the impairment of accrued public pension benefits, expressing his intention to evade this provision of the Michigan Constitution through a federal Chapter 9 bankruptcy proceeding:³

Q: You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?

A: The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law.

Q: Which the 9th Circuit agrees for now.

A: It is what it is—so we said that in a soft way of saying, “Don't make us go into bankruptcy.” **If you think your state-vested pension rights, either as an employee or retiree—that's not going to protect you. If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism, will trump state law** or negotiate. The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy.

On June 14, 2013, the Emergency Manager issued his Proposal for Creditors (the “Restructuring Proposal”) wherein he took the position that: (i) pension debts are unsecured claims that may be, and must be, impaired in any prospective Chapter 9 bankruptcy proceeding; and (ii) the City's alleged approximate \$3.5

³ See *Q & A with Kevyn Orr: Detroit's Emergency Manager Talks About City's Future*, Detroit Free Press (June 16, 2013), available at <http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis>.

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billion underfunding liability would be placed in a pool of unsecured claims comprising approximately \$11.5 billion in claims, and exchanged for a *pro rata* share of an unsecured note in the face amount of \$2.0 billion. The Restructuring Proposal is attached as Exhibit A to 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”).

VI. The Pre-Petition Lawsuits

On July 3, 2013, four participants of GRS filed two separate lawsuits against the Governor, the State Treasurer, and the State of Michigan in the Ingham County Circuit Court, both seeking: (i) a declaration that PA 436 violates Article IX, section 24 of the Michigan Constitution by purporting to permit the impairment of accrued financial benefits in a Chapter 9 bankruptcy proceeding; and (ii) a temporary restraining order or preliminary injunction precluding the Governor and Treasurer from authorizing a Chapter 9 bankruptcy proceeding. *Flowers, et al. v. Snyder, et al.*, Case No. 13-729-CZ (Hon. Rosemarie Aquilina) (the “Flowers Case”); *Gracie Webster, et al. v. The State of Michigan, et al.*, Case No. 13-734-CZ (Hon. Rosemarie Aquilina) (the “Webster Case,” and together with the *Flowers Case*, the “Companion Cases”).⁴ On July 3, 2013, the Webster plaintiffs filed a motion for declaratory judgment and sought expedited relief. On July 15, 2013,

⁴ The Governor, the State Treasurer, and the State of Michigan are collectively referred to herein as the “Webster Defendants.”

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the Webster Defendants filed a motion for summary disposition seeking, on an expedited basis, adjudication of their request for dismissal. *See* Webster Defendants' Motion for Summary Disposition attached as Exhibit 1.

On July 17, 2013, the Retirement Systems filed a Complaint for Declaratory Relief against the Governor and the Emergency Manager in the Ingham County Circuit Court, Case No. 13-768-CZ (the "Retirement Systems Lawsuit" and, together with the Companion Cases, the "Pre-petition Lawsuits").

VII. The Authorization and Filing of the Chapter 9 Bankruptcy Petition

On July 16, 2013, upon information and belief, the Emergency Manager delivered a letter to the Governor and the State Treasurer recommending, pursuant to section 18(l) of PA 436, that the City be authorized to file a case under Chapter 9 of the Bankruptcy Code (the "Bankruptcy Recommendation"). The Bankruptcy Recommendation is attached as Exhibit J to the Orr Declaration. In the Bankruptcy Recommendation, the Emergency Manager states that "[t]he City's debt and legacy liabilities must be significantly reduced" and that, in recommending a Chapter 9 bankruptcy, "the negotiation of changes to pension and retiree benefits with the City's retiree constituency is impracticable without court intervention." Bankruptcy Recommendation at pp. 2, 8. Based on the foregoing and many other excerpts from the Bankruptcy Recommendation, it is clear that the Emergency Manager contemplated use of the Chapter 9 process to implement his

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Restructuring Proposal, including the impairment and diminishment of “legacy” accrued pension benefits.

On July 18, 2013, the Governor sent a letter to the Emergency Manager and the State Treasurer purporting to grant to the Emergency Manager authorization to place the City into Chapter 9 bankruptcy (the “Governor’s Authorization”). The Governor’s Authorization is attached as Exhibit K to the Orr Declaration. The Governor expressly recognized that section 18(1) of PA 436 authorized him to place “contingencies” on a bankruptcy filing, but he nevertheless declined to do so. *Id.* at p. 4. Citing section 943(b)(4) of the Bankruptcy Code, the Governor concluded: “Federal law already contains the most important contingency—a requirement that the plan be legally executable.” *Id.*

On July 18, 2013 (the “Petition Date”), the City filed its Voluntary Petition under Chapter 9 of the Bankruptcy Code (the “Bankruptcy Petition”) and also filed the City Eligibility Submissions.⁵

⁵ The Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code [DN 10] (the “Statement of Qualifications”), the Orr Declaration, the Declaration of Gaurav Malhortra in Support of Statement of Qualifications [DN 12] (the “Malhortra Declaration”), the Declaration of Charles M. Moore in Support of Statement of Qualifications [DN 13] (the “Moore Declaration”), and the Memorandum in Support of Statement of Qualifications [DN 14] (the “Eligibility Memorandum”) are collectively referred to herein as the “City Eligibility Submissions.”

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VIII. The Declaratory Judgment in *Webster*

On July 19, 2013, the Circuit Court for Ingham County held a hearing on the Webster Plaintiffs' Motion for Declaratory Judgment and on the Webster Defendants' Motion for Summary Disposition. Following the hearing, the court entered its Order of Declaratory Judgment (the "Declaratory Judgment") in the Webster Case, a copy of which is attached as Exhibit 2. The Declaratory Judgment was entered against the Webster Defendants—all non-Debtor entities relative to the City's bankruptcy case. In the Declaratory Judgment, the Ingham County Circuit Court ruled:

On July 16, 2013, City of Detroit Emergency Manager Kevyn Orr submitted a recommendation to Defendant Governor Snyder and Defendant Treasurer Dillon pursuant to Section 18(1) of PA 436 to proceed under Chapter 9, which together with the facts presented in Plaintiffs' filings, reflect that Emergency Manager Orr intended to diminish or impair accrued pension benefits if he were authorized to proceed under Chapter 9. On July 18, 2013, Defendant Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. ***By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair accrued pension benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX Section 24 of the Michigan Constitution.***

Id. (emphasis added).

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The Ingham County Circuit Court further ruled that “PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect.”

*Id.*⁶

IX. The July 24, 2013 Hearings in the Bankruptcy Court

On July 19, 2013, in response to the Pre-Petition Lawsuits, the City filed the Stay Motions.⁷ The Retirement Systems filed an objection [Docket No. 141] to the Stay Motions, arguing (i) that in light of the absence of valid state authorization for the filing of the Bankruptcy Petition (per the Declaratory Judgment), the filing was void, and there could not be any discussion of the application of a non-existent automatic stay, and (ii) other substantive objections.

⁶ The Retirement Systems Lawsuit was subsequently removed and transferred to the United States District Court for the Eastern District of Michigan, Case No. 13-13255, and was assigned to the Honorable Paul D. Borman. On August 7, 2013, Judge Borman issued an Opinion and Order Remanding This Case to State Court for Lack of Jurisdiction/No Case or Controversy [Dist. Ct. Docket No. 7].

⁷ The Motion of Debtor, Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order Confirming the Protections of Sections 362, 365 and 922 of the Bankruptcy Code [Docket No. 53] (the “Stay Confirmation Motion”), and the Motion of Debtor, Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order Extending the Chapter 9 Stay to Certain (A) State Entities, (B) Non-Officer Employees and (C) Agents and Representatives of the Debtor [Docket No. 56] (the “Stay Extension Motion,” and together with the Stay Confirmation Motion, the “Stay Motions”).

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On July 24, 2013, the Court held a hearing on the Stay Motions. Although the Court granted the Stay Motions, it also made clear that:

The Court is making no ruling whatsoever on whether the City of Detroit is eligible to be a debtor in Chapter 9. The Court is making no ruling on whether the state constitution prohibited the emergency manager's appointment or prohibited the emergency—excuse me—prohibited the [G]overnor from authorizing this Chapter 9 filing without excepting from it the constitutionally protected pension rights of its citizens. The Court is not ruling on whether the state court orders that were entered either pre- or post-bankruptcy should be given preclusive effect under principles of *res judicata*, collateral estoppel, Rooker-Feldman, or any other preclusive doctrine. The Court is not ruling on whether any orders entered by the state court after this bankruptcy case was filed violated the automatic stay. The Court is not ruling on whether the City of Detroit can propose a feasible or confirmable plan in light of the state constitution or any other consideration, for that matter.

All of these issues on which the Court is not ruling today are fully preserved. Of course, when and if these issues are raised in an appropriate way, the Court will rule on them in due course with adequate notice and opportunity to be heard.⁸

⁸ As discussed in more detail at Argument section I.B.1, *infra*, this Objection focuses on eligibility issues and not on the issue described by the Court as “whether the City of Detroit can propose a feasible or confirmable plan in light of the state constitution or any other consideration.” As indicated by the Court, this issue, among other issues, is “fully preserved” and shall be raised “in due course.”

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Exhibit 3, 7/24/2013 Hrg. Tr. at p. 84, lines 1-24. On July 25, 2013, the Court entered orders granting the Stay Motions.⁹

Argument

I. The City of Detroit Cannot Satisfy the Eligibility Requirements of Section 109(c)(2) of the Bankruptcy Code, and Its Bankruptcy Case Must Be Dismissed as a Matter of Law.

A. Standard of Review

The City may be a debtor under Chapter 9 of the Bankruptcy Code if and only if it:

- (1) is a municipality;
- (2) is *specifically authorized*, in its capacity as a municipality or by name, to be a debtor under such chapter *by State law*, or by a governmental officer or organization *empowered by State Law* to authorize such entity to be a debtor under such chapter;
- (3) is insolvent;
- (4) desires to effect a plan to adjust such debts; and
- (5) (A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

⁹ See Order Pursuant to Section 105(a) of the Bankruptcy Code Extending the Chapter 9 Stay to Certain (A) State Entities, (B) Non Officer Employees and (C) Agents and Representatives of the Debtor [Docket No. 166] and Order Pursuant to Section 105(a) of the Bankruptcy Code Confirming the Protections of Sections 362, 365 and 922 of the Bankruptcy Code [Docket No. 167].

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(B) has negotiated in good faith with creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

11 U.S.C. § 109(c)(1-5) (emphasis added).

Section 921(c) of the Bankruptcy Code provides that “[a]fter any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of [the Bankruptcy Code].” 11 U.S.C. § 921(c).¹⁰

Courts have ruled that after an objection to the petition, the bankruptcy court must dismiss the case if the petition does not meet the requirements of the Bankruptcy Code, notwithstanding the seemingly permissive language of section 921(c). *See, e.g., In re New York City Off-Track Betting Corporation*, 427 B.R. 256, 264 (Bankr. S.D.N.Y. 2010) (“Courts must dismiss the petitions of debtors filing under chapter 9 who fail to satisfy [the] requirements [of section 109(c)].”), citing *Int’l Ass’n of Firefighters, Local 1186 v. City of Vallejo (In re City of*

¹⁰ While the arguments in this Objection focus on the City’s inability to satisfy the eligibility requirements under sections 109(c)(2) and (5) of the Bankruptcy Code, the same arguments support a dismissal of the City’s petition for lack of good faith under section 921(c).

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Vallejo), 408 B.R. 280, 289 (9th Cir. B.A.P. 2009); *In re Suffolk Regional Off-Track Betting Corp.*, 462 B.R. 397, 421 (Bankr. E.D.N.Y. 2011) (citation omitted) (“Despite the permissive statutory language, courts have construed § 921(c) to require the mandatory dismissal of a petition filed by a debtor who fails to meet the eligibility requirements under §109(c).”).

The burden rests with the debtor to establish by a preponderance of the evidence that the requirements of Bankruptcy Code section 109(c) have been met. *In re City of Stockton*, 475 B.R. 720, 725 (Bankr. E.D. Cal. 2012) (internal citations omitted) (“The burden of proof, at least as to the five § 109(c) elements, is on the municipality as the proponent of voluntary relief. . . . The quantum of proof . . . is the familiar preponderance-of-evidence standard of basic civil litigation.”); *In re City of Harrisburg*, 465 B.R. 744, 752 (Bankr. M.D. Pa. 2011) (citations omitted) (“The burden of establishing eligibility is on the debtor.”); *Suffolk Regional Off-Track Betting Corp.*, 462 B.R. at 414 (citations omitted) (“The debtor bears the burden to establish that the requirements of § 109(c) are satisfied.”). In order to satisfy § 109(c)(2), that “explicit authorization must be written, ‘exact, plain, and direct with well-defined limits so that nothing is left to inference or implication.’” *New York City Off-Track Betting Corporation*, 427 B.R.at 267 (citations omitted).

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The eligibility requirements, with the exception of the section 109(c)(2) requirement, are “federal questions based on, and created by, the federal Bankruptcy Code and subject to a federal rule of decision.” *Stockton*, 475 B.R. at 729. The eligibility determination under section 109(c)(2), however, presents a *question purely of state law*. *Id.*; *In re City of Stockton*, 2013 Bankr. LEXIS 2416, 21 (Bankr. E.D. Cal. June 12, 2013) (“California law governs the question whether the City [of Stockton] is authorized to be a chapter 9 debtor.”). As one bankruptcy court has observed, states “act as gatekeepers to their municipalities’ access to relief under the Bankruptcy Code.” *In re City of Vallejo*, 403 B.R. 72, 76 (Bankr. E.D. Cal. 2009), *aff’d IBEW, Local 2376 v. City of Vallejo (In re City of Vallejo)*, 432 B.R. 262 (E.D. Cal. 2010). Bankruptcy courts exercise jurisdiction carefully when the authority to file bankruptcy under state law is questioned “in light of the interplay between Congress’ bankruptcy power and the limitations on federal power under the Tenth Amendment.” *Harrisburg*, 465 B.R. at 754 (internal citation omitted); *see also Suffolk Regional Off-Track Betting Corp.*, 462 B.R. at 420 (internal citations omitted) (emphasis added) (“Although §109(c) should be construed broadly to give effect to Congress’[s] intent ‘to expand the applicability of chapter IX as much as possible’ . . . the Court may not accomplish this by turning a blind eye to New York law governing the scope of a county’s authority.”).

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B. The Supremacy Clause and Concepts of Preemption Do Not Apply Because Congress Gave States the Authority to Regulate Their Municipalities' Access to Chapter 9 Bankruptcy.

Under the Supremacy Clause, “the Laws of the United States . . . shall be the supreme Law of the Land.” U.S. CONST. art. VI, cl 2. The Tenth Amendment, however, provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” U.S. CONST. amend. X.

Under section 109(c)(2), the relevant federal law *directs* that eligibility turns on proper state authorization under state law. This, in turn, reflects a further federal constitutional norm of critical importance: political subdivisions of a state can only seek bankruptcy relief to the extent authorized by state law. *See Ashton v. Cameron County Water Improvement Dist.*, 298 U.S. 513 (1936); *United States v. Bekins*, 304 U.S. 27 (1938).

In *Ashton*, the Supreme Court struck down as unconstitutional the provisions of Chapter IX of the former Bankruptcy Act, because they authorized political subdivisions of a state to file for federal bankruptcy relief without state authorization. *Ashton*, 298 U.S. at 531-32. Following *Ashton*, Congress amended the Bankruptcy Act to include a mechanism in Chapter X that permitted state entities to file for federal bankruptcy relief if the state authorized them to do so and, critically, required dismissal if the relevant plan was not “authorized by law,”

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meaning “state law.” *Bekins*, 304 U.S. at 49.¹¹ In upholding the new statutory provision under Chapter X, the Court in *Bekins* concluded that the debtor in that case—a California irrigation district—was eligible to file for relief because California statutory law authorized it to do so. Moreover, in remarking on the statute, the Court observed that it was otherwise carefully drawn to preserve the State’s sovereignty and Tenth Amendment concerns because “[t]he bankruptcy power is exercised . . . only in a case where the action of the [debtor] in carrying out a plan of composition approved by the bankruptcy court is authorized by state law.” *Id.* at 51.¹²

Accordingly, the current Bankruptcy Code *expressly* reserves the question of eligibility to state law. *See* 11 U.S.C. § 109(c)(2) (requiring a municipal debtor to be “specifically authorized . . . to be a debtor . . . *by State law*, or by a governmental officer or organization empowered *by State law* to authorize such entity to be a debtor”) (emphasis added). While the majority of Bankruptcy Code provisions are governed by federal law, this particular Code provision explicitly

¹¹ Following *Ashton*, Congress amended the Bankruptcy Act to include Chapter X, which was later redesignated as Chapter IX pursuant to the Chandler Act in 1938.

¹² To address Tenth Amendment concerns, Congress has amended the municipal bankruptcy statute several times, gradually requiring more rigorous state-law authorization. *See, e.g.*, H. Rep. 95-595, 95th Cong., 1st Sess. 319 (1977) (recognizing that *Ashton* and *Bekins* require state authorization of municipal bankruptcy to protect state sovereignty); *see also Harrisburg*, 465 B.R. at 753-55.

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demands that state law—not federal law—be applied. Indeed, as one court has observed:

Section 109(c)(2) presents a question of pure state law All other eligibility questions under § 109(c)—§ 109(c)(1) municipality; § 109(c)(3) insolvent; § 109(c)(4) desire to effect plan of adjustment; and § 109(c)(5) creditor negotiation—and the good faith question under § 921(c) **are federal questions based on, and created by, the federal Bankruptcy Code and subject to a federal rule of decision.**

Stockton, 475 B.R. at 729 (emphasis added).

Where the Code expressly reserves authority to the states (such as it does with exemptions, for example),¹³ the Sixth Circuit Court of Appeals has held that the Supremacy Clause and preemption principles do not apply:

It is fundamental that the state and federal legislatures share concurrent authority to promulgate bankruptcy laws, . . . and that the Supremacy Clause and the doctrine of preemption will serve to invalidate state promulgations to the extent that they are inconsistent with or contrary to federal law. ***It is equally axiomatic, however, that Congress has not preempted an area wherein it has legislated when it expressly and concurrently authorizes the state legislatures to disregard or opt-out of such federal legislative area. In such instance, rather than preempting the area, Congress expressly authorizes the***

¹³ With respect to exemptions, “Bankruptcy Code § 522(b)(1) gives the debtor a choice between exempting the property specified in Bankruptcy Code § 522(d) or exempting the property protected by federal non-bankruptcy law or state or local law ‘unless the State law that is applicable to the debtor . . . specifically does not so authorize.’ . . . Thus, Congress vested states with the authority to deny their citizens the ability to use the federal exemption scheme[.]” *Storer v. French (In re Storer)*, 58 F.2d 1125, 1127 (6th Cir. 1995) (citation omitted).

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states to “preempt” the federal legislation. Congress did not intend to preempt bankruptcy exemptions through the promulgation of 11 U.S.C. § 522(d) since it vested in the states the ultimate authority to determine their own bankruptcy exemptions.

Rhodes v. Stewart, 705 F.2d 159, 163 (6th Cir. 1983), *cert. denied*, 464 U.S. 983 (1983) (internal citations omitted) (emphasis added); *see also Storer*, 58 F.3d at 1127. By the same reasoning, the Supremacy Clause and preemption principles do not apply to consideration of whether a Chapter 9 debtor has met the state law eligibility requirement under Bankruptcy Code section 109(c)(2).

The debtor in *Harrisburg* unsuccessfully relied on the Supremacy Clause to argue that any infirmity in its authorization to file a Chapter 9 petition should be ignored. In *Harrisburg*, the Harrisburg City Council contended that Act 26 (a statute that precluded third-class cities, including Harrisburg, from filing a bankruptcy petition), could not prevent Harrisburg’s bankruptcy filing because it violated the Supremacy Clause of the U.S. Constitution. *Harrisburg*, 465 B.R. at 755. The *Harrisburg* court rejected that argument:

[The *Supremacy Clause* does not invalidate] the actions taken by the [state of Pennsylvania] to regulate the use of the bankruptcy process by distressed third class cities. ***The citation to the Supremacy Clause does not support City Council’s argument because, as noted above, in regard to admission into the bankruptcy process, § 109(c)(2) recognizes that a state serves as a municipality’s gatekeeper into Chapter 9. It is only after a state specifically authorizes a municipality to file a bankruptcy petition and an order for relief is entered***

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under 11 U.S.C. § 921(d) that the Supremacy Clause would become relevant to matters before this Court.

Id. (emphasis added).¹⁴ The rationale for this was succinctly explained by the court in *Harrisburg*:

The allegation that the [city of Harrisburg] has sought bankruptcy relief in defiance of this [state] statutory bar ***raises important concerns of federalism and respect for the power of states to manage their internal affairs.*** Primary among these concerns is the Tenth Amendment to the U.S. Constitution, which provides that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.” U.S. Const. amend. X. ***Although Congress has the sole power to establish “uniform Laws on the subject of Bankruptcies throughout the United States” (U.S. Const. art. I, § 8), where federal bankruptcy law intersects with the rights of states to regulate the activities of political subdivisions created by the state, principles of dual sovereignty as defined by the Tenth Amendment must be considered. Congress has made bankruptcy available to municipalities, but states retain their concomitant rights to limit access by their political subdivisions to bankruptcy relief.***

Harrisburg, 465 B.R. at 753. Accordingly, any notion that the Michigan Constitution is preempted in this matter is incorrect.

¹⁴ The court also noted that: “Even after an order for relief is granted, states maintain significant control over their political subdivisions. This position is set forth bluntly in § 903 of the Bankruptcy Code, which states that Chapter 9 does not ‘limit or impair the power of a State to control, by legislation or otherwise, a municipality . . . in the exercise of the political or governmental powers of such municipality’” *Harrisburg*, 465 B.R. at 755 (citing 11 U.S.C. § 903).

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- 1. The threshold issues of eligibility and access to Chapter 9 are the sole issues before the Court presently.**

The Retirement Systems submit that it is important to clarify what is and is not before the Court at this juncture in the case. As discussed above, what is before the Court is the threshold or gating issue of whether the City is authorized to commence this case under Bankruptcy Code section 109(c)(2). This issue turns on state law. As discussed *infra*, the Court should construe section 109(c)(2) as requiring compliance with state law in order to avoid rendering Chapter 9 unconstitutional. Other elements of eligibility or lack of good faith are or may be before the Court at this time as well.

What is not before the Court at this juncture (without limitation and reserving all rights) is the issue of whether otherwise-applicable state constitutional law can be abrogated in a Chapter 9 proceeding (specifically, whether accrued public pension benefits protected under state constitutional law can be diminished or impaired by a debtor in a Chapter 9 proceeding, pursuant to a plan of adjustment or otherwise)—even assuming that the debtor has satisfied the eligibility requirements of the Bankruptcy Code. This issue includes but is not limited to the question of whether, under Bankruptcy Code sections 943(b)(4) and/or 903, a debtor may confirm a plan that violates state law by impairing accrued pension benefits.

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This separation of issues follows not only as a matter of logic but also in light of: (a) the Court's indication that only issues of "eligibility" would be addressed at this time in connection with the scheduled October 23, 2013 hearing; and (b) the doctrine of constitutional avoidance, as recently relied upon by the United States Court of Appeals for the Sixth Circuit in *City of Pontiac Retired Employees Ass'n v. Schimmel*, 2013 U.S. App. LEXIS 16519 (6th Cir. August 9, 2013) (recommended for full-text publication).¹⁵ The Sixth Circuit Court of Appeals stated in that case:

Under the doctrine of constitutional avoidance, we avoid constitutional determinations when a case can be resolved on other grounds. *See Ashwander v. TVA*, 297 U.S. 288, 347, 56 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis, J., concurring) ("It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.") (internal citation and quotation marks omitted); *see also Muller Optical Co. v. EEOC*, 743 F.2d 380, 386 (6th Cir. 1984) ("The duty to avoid decisions of constitutional questions . . . [is] based upon the general policy of judicial restraint."). When a case can be resolved on state constitutional grounds, we should decide the state issue so as to avoid rendering a decision under the Federal Constitution. *See Siler v. Louisville & Nashville R.R. Co.*, 213 U.S. 175, 191, 29 S. Ct. 451, 53 L. Ed. 753 (1909) ("This court has the same right, and can, if it deem it proper, decide the local questions only, and omit to decide the federal questions, or decide them adversely to the party claiming their benefit.") (citations omitted).

¹⁵ All unpublished cases cited herein are attached collectively as Exhibit 7.

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City of Pontiac Retired Employees Ass'n, 2013 U.S. App. LEXIS at 8-9. By the same reasoning, if the Court determines that the City is not eligible for bankruptcy relief as a matter of state law, it need not consider the federal constitutional questions involved with respect to sections 943(b)(4) and/or 903. Under the canon of constitutional avoidance, the Court should first address, in the context of construing and applying section 109(c)(2), the state law issue of the validity and state constitutionality of the Governor's Authorization, to possibly avoid having to address potential federal constitutional issues regarding (without limitation and reserving all rights) the Supremacy Clause, the Bankruptcy Clause, and the Tenth Amendment to the U.S. Constitution that may be implicated in determining the ability of a Chapter 9 debtor to abrogate state constitutional law via a plan of adjustment or otherwise.

C. The Court Must Construe Section 109(c)(2) To Require Compliance with State Law.

Congress included section 109(c)(2) as part of Chapter 9 for a particular and important purpose—to preserve the role of state law in determining the eligibility of a state municipality to file for bankruptcy relief. Moreover, Congress did so for compelling constitutional reasons in the wake of *Ashton* and *Bekins*. As the Supreme Court has directed, in construing a federal statutory provision such as section 109(c)(2), federal courts should do so not only to effectuate its object and purpose but also to avoid questions about its constitutionality. *See United States v.*

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Security Indus. Bank, 459 U.S. 70, 78 (1982) (reciting the “cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the constitutional question may be avoided”) (citations and internal marks omitted).

In this case, construing section 109(c)(2) to permit the City to commence a Chapter 9 case notwithstanding that the relevant state official’s authorization violated state law would do more than simply cast doubt on the constitutionality of section 109(c)(2); it would render it unconstitutional. The deference owed under the Tenth Amendment and the Supreme Court’s decisions in *Ashton* and *Bekins* is not to state officials, but to state law. In this case, it is clear that Michigan law does not permit the Governor to authorize the City’s bankruptcy filing under the circumstances present here—as already determined by an appropriate state court. In order to fully respect state law as Congress has directed, and likewise avoid any constitutional question regarding section 109(c)(2), this Court should conclude that the City is not eligible for bankruptcy relief.

D. The City is Not Specifically Authorized to be a Chapter 9 Debtor Under State Law.

The Bankruptcy Code is explicit as to who may be a debtor under Chapter 9. Pursuant to Bankruptcy Code section 109(c)(2), the only entity that may be a Chapter 9 debtor is one that is *specifically authorized by State law* or by a governmental officer or organization *empowered by State law* to authorize such

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entity to be a debtor under Chapter 9. 11 U.S.C. § 109(c)(2). In its Eligibility Memorandum, the City argues that it satisfied section 109(c)(2) because (a) PA 436 authorized the Emergency Manager to recommend that the City commence a Chapter 9 bankruptcy proceeding, provided certain statutory requirements were satisfied; (b) the statutory requirements of PA 436 have been satisfied; (c) the Governor provided written authorization for the City to commence a Chapter 9 bankruptcy proceeding; and (d) upon receipt of the Governor's Authorization, PA 436 authorized the Emergency Manager to commence this case. *See* Eligibility Memorandum at pp. 9-11. This kind of technical argument, however, is insufficient to meet the City's burden. What matters is the substance of the City's authority, not its superficial form. The United States Bankruptcy Court for the Middle District of Pennsylvania rejected a similar argument in the *Harrisburg* case, and it properly fails as a matter of law.

In *Harrisburg, supra*, the city council adopted a resolution authorizing the city to file a Chapter 9 bankruptcy case. The authorizing statute at issue, Pennsylvania's Municipal Financial Recovery Act ("Act 47"), provided authority for a city to file bankruptcy if any one of five statutory conditions were satisfied. *Harrisburg*, 465 B.R. at 751. A second act, Act 26, restricted the ability of a financially distressed city of the third class to file Chapter 9 bankruptcy and prohibited government agencies from authorizing a distressed third-class city from

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becoming a debtor under Chapter 9 of the Bankruptcy Code. *Id.* A third act, the Optional Third Class City Charter Law (the “Charter Law”), authorized the mayor to appoint a solicitor with the advice and consent of the city council. *Id.* at 764-65. Against this legislative backdrop, the *Harrisburg* court held that the city council did not have the authority to commence a bankruptcy case on behalf of the city of Harrisburg and it was not authorized under state law to be a debtor under the Bankruptcy Code. *Id.* at 765. The court thus dismissed the debtor’s bankruptcy case. *Id.*

The *Harrisburg* court first concluded that, on its face, the city had complied with Act 47 and “would have been specifically authorized to file a petition under Chapter 9,” absent the filing bar imposed by Act 26. *Harrisburg*, 465 B.R. at 754-55. Turning to the question of whether Act 26 eliminated the city’s ability to file for bankruptcy, the court considered and disregarded challenges to the constitutionality of Act 26 based upon federal and state law. *Id.* at 755-63. The Court concluded that Act 26 eliminated the city of Harrisburg’s ability to file bankruptcy, reasoning:

Act 47 is intended to address the needs of financially distressed cities. It's [sic] provisions, however, ***are not intended to replace the entire scheme of governance set forth in the Charter Law and the Third Class City Code. Statutory provisions should be construed with reference to similar enactments and not simply read in a vacuum.*** . . . When § 261(b) of Act 47 is read in *pari materia* with the Third Class City Code and the Charter Law, **§ 261(b)**

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provides a limitation on the otherwise unfettered right of the Mayor to commence legal action on behalf of the City. Section 261(b) does not supplant other law allocating power between the executive and legislative branches of municipal government, it simply clarifies that a mayor in a city operating under Plan A may not cause a petition to be filed unless a majority of the council also agrees that this is an appropriate course of action. Accordingly, City Council's usurpation of the executive power of the Mayor by commencing litigation of behalf of the City of Harrisburg violated the Charter Law and the Third Class City Code.

Harrisburg, 465 B.R. at 764-65 (internal citation omitted) (emphasis added).

Based upon state law and its analysis of the relationship between Act 47, Act 26, and the Charter Law, the *Harrisburg* court determined that the city council: (i) usurped the executive power of the mayor by commencing the bankruptcy; (ii) violated the Charter Law and the Third Class City Code; and (iii) did not have the authority to commence a bankruptcy case on behalf of the city. *Id.* As a result, the court concluded that the city was not specifically authorized to be a debtor as required by section 109(c)(2) and dismissed the bankruptcy case. *Id.*

Consistent with *Harrisburg*, Michigan's authorizing statute (PA 436) and the Governor's Authorization granted thereunder, must be construed with reference to the other laws of the state—specifically, Article IX, section 24 of the Michigan Constitution. The City is not eligible to be a Chapter 9 debtor simply because it “technically” received authorization from the Governor under PA 436 to file this case. *Harrisburg* requires a more rigorous review of the relevant state laws and

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directs that even if the City technically complied with PA 436, the Governor is not empowered to authorize a bankruptcy if the filing simultaneously offends some other state law. Instead, the City must demonstrate that it received authorization from the Governor to be a Chapter 9 debtor, and that this authorization itself was valid under all of the laws of the State of Michigan (*i.e.*, both PA 436 and the Michigan Constitution). When PA 436 is read in conjunction with Article IX, section 24 of the Michigan Constitution, it becomes readily apparent that, although the City obtained a *superficial* authorization to commence this case from the Governor, that authorization is **invalid**. The City cannot satisfy section 109(c)(2), and the City is ineligible to be a debtor under Chapter 9 of the Bankruptcy Code.

1. **The Governor and the Emergency Manager must uphold the Michigan Constitution.**

The Michigan Constitution demands that “the governor shall take care that the laws be faithfully executed.” MICH. CONST. art. V, § 8.¹⁶ The single most important law for the Governor to uphold is the Michigan Constitution. “[T]he

¹⁶ The Michigan Constitution requires that all officers—legislative, executive and judicial—in the state of Michigan must take an oath to support the Constitution of the United States and the Constitution of the state of Michigan. MICH. CONST. 1963, art. XI, § 1. Michigan law also requires that “[e]very person elected to the office of governor . . . before entering upon the duties of his office, shall take and subscribe to the oath as provided in section 1 of article 11 of the state constitution and deposit same with the secretary of state.” M.C.L. § 168.64. In addition: “All persons now employed, or who may be employed by the state of Michigan . . . shall . . . take and subscribe to the oath or affirmation required of members of the legislature and other public officers by [MICH. CONST., art. XI, § 1].” M.C.L. § 15.151.

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plain provisions of the Constitution are paramount.” *Twp. of Dearborn v. Dearborn Twp. Clerk*, 55 N.W.2d 201, 207 (1952). The proposition that the “Michigan Constitution is a limitation on the plenary power of government” is one “so basic as to require no citation.” *Smith v. Michigan*, 410 N.W.2d 749 (Mich. 1987) (J. Boyle, concurring in part and dissenting in part). It “is the fundamental law to which all other laws must conform.” *Id.*

“Public officers have and can exercise only such powers as are conferred on them by law.” *Sittler v. Bd. of Control*, 53 N.W.2d 681, 684 (Mich. 1952) (citations omitted). It is thus clear that the Michigan Constitution provides clear limitations on actions that may be taken by each branch of government, and no branch has the authority to eradicate constitutional guarantees. *See Musselman v. Governor of Mich.*, 533 N.W.2d 237, 244-45 (Mich. 1995); *Oshtemo Charter Twp. v. Kalamazoo County Rd. Comm'n*, 2013 Mich. App. LEXIS 1163, *19 (Mich. Ct. App. June 25, 2013) (“The Legislature's authority does not extend to eradicating constitutional guarantees.”); *People ex rel Metevier v. Therrien*, 45 N.W. 78, 80 (Mich. 1890) (“The Governor cannot, by any act of his own, enlarge the power granted him by the Legislature . . . [and] cannot foreclose the right of the courts to preserve . . . constitutional rights.”). Accordingly, the Governor can only exercise the power granted to him by law, and he is unable to act in violation of the State Constitution.

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2. **Article IX, section 24 of the Michigan Constitution prohibits the Governor and the Emergency Manager from taking any action that causes accrued public pension benefits to be diminished or impaired.**

The Michigan Constitution prohibits the State of Michigan and its political subdivisions from diminishing or impairing the “accrued financial benefits” of their pension plans and retirement systems. MICH. CONST. art. IX, § 24. The Michigan Supreme Court has defined the term “accrued financial benefit” as “the right to receive certain pension payments upon retirement, based on service performed.” *Kosa v. State Treasurer*, 292 N.W.2d 452, 459-60 (Mich. 1980) (citation omitted).¹⁷ Action that diminishes or impairs “accrued financial benefits” is in violation of a “solemn” obligation “between public employees and the Legislature guaranteeing that pension benefit payments cannot be constitutionally impaired.” *Id.* at 465.

¹⁷ See also *Tinsman v. City of Southfield*, 1999 Mich. App. LEXIS 2112, at *10 (Mich. Ct. App. Dec. 3, 1999) (unpublished) (“By changing the formula and applying it to all current employees, the net effect was to diminish or impair plaintiffs’ accrued financial benefits in the pension plan, contrary to Mich. Const. 1963, art. 9, § 24.”); *Seitz v. Probate Judges Retirement System*, 474 N.W.2d 125, 130 (Mich. App. 1991) (“[T]he state may not reduce the pension benefit of any state employee or official, or local employee or official, once a pension right has been granted”); *Murphy v. Wayne County Employees Retirement Bd. of Trustees*, 192 N.W.2d 568 (Mich. App. 1971) (affirming grant of summary judgment in favor of plaintiff on his request for specific relief in the form of reinstatement of his retirement benefits which were unconstitutionally impaired and diminished by legislative act).

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As established above, the Governor is required to uphold the Michigan Constitution and, therefore, is duty-bound to prevent the City from diminishing or impairing the “accrued financial benefits” of its pension plan and retirement systems. Moreover, financial distress is not grounds for the Legislature or the Executive branch to abrogate the Michigan Constitution. Indeed, the Michigan Supreme Court has specifically ruled that the Governor cannot violate Article IX, section 24—even if only done so “temporarily” or in response to a financial crisis. In *Musselman, supra*, a former Michigan governor attempted to reduce expenditures by decreasing appropriations to the schools’ retirement system by \$54 million. The plaintiffs, a group of current and retired public school employees, argued that the governor’s actions violated the second sentence of Article IX, section 24, which requires “financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.” The governor argued that his power under Michigan Constitution article 5, section 20 (which permits the governor to “reduce expenditures”) authorized him to do so. *Musselman*, 533 N.W.2d at 239-40.

The court disagreed with the governor and started by acknowledging the unique status of pension benefits: “pension obligations differ from nearly every other type of government spending insofar as they simply cannot be reduced or cut

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. . . Michigan governmental units do not have the option . . . of not paying retirement benefits.” *Musselman*, 533 N.W.2d at 243. The Court ruled that although the Michigan Constitution expressly allowed the Governor to reduce expenditures and that “education has not been immunized from emergency reductions,” the governor still could not reduce expenditures if it ran afoul of another constitutional provision (namely, Article IX, section 24). *Id.* at 244. Further, “[Article 5, section 20] certainly would not authorize the government to refuse to satisfy its contractual obligations, such as pension payments to retirees,” even “in an emergency.” *Id.* The court also rejected the governor’s argument that the violation was merely “temporary,” holding that Governor lacks “authority to violate other constitutional provisions even temporarily.” *Id.* at 245. Lastly, the court ruled that the Legislature was likewise barred from adopting the governor’s unconstitutional strategy: “Insofar as it authorizes the Governor to select and implement spending cuts in an emergency, it simply affords him legislative power. But the Legislature does not have authority to fail to prefund a pension fund, even temporarily.”¹⁸ *Id.*

¹⁸ On rehearing, the majority wrote that they would “affirm all portions of this Court’s April 25, 1995, majority opinion [in *Musselman I*].” *Musselman v. Governor*, 545 N.W.2d 346, 346 (1996). Justice Brickley, who had previously been in the majority, dissented on the grounds that it was not “necessary to interpret the meaning of ‘financial benefits’ as the term applies to Const 1963, art 9, § 24,” so he would no longer hold that health care benefits constitute “financial benefits” within the meaning of Article IX, section 24. *Id.* at 349. This does not change the validity of *Musselman I* as it relates to the Retirement Systems’ analysis, however, because it is not being cited for the proposition that “accrued financial benefits” includes health care benefits.

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Thus, the Governor, the Legislature, and the Emergency Manager must all abide by the Michigan Constitution and cannot take any act that would impair or diminish accrued financial benefits—even temporarily—regardless of any financial circumstances they believe to be exigent.

3. The Governor's Authorization of the City's bankruptcy without imposing conditions prohibiting the diminishment or impairment of accrued public pension benefits violated the Michigan Constitution and is void *ab initio*.

Sections 18 and 26 of PA 436 permit the Governor to authorize the Emergency Manager to initiate a Chapter 9 bankruptcy proceeding. M.C.L. § 141.1558(1); M.C.L. § 141.1566(1). If the Governor does grant such an authorization, those same provisions of PA 436 permit the Emergency Manager to file a petition under Chapter 9. *Id.*

However, PA 436 does not enable the Governor to authorize a Chapter 9 filing if such filing would violate the Michigan Constitution—indeed, the statute could not permit this, as the Governor and the Legislature do not have the authority to simply legislate amendments to the Michigan Constitution.¹⁹ In addition, nothing in PA 436 expressly authorizes the Governor or Emergency Manager to seek to have municipal pension debts or the accrued financial benefits of municipal

¹⁹ The Michigan Constitution can be amended three ways, none of which have occurred here—(i) by legislative proposal and a vote of electors, (ii) by petition and a vote of electors, or (iii) by a general revision at a constitutional convention. See MICH. CONST. art. XII, § 1-3.

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pension plans impaired under Chapter 9. To the contrary, section 12(1)(m)(ii) of PA 436 states that if appointed sole trustee of either of the Retirement Systems, “[t]he emergency manager shall fully comply with . . . section 24 of article IX of the state constitution of 1963.” M.C.L. § 141.1552(1)(m)(ii) (emphasis added).²⁰

Further, sections 18(1) and 26(2) of PA 436 state that “[t]he governor may place *contingencies* on a local government in order to proceed under chapter 9.” M.C.L. § 141.1558(1); M.C.L. § 141.1566(2) (emphasis added). By authorizing the Governor to place conditions on a Chapter 9 authorization, it can be presumed that the Legislature intended for Chapter 9 authorizations, in applicable situations, to be contingent upon, among other things, the Emergency Manager not being permitted to seek or accede to the impairment of accrued pension benefits, in order to uphold the State Constitution.

The Governor’s Authorization acknowledges that section 18(1) of PA 436 permitted him to place “contingencies” on a bankruptcy filing, but the Governor nevertheless declined to do so. Exhibit K to Orr Declaration, p. 4. In so declining, the Governor violated the Michigan Constitution. Citing section 943(b)(4) of the Bankruptcy Code, the Governor concluded: “Federal law already contains the

²⁰ Section 11(1)(d) of PA 436 also requires that any financial and operating plan developed by the Emergency Manager shall provide for “[t]he timely deposit of required payments to the pension fund for the local government or in which the local government participates.” M.C.L. § 141.1551(1)(d).

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most important contingency - - a requirement that the plan be legally executable.”

Id. This reasoning, however, is faulty. It confuses and conflates two different issues. The first issue arises under section 109(c)(2) regarding whether the Governor even has the authority under applicable state law to authorize the Chapter 9 filing. As discussed *supra*, this is a separate and threshold issue that must be addressed before one considers the interplay of federal and state constitutional issues implicated by an analysis of section 943(b)(4). An analysis of that first, threshold issue leads to the conclusion that a contingency for preserving the state constitutional protection of accrued pension benefits is a mandatory contingency upon the authorization of the City’s filing of its Chapter 9 Bankruptcy Petition.

Michigan courts have long held that a Governor’s actions outside the confines of the Michigan Constitution are “null and void.” In the early Michigan Supreme Court case of *Dullam v. Willson*, the court found unconstitutional the Governor’s action in attempting to remove a state school trustee from his post without a hearing. *Dullam v. Willson*, 19 N.W. 112 (Mich. 1884). In *Dullam*, Justice Cooley noted:

Courts, in determining whether rights exist, or whether vested rights have ceased to exist, do not act necessarily or usually as appellate tribunals, whose judgments operate on the tribunals or persons whose invasions of right are complained of. They may or may not do so.
But in a constitutional government the action of all

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persons, official or private, which is in violation of constitutional rights, is simply null and void, and usually needs no reversal. And the action of any department of government, whether legislative, executive or judicial, beyond its jurisdiction, or against the constitutional limitations of its authority, is in law the same as if there had been no action, and cannot be recognized as having legal effect. . . . No executive authority exists outside of its legal boundaries.

Id. at 120-21 (Cooley, J., concurring) (emphasis added).

Given this legal framework, it is clear that actions taken by the Governor that are outside of his constitutional power are *ultra vires*. “The term ‘ultra vires’ means outside the scope of authority.” *McCartney v. Attorney General*, 587 N.W.2d 824, 826 (Mich. App. 1998) (citation omitted). “Thus, if the Governor acts outside the scope of his authority, his actions are considered *ultra vires*.” *Id.*

Ultra vires acts are void *ab initio*. See, e.g., *McKane v. City of Lansing*, 1998 U.S. App. LEXIS 649, *12-15 (6th Cir. Jan. 14, 1998) (affirming district court determination that city council’s adoption of an early retirement plan was void *ab initio* when adopted via resolution, not ordinance); *Utica State Sav. Bank v. Oak Park*, 273 N.W. 271, 274 (Mich. 1937) (“Surely no one, in view of the constitutional, statutory and charter provisions noted herein, could successfully assert that the legislature had the power to make a contract of this character in behalf of the defendant village. It follows that notwithstanding the remedial act of

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the legislature, the contract under which plaintiffs assert their rights was void in its inception and still remains so.”).

If an act is void *ab initio*, it is as though the act never occurred in the first place. See *Kim v. JPMorgan Chase Bank, N.A.*, 825 N.W.2d 329, 330 (Mich. 2012) (citing Black’s Law Dictionary (9th ed.) and defining void *ab initio* as “[n]ull from the beginning, as from the first moment. . .”).

In the municipal bankruptcy context, if the government official or entity authorizing the bankruptcy is acting *ultra vires*, then the bankruptcy filing is *not* “specifically authorized” and the petition must be dismissed. See *Suffolk Off-Track Betting Corp.*, 462 B.R. at 420-21 (“The County Resolution exceeded Suffolk County’s authority and is therefore unconstitutional and void . . . Accordingly, Suffolk OTB has not complied with § 109(c)(2), and is therefore ineligible to be a debtor under chapter 9.”) (internal citations omitted).

In this case, the Governor exceeded his authority under the Michigan Constitution by authorizing the Emergency Manager to file a Chapter 9 petition without conditioning that authorization upon the preservation of the State constitutional protection of accrued pension benefits, and his action was therefore *ultra vires* and void *ab initio*. Because the Governor’s action was void *ab initio*, the Emergency Manager had no authority to file a Chapter 9 petition under PA 436, and his actions in doing so were similarly void *ab initio*.

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4. The Governor cannot abrogate provisions of the Michigan Constitution, directly or indirectly.

The Governor is bound to uphold the State Constitution, including the provisions of Article IX, section 24. He does not have the authority to unilaterally abrogate provisions of the State Constitution. Similarly, he cannot delegate authority that he does not have to a third party (*i.e.*, the Emergency Manager) to take actions that would result in an abrogation of constitutional provisions. In essence, the Governor cannot do indirectly what he cannot do directly. *See Attorney Gen ex rel Eaves v. State Bridge Com.*, 269 N.W. 388, 392 (Mich. 1936) (“It is a fundamental and familiar proposition of law that the State may not do indirectly that which it is forbidden to do directly.”).²¹

It therefore follows that neither the Legislature nor the Governor may delegate to the Emergency Manager the authority to impair or diminish the accrued financial benefits of the Retirement Systems and their participants because Article

²¹ See also *Blank v. Dep't. of Corrections*, 564 N.W.2d 130, 136 (Mich. App. 1997) (“The Legislature may not do indirectly what it cannot do directly.”); *Socialist Workers Party v. Secretary of State*, 317 N.W. 1, 11 (Mich. 1982) (holding that the Legislature could not “do indirectly what art 2, § 4, forbids it from doing directly.”); *Regents of University of Mich. v. State*, 235 N.W.2d 1, 17 (Mich. 1975) (“The condition may not be designed to permit the Legislature to indirectly accomplish that which it may not do directly.”); *Toebe v. Munising*, 275 N.W. 744, 748 (Mich. 1937) (“This manner of doing indirectly that which may be done directly, is not proscribed by the language of the Constitution.”).

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IX, section 24 of the Michigan Constitution expressly denies the Legislative and Executive branches that power. *See Musselman*, 533 N.W.2d at 245.

5. The Emergency Manager's authorization of the City's bankruptcy without imposing conditions prohibiting the diminishment or impairment of accrued financial benefits violated the Municipal Code of the City of Detroit and is void *ab initio*.

Article 11, section 11-101(3) of the Municipal Code of the City of Detroit also prohibits the diminishment or impairment of accrued financial benefits of active and retired city employees. When the Emergency Manager recommended that the City be authorized to file bankruptcy and when the Emergency Manager commenced this case without conditioning such filing upon the protection of accrued pension benefits of active and retired city employees, the Emergency Manager violated the Detroit Municipal Code.²² Thus, for this additional reason, his actions were *ultra vires* and void *ab initio*. *See McKane and Suffolk, supra*. Accordingly, the City was not validly authorized to be a debtor under Chapter 9, it

²² Reserving all rights, the Retirement Systems note that PA 436, on its face, appears to authorize the Emergency Manager to suspend, amend, or repeal ordinances of a municipality. M.C.L. § 141.1552(2) (“Except as otherwise provided in this act, during the pendency of the receivership, the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the emergency manager.”). However, the Emergency Manager did not suspend Article 11, section 11-101(3) of the Detroit Municipal Code as of the date of his recommendation or the Petition Date. *See* Emergency Manager Order No. 13, July 18, 2013, attached to the City’s Bankruptcy Petition (Docket No. 1) at 9-11 (no suspension of Article 11, section 11-101(3) mentioned).

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cannot satisfy the requirements of section 109(c)(2), and the case must be dismissed.

6. **Alternatively, if PA 436 does purport to permit the impairment of accrued financial benefits, then it is unconstitutional and the Governor's Authorization and initiation of the Chapter 9 bankruptcy was *ultra vires* and void *ab initio*.**

If this Court determines that PA 436 does indeed provide that the Governor and the Emergency Manager can take actions that may impair the City's obligations for accrued pension benefits, then, for the reasons discussed above, PA 436 contravenes Article IX, section 24 of the Michigan Constitution and is of no force and effect.

It is a well-established rule that courts "will presume that all legislation is constitutional and will attempt to construe legislation so as to preserve its constitutionality." *People v. Neumayer*, 275 N.W.2d 230, 237 (Mich. 1979). Here, sections 18(1) and 26(2) of PA 436 provide this Court with an opportunity to save PA 436 from being unconstitutional by finding that PA 436 does **not** authorize the Governor or Emergency Manager to cause the impairment of constitutionally-protected accrued public pension benefits through authorization of a Chapter 9 bankruptcy. Both provisions state that "[t]he governor may place contingencies on a local government in order to proceed under chapter 9." M.C.L. § 141.1558(1); M.C.L. § 141.1566(2). By authorizing the Governor to place conditions on a

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Chapter 9 authorization, it may thus be presumed that the Legislature intended for Chapter 9 authorizations, in applicable situations, to be contingent on the Emergency Manager not being permitted to seek or accede to the impairment of accrued financial benefits.

E. Collateral Estoppel Precludes the City from Relitigating the Threshold Issue of Whether the City Received Valid Authorization from the Governor to File the Petition Because That Issue Has Already Been Litigated and a Declaratory Judgment Rendered.

On July 19, 2013, the Ingham County Circuit Court—a court of competent jurisdiction—entered the Declaratory Judgment stating: “PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect.” (Exhibit 2, Declaratory Judgment, pg. 2) (emphasis added). The Declaratory Judgment further states: “The Governor is prohibited by Article IX Section 24 . . . from authorizing an emergency manager . . . to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits, and any such action by the Governor is without authority. . . [.]” *Id.* (emphasis added). The City ignores that the very statute it relies upon to demonstrate that it was “specifically authorized” under Section 109(c)(2) has been

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deemed “unconstitutional” and “of no force and effect” by a Michigan state court to the extent that statute is being relied upon to support the Governor’s Authorization of the filing of the Bankruptcy Petition. It also ignores that the Governor was specifically found to *lack* the authority to grant such authorization. Collateral estoppel, however, prevents the City (and this Court) from ignoring the Declaratory Judgment, and the City is barred from re-litigating this issue in this forum.

1. The Declaratory Judgment is entitled to full faith and credit.

The Full Faith and Credit Clause in the United States’ Constitution commands that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.” U.S. CONST. art. IV, § 1. While this clause is binding only upon the States, “Congress imposed on the federal courts the duty to give full faith and credit to judgments of the state courts” by implementing the Full Faith and Credit Statute, codified at 28 U.S.C. § 1738. *Wayside Transp. Co. v. Marcell's Motor Express, Inc.*, 284 F.2d 868, 870-71 (1st Cir. 1960). The Full Faith and Credit Statute states:

The . . . judicial proceedings of any court of any . . . State
. . . shall have the same full faith and credit in every court

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within the United States . . . as they have by law or usage
in the courts of such State . . . from which they are taken.

28 U.S.C. § 1738.

Under the Full Faith and Credit Statute, state court judgments must be honored by federal bankruptcy courts. “When a federal court re-examines an issue that has already been determined in the State Courts, tension may develop. To avoid this imminent conflict, Congress passed the ‘Full Faith and Credit Act.’” *In re Miloszar*, 238 B.R. 266, 269 (D.N.J. 1999) (internal citations and quotations omitted). The Full Faith and Credit Statute “requires the federal courts to give a prior State Court judgment the same preclusive effect that it would be given in subsequent proceedings in the same state.” *Id.* As a result, for example “[t]he Bankruptcy Court does not have the power to vacate a State Court default judgment.” *Id.*; *see also Bay Area Factors v. Calvert (In re Calvert)*, 105 F.3d 315, 317 (6th Cir. 1997) (“Our determination of the collateral estoppel effect of a state court default judgment in bankruptcy dischargeability proceedings begins with the Full Faith and Credit Statute, 28 U.S.C. § 1738, which requires the federal courts to give full faith and credit to the judicial proceedings of state courts.”)

Notably, a state court’s *judgment* is entitled to stricter compliance than a state’s general *laws*. *See Baker v. General Motors Corp.*, 522 U.S. 222, 233 (1998). In *Baker*, the United States Supreme Court distinguished between the credit a court must give to another state’s *laws* versus the credit owed to another

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court's *judgments* and concluded that a court cannot refuse to give effect to another court's judgment:

The Full Faith and Credit Clause does not compel a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate. ***Regarding judgments, however, the full faith and credit obligation is exacting.*** A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, ***qualifies for recognition throughout the land.*** For claim and issue preclusion (*res judicata*) purposes, in other words, the judgment of the rendering State gains nationwide force.

Id. (internal quotations and citations omitted, emphasis added). The Supreme Court has acknowledged the importance of judgment recognition between the state and federal courts:

[I]nvocation of *res judicata* and collateral estoppel [relieves] parties of the cost and vexation of multiple lawsuits, [conserves] judicial resources, and, by preventing inconsistent decisions, [encourages] reliance on adjudication . . . [T]hese doctrines also serve to promote the comity between state and federal courts that has been recognized as a bulwark of the federal system.²³

Allen v. McCurry, 449 U.S. 90, 94-96 (1980) (internal quotes omitted).

²³ Coincidentally, the Court acknowledged these concerns when ordering the stay be extended to the Governor and the Treasurer; the Court noted dual proceedings are “costly, expensive, and inefficient” and there is “of course, a danger of potentially inconsistent results.” (Exhibit 3, 7/24/2013 Hrg. Tr., pg. 81). This is precisely why the declaratory judgment must be given effect—a second crack at this argument in the bankruptcy court is “costly, expensive, and inefficient,” and could lead to “inconsistent results.”

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Under the Full Faith and Credit Act, this Court is bound by the Declaratory Judgment.

2. The preclusive effect of the Declaratory Judgment is governed by Michigan law.

The Full Faith and Credit Clause directs a federal court to apply the law of the state in which the judgment was rendered for purposes of determining its preclusive effect:

This statute directs a federal court to refer to the preclusion law of the State in which judgment was rendered. “It has long been established that § 1738 does not allow federal courts to employ their own rules . . . in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken.

Bay Area Factors, 105 F.3d at 317 (citing *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (quoting *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 481-82 (1982)) (emphasis added); *Migra v. Warren City Sch. Dist. Bd. of Ed.*, 465 U.S. 75, 81 (1984) (“It is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.”). In this case, the applicable preclusion law is that of the State of Michigan.

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3. **The elements for collateral estoppel under Michigan law are satisfied in this matter.**

Under Michigan law, “[c]ollateral estoppel, or issue preclusion, precludes relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding.” *Ditmore v. Michalik*, 625 N.W.2d 462, 467 (Mich. Ct. App. 2001). The elements that must be satisfied before collateral estoppel may be applied are: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties or their privies must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel, if collateral estoppel is being applied offensively. *Monat v. State Farm Ins. Co.*, 677 N.W.2d 843, 845-46 (Mich. 2004).

a. The Governor’s authority to authorize the bankruptcy petition was actually litigated and determined by a valid final judgment.

To be considered “actually litigated,” the issue must be “put into issue by the pleadings, submitted to the trier of fact for a determination, and thereafter determined.” *Cogan v. Cogan*, 385 N.W.2d 793, 795 (Mich. App. 1986).

In this case, the Governor’s “authority” and the validity of PA 436 was fully briefed by all of the parties, and a hearing was held where both parties argued their relative positions (and notably, the Attorney General’s office argued the Webster

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Defendants' position and represented the Emergency Manager and the City's interests). (See Exhibit 4, Webster Verified Complaint; Exhibit 5, 7/19/2013 Hrg. Tr.; Exhibit 1, Webster Defendants' Motion for Summary Disposition). The Declaratory Judgment squarely adjudicated the authority issue and found the Governor lacked authority "to authorize an emergency manager to proceed under Chapter 9" and that the Governor is "prohibited . . . from authorizing an emergency manager under PA 436 to proceed under Chapter 9. . .[.]"

Further, the Declaratory Judgment is a valid final judgment. M.C.R. 2.605(E) ("Declaratory judgments have the force and effect of, and are reviewable as, final judgments").²⁴ It is irrelevant for collateral estoppel purposes that the Declaratory Judgment was appealed by the Webster Defendants, because an appeal does not affect the "finality" of a judgment for claim and issue preclusion purposes.²⁵

²⁴ Michigan courts are empowered to "declare the rights and other legal relations of an interested party seeking a declaratory judgment." M.C.R. 2.605(A)(1). The purpose of a declaratory judgment is to "guide" the parties' "future conduct." *UAW v. Central Mich. Univ. Trustees*, 815 N.W.2d 132, 138 (Mich. App. 2012).

²⁵ "The rule in Michigan is that a judgment pending on appeal is deemed *res judicata*." *City of Troy Bldg. Inspector v. Hershberger*, 183 N.W. 2d 430, 433 (Mich. App. 1970); see also *Temple v. Kelel Distributing Co., Inc.*, 454 N.W. 2d 610, 611 (Mich. App. 1990) (defendant appealed an adverse ruling, but the decision still had *res judicata* effect); *Eisfelder v. Michigan Dept. of Natural Resources*, 847 F. Supp. 78, 83 (W.D. Mich. 1993) ("It is also . . . clear under Michigan law that the fact an appeal is pending does not affect an order's finality.").

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It is anticipated that the City will argue that the Declaratory Judgment is not a “valid” judgment, because the bankruptcy petition was filed at 4:06 p.m. on July 18, 2013 (thereby triggering the automatic stay), and the Declaratory Judgment was not issued until the following day. The automatic stay, however, did not apply to the Webster Defendants when the Declaratory Judgment was entered: the Declaratory Judgment was issued on July 19, and the Court did not extend the automatic stay to the Webster Defendants until July 25. *See* Docket No. 166, pg. 2. Thus, the Retirement Systems have satisfied the first prong of the collateral estoppel analysis.

b. The same parties or their privies litigated this issue in the state court.

For collateral estoppel to be applied, the same parties or their privies must have had a full and fair opportunity to litigate the issue. *Monat*, 577 N.W.2d at 685. “A party is one who was directly interested in the subject matter, and who had a right to defend in, or control, the proceedings, and who had a right to appeal

As one judge has aptly observed, to deny preclusion because a judgment was pending appeal “would be laughable. If a judgment was denied its *res judicata* effect merely because an appeal was pending, litigants would be able to refile an identical case in another trial court while the appeal is pending, which would hog-tie the trial courts with duplicative litigation.” *Warwick Corp. v. Maryland Dep’t of Transp.*, 573 F. Supp. 1011, 1014 (D. Md. 1983); *see also Tripati v. Henman*, 857 F.2d 1366, 1367 (9th. Cir. 1988) (“To deny preclusion in these circumstances would lead to an absurd result: Litigants would be able to refile identical cases while appeals are pending, enmeshing their opponents and the court system in tangles of duplicative litigation.”).

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from the judgment.” *Dearborn Heights Sch. Dist. No. 7 v. Wayne County MEA/NEA*, 592 N.W.2d 408, 412 (Mich. App. 1998).

Privity is defined as “mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.” *Sloan v. Madison Heights*, 389 N.W.2d 418, 422 (Mich. 1986). For collateral estoppel purposes, privity between a party and non-party can exist where there is a “substantial identity of interests” and a “working or functional relationship. . . in which the interests of the non-party are presented and protected by the party in the litigation.” *Phinisee v. Rogers*, 582 N.W.2d 852, 854 (Mich. App. 1998). Accordingly, a nonparty to the prior proceeding may be bound if “that party controlled the earlier proceeding or if the party’s interests were adequately represented in the original matter.” *Dearborn Heights*, 592 N.W.2d at 412.

i. Privity exists between Webster and the Retirement Systems.

Privity exists between an individual pension member, such as Webster, and the Retirement System itself. There is both a “substantial identity of interests” and a “working or functional relationship . . . in which the interests of the non-party are presented and protected by the party in the litigation.” *Phinisee*, 582 N.W.2d at 854. In similar contexts, courts have found privity. For example, in *Dearborn Heights*, the court found that “individual employees are ‘substantially identical to

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the labor organizations which represented them as charging parties before MERC [Michigan Employee Relations Commission].” *Dearborn Heights*, 592 N.W.2d at 412 (citation omitted). Similarly, in *O’Keefe v Merrill Lynch & Co.*, 32 Kan. App. 2d 474, 488-489 (2004), the court found that an administrator of an estate is sufficiently in privity with heirs or beneficiaries of an estate to be subjected to principles of claim preclusion, and in *Moldovan v. A&P*, 1985 U.S. Dist. LEXIS 20659 (W.D. Pa. Apr. 17, 1985), the court found privity between a local union chapter and the trustees for a multiemployer benefit plan.

ii. Privity exists between the Webster Defendants and the Emergency Manager/City.

As noted above, the defendants in the Webster Case were (i) the State of Michigan, (ii) the Governor, and (iii) the Treasurer. The Emergency Manager and the City were not named defendants. However, privity exists between the Webster Defendants and the Emergency Manager (and by extension, the City) such that collateral estoppel applies.

In the context of public officials, “[p]rivity may exist between individual government officials and the entities that they work for even if the officers were not named defendants in the previous action.” *Elder v. Harrison Twp.*, 786 F. Supp. 2d 1314, 1324-25 (E.D. Mich. 2011) *rev’d on other grnds*, 489 Fed. Appx. 934 (6th Cir. 2012) (internal citation omitted) (“When officers are sued in their official capacity, privity is often found.”) In this case, the City has already

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admitted that: “[t]he State of Michigan. . . acts through its officials. . . . So to the extent that the named parties in there are the governor and the treasurer, the state acts through those officials.” (Exhibit 3, 7/24/13 Hrg. Tr., pg. 68). Similarly, the City has admitted that “the emergency manager assumed all of the powers and acts for and in the place of and in the stead of the mayor and the city council. . . [.]” (*Id.* at pp. 7-8).

Furthermore, the terms of PA 436 itself establishes privity between the Governor, the Emergency Manager, and the City. The general powers of the Emergency Manager are set forth in Section 9 of PA 436, which provides, in relevant part, that “an emergency manager shall act for and in the place and stead of the office of chief administrative officer of the local government” and serves “at the pleasure of the governor.” M.C.L. § 141.1549(2) and M.C.L. §141.1549(3)(d).

Moreover, any recommendation that the City of Detroit proceed under Chapter 9 is explicitly controlled by the Governor, and the Emergency Manager can only act at the behest of the Governor.

Indeed, the City has conceded that such an “identity of interests” exists here—the City based its entire Stay Extension Motion on the premise that there was an “identity of interests” between the Governor, the Treasurer, the Emergency Manager and the City. *See, e.g.*, Docket No. 56, ¶¶ 19-21. The City admitted in its motion that the Governor and the Treasurer are “*closely connected to the City and*

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the Emergency Manager.” *Id.* (emphasis added). At the hearing on July 24, 2013, the City again admitted the reason it needed the stay extended was because it was concerned that lawsuits involving the Webster Defendants could potentially bind the City. (Exhibit 3, 7/24/2013, pg. 12) (emphasis added).

In granting the Stay Extension Motion, this Court acknowledged the close connection: “In this case, the Court readily finds that the debtor—the interests of the debtor and the interests of those potential defendants to whom the debtor seeks to extend the automatic stay [*i.e.*, the Governor and the Treasurer] *are so intertwined* that the unusual circumstances test is met.” (Exhibit 3, 7/24/2013 Hrg. Tr. at pg. 78) (emphasis added).

Lastly, the same attorney (the Attorney General of Michigan) represents the Governor, the State, and the Emergency Manager. While this alone is not dispositive, it is significant because it illustrates the close connection between the relevant governmental officials—state officers such as the Attorney General represent state agents and interests, not those of strangers to state government. In this case, the Attorney General’s Office has a duty to defend the Emergency Manager from all civil claims challenging the validity of PA 436 or the authority of the Emergency Manager. M.C.L. § 141.1560(2)-(3). Thus, the City’s interests were adequately represented by the Attorney General. Accordingly, based on the

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entire scheme and structure of PA 436, the City is certainly a “privy” to the Webster Defendants and is thus bound by the Declaratory Judgment.

c. The parties had a full and fair opportunity to litigate.

In determining whether a party has had a “full and fair” opportunity to litigate the issue, Michigan courts may look to the factors outlined in the Restatement of Judgments. *Monat*, 469 Mich. at 685, n. 2 (citing Rest. 2d Judgments § 28-29). However, failure to exhaust all appeals does not mean a party lacked a full and fair opportunity to litigate, nor does it delay application of collateral estoppel. *See footnote 25, supra.*

In this case, the Declaratory Judgment was entered after a Motion for Summary Disposition was filed by the Webster Defendants. The Webster Defendants chose to file this dispositive motion just twelve days after the complaint was filed by Webster, thereby foregoing discovery or other litigation processes. (Exhibit 6, Register of Actions). The Webster Defendants even requested an expedited ruling from the state court, urging: “a speedy resolution of this action is required to avoid adversely impacting the City of Detroit’s Emergency Manager’s current efforts to reach a consensus that could achieve some financial stability for the City [and] . . . [d]elaying a resolution of this case would certainly have a negative impact on those efforts. . .[.]” (Exhibit 1, Webster Defendants’ Motion for Summary Disposition, pg. 4). The City can hardly

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complain that its position was not fully and fairly litigated when the Governor, the State, and the Treasurer filed a motion *affirmatively seeking summary adjudication of this very issue on an expedited basis.*

Further, a full jury trial on the merits is not necessary in order for a matter to be deemed fully and fairly litigated; declaratory judgments are entitled to preclusive effect.²⁶ See *Farmers Ins. Exch. v. Young*, 2010 Mich. App. LEXIS 1499, at *22 (Mich. Ct. App. Aug. 3, 2010) (concluding that a declaratory judgment was a final judgment for purposes of collateral estoppel or *res judicata*); *Hansen v. State Farm Fire and Cas. Co.*, 2006 Mich. App. LEXIS 1556, at *8 (Mich. Ct. App. May 9, 2006) (affirming the trial court's summary disposition ruling in favor of defendant by applying collateral estoppel based on a declaratory judgment); *Hill v. Wall St. Sys.*, 2003 Mich. App. LEXIS 1261, *11-14 (Mich. Ct. App. May 27, 2003) (applying collateral estoppel to an earlier declaratory judgment).

Thus, sufficient privity exists between the various parties to permit the

²⁶ Similarly, arbitration awards, consent judgments, settlement agreements, and cases resolved by dispositive motion are also entitled to preclusive effect. *Laethem Equip. Co., et al. v. J & D Implement, Inc., et al.*, 2007 Mich. App. LEXIS 1769, *17 (Mich. Ct. App. July 19, 2007) (settlement agreement); *Accident Victims Home Health Care v. Allstate Ins. Co.*, 2006 Mich. App. Lexis 1791, *6-7 (Mich. Ct. App. June 6, 2006) (settlement agreement); *Ditmore*, 625 N.W.2d at 466 (consent judgment); *Detroit Auto. Inter-Insurance Exchange v. Sanford*, 369 N.W.2d 239, 242 (Mich. App. 1985) (arbitration award); *Detroit v. Nortown Theatre, Inc.*, 323 N.W.2d 411, 413-14 (Mich. App. 1982) (summary or default judgment).

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application of collateral estoppel, and those privies had a full and fair opportunity to litigate the issue.

d. Mutuality of estoppel exists.

“Mutuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action.” *Monat*, 677 N.W.2d at 846. Estoppel is considered “mutual” if the party taking advantage of the earlier adjudication “would have been bound by it, had it gone against him.” *Id.* at 846-47.

Here, mutuality is present on both sides. The facts, circumstances and entire structure of PA 436 demonstrate that mutuality exists to justify the Retirement Systems’ use of collateral estoppel offensively against the City. The plaintiffs in Webster are participants in the GRS and thus share identical interests with the Retirement Systems – protecting their accrued financial benefits from being impaired. *See Dearborn Heights*, 592 N.W.2d. at 412. There is also little doubt that a judgment against the Webster plaintiffs would bind the Retirement Systems. More important, had the Webster court found in favor of the Webster Defendants and ruled that the Governor *did* have authority to authorize the City’s Chapter 9 case, the City would undoubtedly be relying on the Declaratory Judgment to support its position in the eligibility proceedings. Thus, mutuality of estoppel exists because both sides are bound by the judgment.

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II. The City Failed to Negotiate With Its Creditors in Good Faith and Such Negotiations Were Not Impracticable.

In his Declaration, the Emergency Manager describes a series of informational and presentational meetings that he and his advisors conducted with various creditor constituents and their representatives, including the Retirement Systems, over the course of several weeks prior to the Petition Date. *See* Orr Declaration at ¶¶ 80-81, ¶¶85-103. The Emergency Manager also attests that negotiations with the City's creditors were impracticable due to the sheer volume of creditors, certain creditors' alleged refusal to compromise their positions, and as a result of the Pre-Petition Lawsuits, and that despite this impracticability, the City attempted to negotiate with its creditors in good faith. *Id.* at ¶¶ 108-111. The City alleges that these allegations support a finding that it meets the negotiation requirements set forth in section 109(c)(5)(B) and (C), and that it is eligible to be a debtor under chapter 9 of the Bankruptcy Code. Eligibility Memorandum at pp. 39-61.

In the weeks prior to the commencement of this bankruptcy case, the Retirement Systems, its counsel and advisors, devoted significant resources to researching and reviewing both the City's and the Retirement Systems' financial situations, including attending the informational presentations on June 14, June 20, June 25, July 10 and July 11, 2013 that were referenced in the Orr Declaration. As stated, these sessions were primarily presentational, with multiple parties in

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attendance; there was no opportunity at these meetings for meaningful bilateral discussions. In fact, both the City and the Retirement Systems were in no position to discuss matters substantively because material prerequisite financial information required for such discussions was, and is, not yet complete.

Admittedly, the Retirement Systems filed the Retirement Systems Lawsuit, seeking *declaratory relief* that neither the Governor nor the Emergency Manager has authority to file a Chapter 9 or take other actions that will result in the impairment or diminishment of the accrued pension benefits of the Retirement Systems and their participants. The Retirement Systems Lawsuit, however, does not evidence a refusal to engage in discussions with the City, but instead evidences an effort to obtain a judicial declaration of state law and its impact upon City of Detroit pension benefits. Subject to their position that accrued pension benefits are constitutionally protected, the Retirement Systems have never indicated that the Retirement Systems Lawsuit and bilateral discussions are mutually exclusive initiatives. To the contrary, the Retirement Systems have always indicated a willingness to pursue these initiatives in parallel (assuming adequate financial information is made available to facilitate such discussions). Discussions between the City and the Retirement Systems were thus not impracticable merely because of the Retirement Systems Lawsuit. Accordingly, the City cannot meet its burden of proof to establish its eligibility to be a Chapter 9 debtor under Bankruptcy Code

EXHIBIT 6(J)

section 109(c)(5).²⁷

CONCLUSION

The City cannot meet its burden of proof to establish that it has satisfied the eligibility requirements of Bankruptcy Code section 109(c)(2) and 109(c)(5). Therefore, this case should be dismissed as a matter of law, pursuant to Bankruptcy Code section 921(c).

CLARK HILL PLC

/s/ Robert D. Gordon

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Dated: August 19, 2013

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

²⁷ The Retirement Systems anticipate that other creditors will object to the City's eligibility on the grounds of section 109(c)(5) and will conduct discovery on the issue. The Retirement Systems expressly reserve the right to participate in the discovery process and request access to all discovery, documents exchanged, and depositions.

EXHIBIT 6(K)

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

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In re : Chapter 9

:

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

:

Debtor. : Hon. Steven W. Rhodes

:

:

-----X

**ORDER, PURSUANT TO SECTIONS 105, 501 AND 503
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002
AND 3003(c), ESTABLISHING BAR DATES FOR FILING PROOFS OF
CLAIM AND APPROVING FORM AND MANNER OF NOTICE THEREOF**

This matter coming before the Court on the Motion of Debtor,
Pursuant to Sections 105, 501 and 503 of the Bankruptcy Code and Bankruptcy
Rules 2002 and 3003(c), for Entry of an Order Establishing Bar Dates for Filing
Proofs of Claim and Approving Form and Manner of Notice Thereof
(the "Motion"),¹ filed by the City of Detroit (the "City"); the City having filed the
Notice of Filing of Amended Exhibits 6.1 and 6.2 to Motion of Debtor, Pursuant to
Sections 105, 501 and 503 of the Bankruptcy Code and Bankruptcy Rules 2002
and 3003(c), for Entry of an Order Establishing Bar Dates for Filing Proofs of

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



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Claim and Approving Form and Manner of Notice Thereof (Docket No. 1330)

(the "Amended Exhibits"); the following responses to the Motion (collectively, the "Responses") having been filed:

- (a) The Response (Docket No. 1360) of the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees ("AFSCME");
- (b) The Response (Docket No. 1365) of the Detroit Fire Fighters Association, the Detroit Police Officers Association, the Detroit Police Lieutenants & Sergeants Association and the Detroit Police Command Officers Association (collectively, the "Public Safety Unions");
- (c) The Response (Docket No. 1372) of the Police and Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit;
- (d) The Response (Docket No. 1424) (the "Retiree Committee Response") of the Official Committee of Retirees (the "Retiree Committee");
- (e) The Response (Docket No. 1432) of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW");
- (f) The Response (Docket No. 1438) of the Retired Detroit Police Members Association, concurring in the Retiree Committee Response;
- (g) The Response (Docket No. 1442) (the "Retiree Association Response") of the Retired Detroit Police & Fire Fighters Association, Donald Taylor, the Detroit Retired City Employees Association and Shirley V. Lightsey (collectively, the "Retiree Association Parties");²
- (h) The Response (Docket No. 1460) (the "Assured Response") of Assured Guaranty Municipal Corp.;

² The Retiree Association Response corrected an earlier Response (Docket No. 1430), filed by the Retiree Association Parties.

EXHIBIT 6(K)

- (i) The Response (Docket No. 1461) of National Public Finance Guarantee Corporation joining in the Assured Response;
- (j) The Response (Docket No. 1465) of Ambac Assurance Corporation joining in the Assured Response; and
- (k) The supplemental Response (Docket No. 1523) of the Public Safety Unions.

The City having filed the Reply in Support of Motion of Debtor, Pursuant to Sections 105, 501 and 503 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c), for Entry of an Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof (the "Reply"); the Court having reviewed the Motion, the Amended Exhibits, the Responses and the Reply and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (c) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion, the Amended Exhibits, the Reply and at the Hearing establish just cause for the relief granted herein;

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IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth herein, and the Responses are resolved or addressed by the terms of this Order or as set forth on the record of the Hearing.
2. As used herein, (a) the term "claim" has the meaning given to such term in section 101(5) of the Bankruptcy Code, (b) the term "entity" has the meaning given to such term in section 101(15) of the Bankruptcy Code and (c) the term "governmental unit" has the meaning given to such term in section 101(27) of the Bankruptcy Code.
3. The form of (a) Notice of Deadlines for Filing of Proofs of Claim attached as Exhibit B to the Reply and attached hereto as Annex I (the "Bar Date Notice") and (b) the proof of claim form attached as Exhibit 6.3 to the Motion and attached hereto as Annex II (the "Proof of Claim Form" and, together with the Bar Date Notice, the "Bar Date Notice Package"), and the manner of providing notice of the Bar Dates proposed in the Motion, are approved in all respects pursuant to Bankruptcy Rules 2002(a)(7) and 2002(l). The form and manner of notice of the Bar Dates approved herein are deemed to fulfill the notice requirements of the Bankruptcy Code and the Bankruptcy Rules. As such, the Debtors are authorized to serve the Bar Date Notice Package in the manner described in paragraphs 23 through 26 below. In addition, the City is authorized to

EXHIBIT 6(K)

make non-substantive edits or corrections to the Bar Date Notice and the Proof of Claim form, consistent with the terms of this Order.

4. Except as otherwise provided in this Order, all entities (including, without limitation, individuals, partnerships, corporations, joint ventures and trusts) that assert claims against the City that arose (or are deemed to have arisen) prior to July 18, 2013 (any such claim, a "Prepetition Claim") must file a proof of claim in writing in accordance with the procedures described herein by 4:00 p.m., Eastern Time, on February 21, 2014 (the "General Bar Date").

5. Except as otherwise provided in this Order, the General Bar Date applies to all types of Prepetition Claims, including secured claims, unsecured priority claims and unsecured nonpriority claims. For the avoidance of doubt, the General Bar Date shall apply to claims asserting administrative expense priority under section 503(b)(9) of the Bankruptcy Code ("503(b)(9) Claims"). The filing of a proof of claim form shall satisfy the procedural requirements for the assertion of 503(b)(9) Claims. All administrative claims under section 503(b) of the Bankruptcy Code, other than 503(b)(9) Claims and the administrative portions of Rejection Damages Claims (as defined below), shall not be deemed proper if asserted by proof of claim.

6. Subject to the provisions of paragraphs 16 through 19 of this Order with respect to holders of claims subject to the Rejection Damages Bar Date,

EXHIBIT 6(K)

the Amended Claims List Bar Date and the Governmental Bar Date, and the exceptions described in paragraph 8 below, the following entities must file a proof of claim on or before the General Bar Date:

(a) Any entity: (i) whose prepetition claim against the City is not listed in the List of Claims or is listed as disputed, contingent or unliquidated; and (ii) that desires to share in any distribution in this bankruptcy case and/or otherwise participate in the proceedings in this bankruptcy case associated with the confirmation of any chapter 9 plan of adjustment proposed by the City (a "Chapter 9 Plan"); and

(b) Any entity that believes that its prepetition claim is improperly classified in the List of Claims or is listed in an incorrect amount or priority and that desires to have its claim allowed in a classification, priority or amount other than that identified in the List of Claims, *provided that* any holder of GO Bonds (as defined below) asserting a claim solely for principal and interest in connection with such bonds is not required to file a proof of claim to preserve its right to a *pro rata* share of distributions on account of the amount of principal and interest under such bonds listed in the City's List of Claims.

7. The following procedures for the filing of proofs of claim shall apply:

(a) Proofs of claim must be on the Proof of Claim Form or otherwise conform substantially to Official Bankruptcy Form No. 10;

(b) Proofs of claim must be filed by mailing the original proof of claim or delivering the original proof of claim by hand or overnight courier either to: (a) the City of Detroit Claims Processing Center c/o Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, CA 90245; or (b) the Clerk of the Court, United States Bankruptcy Court for the Eastern District of Michigan, 211 West Fort Street, Suite 1700, Detroit, Michigan 48226. Proofs of claim submitted by facsimile, electronic mail or electronic (ECF) court filing shall not be accepted and shall not be deemed properly filed;

EXHIBIT 6(K)

(c) Proofs of claim will be deemed timely filed only if actually received by the City's claims agent, Kurtzman Carson Consultants LLC ("KCC"), or the Court at the addresses set forth in the foregoing subparagraph on or before the applicable Bar Date. If a creditor wishes to receive acknowledgement of receipt of a proof of claim by KCC or the Clerk of this Court (the "Clerk's Office"), the creditor also must submit to KCC or Clerk's Office by the applicable Bar Date and concurrently with submitting its original proof of claim: (i) a copy of the original proof of claim; and (ii) for claims submitted to KCC or by mail to the Clerk's Office, a self-addressed, postage prepaid return envelope; and

(d) Proofs of claim must (i) be signed by the claimant or by an authorized agent of the claimant; (ii) include any documents upon which the claim is based (or, if such documents are voluminous, a summary) or an explanation as to why the documents are not available; (iii) be written in the English language; and (iv) be denominated in United States currency. Any claimant that provides a summary in lieu of the documentation required by Bankruptcy Rule 3001 shall transmit the documents in support of its claim to KCC and the City within ten days after the date of any written request by the City for such documents.

8. Entities holding the following claims (to the extent such claims would be subject to the General Bar Date) shall not be required to file proofs of claim in this chapter 9 case on account of such claims:

(a) Any claim for liabilities associated with post-employment benefits under the City's Health and Life Insurance Benefit Plan, the Supplemental Death Benefit Plan or other non-pension post-employment welfare benefits, including unfunded actuarially accrued liabilities (any such claim, a "Healthcare Liability Claim").

(b) Any claim by present or potential future beneficiaries of the City's two pension systems, the General Retirement System and the Police and Fire Retirement System, for pension benefits or unfunded pension liabilities (any such claim, a "Pension Liability Claim").

(c) Any claim of (or on behalf of) an active employee for ordinary course compensation and employment benefits, including, without limitation, wages, salaries, employee medical benefits and/or insurance

EXHIBIT 6(K)

benefits ("Ordinary Course Compensation Claims"), *provided, however*, that Ordinary Course Compensation Claims shall not include claims asserted or to be asserted in any lawsuit or similar proceeding even where such claims assert as damages an entitlement to wages, salaries, employee medical benefits and/or insurance benefits.

(d) Any claim by a holder for the repayment of principal, interest and/or other applicable fees and charges on or under (i) the Secured Bonds or (ii) the COPs.

(e) Any claim by a holder for the repayment of principal or interest on or under the City's unlimited tax general obligation bonds, limited tax general obligation bonds and general fund bonds (collectively, the "GO Bonds") to preserve its right to a *pro rata* share of distributions on account of the amount of principal and interest under such bonds listed in the City's List of Claims.

(f) Any claim arising from an ordinary course entitlement to an income tax refund (to the extent of such claimed entitlement) asserted through the City's established income tax refund procedures, *provided, however*, that entities holding any other Prepetition Claims or causes of action related to income tax matters that are not properly asserted through the City's established income tax refund procedures must file a proof of claim by the General Bar Date.

(g) Any claim with respect to which the holder already has filed a signed proof of claim against the City with the Clerk's Office or KCC in a form substantially similar to Official Bankruptcy Form No. 10;

(h) Any claim that is listed on the List of Claims if (i) the claim is not listed as "disputed," "contingent" or "unliquidated;" and (ii) such entity agrees with the amount, nature and priority of the claim as set forth in the List of Claims;

(i) Any claim that previously has been allowed by order of the Court;

(j) Any claim that has been paid in full by the City; and

(k) Any claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration (other than any

EXHIBIT 6(K)

503(b)(9) Claim or any portion of a Rejection Damages Claim asserting administrative priority under section 503(b) of the Bankruptcy Code).

9. Nothing herein shall operate to limit or deny the right of:

(a) any employee or retiree to vote on any Chapter 9 Plan proposed by the City in this case with respect to Healthcare Liability Claims or Pension Liability Claims that they may possess; or (b) any entity to file any proof of claim that such entity deems necessary or appropriate, subject to any rights the City or other parties in interest may have to object to any such proof of claim.

10. For the avoidance of doubt, the following entities should file proofs of claim to the extent the filing of such claim is not otherwise made unnecessary by the terms of the foregoing paragraph 8: (a) employees and retirees asserting Prepetition Claims *other than* Healthcare Liability Claims, Pension Liability Claims or Ordinary Course Compensation Claims and (b) insurers of the GO Bonds asserting claims in connection with such bonds.

11. Each of the Public Safety Unions may file one or more omnibus proofs of claim by the General Bar Date for its members with respect to (a) claims related to grievances for its respective members and/or (b) defense and indemnification claims arising from tort claims asserted or that may be asserted by third parties against the City and/or such Public Safety Union member(s), subject to the City's right to object to any such claims. The filing of any such omnibus

EXHIBIT 6(K)

proof of claim is without prejudice to the right of any Public Safety Union member to file a claim on his or her own behalf.

12. The Retiree Committee may file one or more protective proofs of claim on behalf of retirees and their beneficiaries on account of Healthcare Liability Claims and Pension Liability Claims, subject to the City's rights to object to such claims. For the avoidance of doubt, it is not necessary for the Retiree Committee to file any such proof of claim: (a) to preserve the rights of retirees and their beneficiaries to receive any distributions from the City to which they may be entitled; or (b) to vote on any Chapter 9 Plan, to the extent such retirees and beneficiaries otherwise would be entitled to do so. In addition, nothing herein shall preclude the Retirement Systems from filing proofs of claim on behalf of retirees and beneficiaries on account of Pension Liability Claims, nor shall this Order constitute a judicial determination of the proper party or parties to assert any claim.

13. UAW may file one or more omnibus proofs of claim on behalf of UAW-represented employees and former employees, regardless of the nature of such claims, including, without limitation, claims for post-retirement health obligations, pension obligations (whether benefits, underfunding or otherwise) or other compensation, subject to the City's right to object to any such claims. The City shall reasonably cooperate with UAW in providing names and addresses of City retirees who are former employees of UAW-represented City bargaining

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units to the extent the City has such information. The filing of any such omnibus proof of claim is without prejudice to the right of any UAW-represented employee or former employee to file a claim on his or her own behalf.

14. AFSCME may file one or more omnibus proofs of claim on behalf of AFSCME-represented employees and former employees, regardless of the nature of such claims, including, without limitation, claims for post-retirement health obligations, pension obligations (whether benefits, underfunding or otherwise) or other compensation, subject to the City's right to object to any such claims. The City shall reasonably cooperate with AFSCME in providing names and addresses of City retirees who are former employees of AFSCME-represented City bargaining units to the extent the City has such information. The filing of any such omnibus proof of claim is without prejudice to the right of any AFSCME-represented employee or former employee to file a claim on his or her own behalf.

15. For the avoidance of doubt, the classification, priority and treatment of claims for principal and interest under the GO Bonds pursuant to any Chapter 9 Plan shall not be affected by any provision of this Order or by whether or not the holders of GO Bonds file or do not file proofs of claim.

16. Any entities asserting claims arising from or relating to the rejection of executory contracts or unexpired leases, in accordance with

EXHIBIT 6(K)

section 365 of the Bankruptcy Code and pursuant to an order of this Court entered prior to the confirmation of the City's Chapter 9 Plan (a "Rejection Order"), or claims otherwise related to such rejected agreements, including (a) secured claims, unsecured priority claims and unsecured nonpriority claims that arose or are deemed to have arisen prior to the Petition Date and (b) administrative claims under section 503(b) of the Bankruptcy Code (collectively, "Rejection Damages Claims") are required to file proofs of claim by the later of (a) the General Bar Date and (b) 4:00 p.m., Eastern Time, on the first business day that is at least 30 days after the entry of the applicable Rejection Order (the "Rejection Damages Bar Date"). For the avoidance of doubt, all prepetition and postpetition claims of any kind or nature relating to executory contracts or unexpired leases rejected by a Rejection Order must be filed by the Rejection Damages Bar Date. Rejection Orders entered after the date of entry of this Order shall include a description of the Rejection Damages Bar Date in the text of the Rejection Order.

17. Each entity asserting a Rejection Damages Claim with an administrative claim component must file, along with its proof of claim, a detailed statement describing the nature and basis of the portion of the Rejection Damages Claim asserting an administrative priority under section 503(b) of the Bankruptcy Code (the "Administrative Claim Supplement"). The filing of a proof of claim form, along with an attached Administrative Claim Supplement, if applicable, shall

EXHIBIT 6(K)

satisfy the procedural requirements for the assertion of a Rejection Damages Claim (including any administrative claim included therein).

18. The City shall retain the right to: (a) dispute, or assert offsets or defenses against, any Filed Claim or any Scheduled Claim as to nature, amount, liability, classification, priority or otherwise; (b) subsequently designate any Scheduled Claim as disputed, contingent or unliquidated; and (c) otherwise amend or supplement the List of Claims. If the City amends or supplements the List of Claims after the Service Date, the City shall give notice of any such amendment or supplement to the holders of claims affected thereby, including notice of the applicable Amended Claims List Bar Date to file proofs of claim in response to the amendment or supplement to the List of Claims.

19. In particular, if the City amends or supplements its List of Claims to: (a) reduce the undisputed, noncontingent and liquidated amount of a claim; (b) change the nature, classification or priority of a Scheduled Claim in a manner adverse to the listed creditor; or (c) add a new Scheduled Claim to the List of Claims with respect to a party that was not previously served with notice of the Bar Dates (in each case, a "Modified Claim"), the affected claimant shall be permitted to file a proof of claim, or amend any previously filed proof of claim, in respect of the Modified Claim in accordance with the procedures described herein by the later of (a) the General Bar Date; and (b) 4:00 p.m., Eastern Time, on the

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first business day that is at least 30 days after the date that notice of the applicable amendment to the List of Claims is served on the claimant (the "Amended Claims List Bar Date"). By contrast, if the amendment to the List of Claims improves the amount or treatment of a previously listed or filed claim, a claimant that previously was served with a notice of the Bar Dates is not permitted to file additional claims by the Amended Claims List Bar Date; *provided, however*, that nothing contained herein shall be construed to limit, enhance or otherwise affect a claimant's right to amend a timely filed proof of claim.

20. Nothing contained in this Order shall preclude the City from objecting to any claim, whether listed or filed, on any grounds. In addition, nothing herein limits, or is intended to limit, any claimant's rights to defend against any objection.

21. Pursuant to Bankruptcy Rule 3002(c)(1), the date by which governmental units shall file proofs of claim in this case shall be the later of: (a) the first business day that is at least 180 days following the date of the entry of an order for relief in this case; and (b) any Rejection Damages Bar Date or Amended Claims List Bar Date applicable to the governmental unit.

22. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(2), any entity that is required to file a proof of claim in this case pursuant to the Bankruptcy Code, the Bankruptcy Rules or this Order

EXHIBIT 6(K)

with respect to a particular claim against the City, but that fails properly to do so by the applicable Bar Date, shall be forever barred, estopped and enjoined from:

(a) asserting any claim against the City or property of the City that (i) is in an amount that exceeds the amount, if any, that is identified in the List of Claims on behalf of such entity as undisputed, noncontingent and liquidated or (ii) is of a different nature or a different classification or priority than any Scheduled Claim identified in the List of Claims on behalf of such entity (any such claim under subparagraph (a) of this paragraph being referred to herein as an "Unscheduled Claim"); (b) voting upon, or receiving distributions under any Chapter 9 Plan in this case in respect of an Unscheduled Claim; or (c) with respect to any 503(b)(9) Claim or administrative priority claim component of any Rejection Damages Claim, asserting any such priority claim against the City or property of the City.

23. Within five business days after the entry of this Order or as soon as practicable thereafter, the City, through KCC or otherwise, shall serve the Bar Date Notice Package by first class mail, postage prepaid (or equivalent service), on:

- (a) all known potential claimants (or their counsel, if known), including all entities identified as potential claim holders in the List of Claims;
- (b) the Trustees;
- (c) counsel to the Official Committee of Retirees appointed in this case;

EXHIBIT 6(K)

- (d) all parties that have requested notice of the proceedings in this case as of the date of this Order;
- (e) all parties that have filed proofs of claim in this case as of the date of this Order;
- (f) all known parties to executory contracts and unexpired leases with the City, including all parties to executory contracts and unexpired leases rejected by a Rejection Order, if any, as of the date of this Order;
- (g) all known parties to pending litigation with the City;
- (h) the United States Attorney for this District; and
- (i) all federal and state environmental protection agencies for this jurisdiction.

24. The City also shall serve the Bar Date Notice on the holders of the GO Bonds. If DTC has not already provided the Institutional Nominee List to the City as of the date of this Order, DTC is directed to provide the City with the Institutional Nominee List within three business days of this date or as soon as practicable thereafter. Service of the Bar Date Notice by electronic mail on those holders of the GO Bonds that previously consented in writing to receive notices regarding the GO Bonds by electronic mail shall constitute adequate notice of the Bar Dates on such holders.

25. As part of the Bar Date Package, the City shall mail one or more Proof of Claim Forms (as appropriate) to the parties receiving the Bar Date Notice. Except with respect to holders of GO Bonds, for holders of Scheduled Claims listed in the List of Claims, the Proof of Claim Form mailed to such entities

EXHIBIT 6(K)

shall indicate how the City has listed the creditor's claim in the List of Claims, including: (a) the amount of the claim, if any; (b) whether the claim is listed as disputed, contingent or unliquidated; and (c) whether the claim is listed as a secured claim or an unsecured nonpriority claim. Along with Proof of Claim Forms distributed to the holders of GO Bonds, the City will provide a schedule identifying the amount listed in the List of Claims for each series of GO Bonds.

26. Pursuant to Bankruptcy Rule 2002(f), the City shall publish the Bar Date Notice, once, in the *Detroit Free Press*, *The Detroit News* and national editions of *USA Today* and *The Wall Street Journal* at least 28 days prior to the General Bar Date, which publication is hereby approved and shall be deemed good, adequate and sufficient publication notice of the Bar Dates. The City is authorized to modify the Bar Date Notice to the extent necessary or appropriate to conform the Bar Date Notice to publication and minimize expense.

27. The City and KCC are authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

28. The entry of this Order is without prejudice to the right of the City to seek a further order of this Court fixing a date by which holders of claims or interests not subject to the Bar Dates established herein must file such proofs of claim or interest or be barred from doing so.

EXHIBIT 6(K)

29. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation, implementation and/or enforcement of this Order.

Signed on November 21, 2013

/s/ Steven Rhodes

Steven Rhodes

United States Bankruptcy Judge

EXHIBIT 6(K)

ANNEX I

EXHIBIT 6(K)

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

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

INFORMATION ABOUT DEADLINES TO FILE CLAIMS

OVERVIEW – KEY POINTS

- This document is a legal notice concerning the bankruptcy case of the City of Detroit, Michigan. This document is being sent to all parties that may be owed money by the City (known as "creditors").
- **The Overview on this page describes the key terms of this document. Please read the entire document carefully for further details. On the following pages, each section of this document includes a summary of the main points, followed by more detailed information.**
- In bankruptcy, creditors may be required to file claim forms stating the amount of money owed to them as of the day the bankruptcy was filed. This document explains how to file claims.
- **Many creditors in the City's bankruptcy case are not required to file a claim.** This document explains who is required to file a claim and who is not required to file a claim. If you are not required to file a claim, then you do not need to take any action at this time to preserve your right to vote on or receive payments under a restructuring plan.
- **The following parties are not required to file a claim** (for further information, see Section 1 of this document):
 - **City retirees and their beneficiaries** are not required to file claims for pension or healthcare benefits or other post-employment welfare benefits.
 - **City employees and their beneficiaries** are not required to file claims for pension or healthcare benefits, routine wages or other employment benefits.
 - **Taxpayers** are not required to file claims for routine income tax refunds.
 - **Bondholders** holding any of the bonds identified on the "Schedule of Secured Bonds" on the last two pages of this document and **holders of Certificates of Participation** issued by the City are not required to file claims for the repayment of principal, interest and/or other applicable fees and charges.
 - **Other bondholders** holding general obligation bonds are not required to file claims to receive their *pro rata* share of distributions on account of the amount of principal and interest calculated by the City.
- If you are required to file a claim against the City, you must do so by **February 21, 2014 at 4:00 p.m., Eastern Time**. A form that you may use to file your claim is provided with this document. *For further information, and other special deadlines for certain creditors, see Sections 3 and 4 of this document.*
- Claims may be mailed or hand delivered to the City's agent (Kurtzman Carson Consultants) or to the Court at the addresses provided in Section 5 of this document.
- After reading this document, if you have any questions regarding the filing of a claim, you may contact the City of Detroit Claims Hotline toll-free during normal business hours at **(877) 298-6236**. Please note that the people answering the hotline phone number are not able to provide legal advice. If you have questions about your legal rights, including whether you need to file a claim, you should talk to a lawyer.

[Note: This Overview and the Summaries herein are for the service version, not the publication version, of this Notice.]

EXHIBIT 6(K)

NOTICE OF DEADLINES FOR FILING OF PROOFS OF CLAIM (GENERAL BAR DATE IS FEBRUARY 21, 2014 AT 4:00 P.M., EASTERN TIME)

TO ALL PERSONS AND ENTITIES WITH CLAIMS AGAINST THE CITY OF DETROIT, MICHIGAN (THE "CITY"):

On [____], 2013, the United States Bankruptcy Court for the Eastern District of Michigan (the "Court") entered an order (Docket No. [____]) (the "Bar Date Order") establishing certain deadlines for the filing of proofs of claim in the chapter 9 bankruptcy case of the City.

By the Bar Date Order, the Court established **February 21, 2014 at 4:00 p.m., Eastern Time** (the "General Bar Date"), as the general claims bar date for filing proofs of claim in the City's case. As described below, certain claimants are not required to file proofs of claim with respect to their claims, and the Bar Date Order also establishes different bar dates with respect to certain categories of claims. See Section 1 for more information. *To determine if you need to file a proof of claim in this case and the applicable deadline and instructions for filing a proof of claim, please read this Notice carefully.*

List of Claims

On September 30, 2013, the City filed its Second Amended List of Creditors and Claims, Pursuant to Sections 924 and 925 of the Bankruptcy Code (Docket No. 1059), which constitutes the City's list of claims (as amended or supplemented from time to time, the "List of Claims") under section 925 of title 11 the United States Code (the "Bankruptcy Code"). Any claim identified on the List of Claims is referred to herein as a "Scheduled Claim."

Proof of Claim Form

For your convenience, enclosed with this Notice is a proof of claim form (the "Claim Form"), which identifies on its face the amount, nature and classification of your claim(s), if any, listed in the City's List of Claims. *If you are the holder of a general obligation bond (defined in Section 1 as GO Bonds), please note that the List of Claims identifies the City's calculation of the total bond debt by series as of commencement of the City's bankruptcy case on July 18, 2013, and the List of Claims does not identify the amount owed to any particular bondholder. If you are a holder of a GO Bond, the amount listed by the City in the List of Claims for each series of GO Bonds is provided with your Claim Form.*

A blank copy of the Claim Form is available on the City's restructuring website at www.kccllc.net/detroit, along with all other documents filed in the City's bankruptcy case. **[Note: The preceding two paragraphs are for the service version, not the publication version, of this Notice.]**

For the convenience of potential claimants, a proof of claim form prepared for use in the City's chapter 9 case (the "Claim Form"), along with all other documents filed in the City's bankruptcy case, is available on the City's restructuring website at www.kccllc.net/detroit. **[Note: This paragraph is for the publication version of this Notice.]**

Certain Definitions

The following definitions come from the Bankruptcy Code and are provided for your convenience.

As used in this Notice the term "entity" has the meaning given to it in section 101(15) of the Bankruptcy Code and includes, among other things, individuals, partnerships, corporations, joint ventures and trusts.

As used in this Notice, the term "claim" means, as to or against the City and in accordance with section 101(5) of the Bankruptcy Code: (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

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SECTION 1 — WHO IS NOT REQUIRED TO FILE A PROOF OF CLAIM

SUMMARY

- **Section 1 describes which of the City's creditors are not required to file a claim. It states that the following creditors, among others, are not required to file a claim:**
 - **City retirees and their beneficiaries** are not required to file claims for pension or healthcare benefits or other post-employment welfare benefits. *The City will work with retiree representatives to establish an appropriate process for retirees and their beneficiaries to vote on and receive payments under any restructuring plan.*
 - **City employees and their beneficiaries** are not required to file claims for pension or healthcare benefits, routine wages or other employment benefits. *The City will work with employee representatives to establish an appropriate process for employees to vote on and receive payments under any restructuring plan.*
 - **Taxpayers** are not required to file claims for routine income tax refunds. *The City will continue to process routine income tax refunds according to its usual procedures.*
 - **Bondholders** holding any of the bonds identified on the "Schedule of Secured Bonds" on the last two pages of this Notice and **holders of Certificates of Participation** issued by the City are not required to file claims for the repayment of principal, interest and/or other applicable fees and charges. *In each case, the applicable trustee or other agent has agreed to file the claim on behalf of the holders.*
 - **Other bondholders** holding general obligation bonds are not required to file claims to receive their *pro rata* share of distributions on account of the amount of principal and interest listed on the City's list of claims. *See Section 8 for more details about the list of claims.*
- A restructuring plan is a document that explains how the City proposes to pay the amounts it owes to its creditors. Once filed, this plan will be available for creditors to review. **If you are not required to file a claim, you do not need to complete and return a claim form, and you will still keep your rights to vote on a restructuring plan and receive payments under the plan.** Who gets to vote on the plan will be determined at a later date. The amount you may receive under the plan also will be determined later. The plan may propose that you receive less than the amount you are owed.
- **Even if you are not required to file a claim form, you are permitted to do so.**

The Bar Date Order provides that entities holding the following claims **are not required** to file proofs of claim on account of such claims to preserve any right they may have to receive distributions from the City and vote on any chapter 9 plan of adjustment (a "Plan") proposed by the City:

- (a) Claims of retirees, employees or other beneficiaries for (a) post-employment benefits under the City's Health and Life Insurance Benefit Plan, the Supplemental Death Benefit Plan or other non-pension post-employment welfare benefits, including unfunded actuarially accrued liabilities (any such claim, a "Retirement Healthcare Claim") and (b) pension benefits (any such claim, a "Pension Claim") under the City's two retirement systems, the General Retirement System and the Police and Fire Retirement System (together, the "Retirement Systems"). In consultation with the Official Committee of Retirees appointed in the Chapter 9 Case (the "Retiree Committee"), other groups representing the interests of current and future recipients of post-employment healthcare and pension benefits and, in the case of Pension Claims, the Retirement Systems, the City intends to establish an appropriate mechanism for such retirees, employees or other beneficiaries to vote on any Plan with respect to any pension and healthcare claims they may possess.
- (b) Claims of active employees for ordinary course compensation and employment benefits including, without limitation, wages, salaries, employee medical benefits and insurance benefits ("Ordinary Course Compensation Claims"). The City intends to continue to pay Ordinary Course Compensation Claims in the normal course. Accordingly, active employees need not file proofs of claim on account of Ordinary Course Compensation Claims. For the avoidance of doubt, claims asserted or to be asserted in any lawsuit or similar proceeding are not Ordinary Course

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Compensation Claims even where the claims assert as damages an entitlement to wages, salaries, employee medical benefits and/or insurance benefits.

- (c) Any claim by a holder for the repayment of principal, interest and/or other applicable fees and charges on or under (i) the bonds identified on the "Schedule of Secured Bonds" on the last two pages of this Notice (collectively, the "Secured Bonds") or (ii) any certificates of participation issued by the City (collectively, the "COPs"). In each case, the trustee or similar entity with respect to the applicable series of Secured Bonds or COPs has informed the City that, consistent with Bankruptcy Rule 3003(c), it intends to: (i) file any proofs of claim against the City on behalf of the holders of the Secured Bonds and the COPs; and (ii) provide notice to the holders of the Secured Bonds and the COPs.
- (d) Any claim by a holder for the repayment of principal or interest on or under the City's unlimited tax general obligation bonds, limited tax general obligation bonds and general fund bonds (collectively, the "GO Bonds" or "general obligations bonds") to preserve its right to a *pro rata* share of payments on account of the amount of principal and interest under such bonds listed in the List of Claims. Holders of GO Bonds with claims for amounts beyond principal and interest under these bonds are required to file claims for those additional amounts unless another exception applies. Also, the insurers of the GO Bonds must file any claims relating to the GO Bonds by the General Bar Date. The classification, priority and treatment of claims for principal and interest under the GO Bonds pursuant to any Chapter 9 Plan shall not be affected by any provision of the Bar Date Order or by whether or not the holders of GO Bonds file or do not file proofs of claim.
- (e) Any claim arising from an ordinary course entitlement to an income tax refund (to the extent of such claimed entitlement) asserted through the City's established income tax refund procedures, provided, however, that entities holding any other Prepetition Claims or causes of action related to income tax matters that are not properly asserted through the City's established income tax refund procedures must file a proof of claim by the General Bar Date.
- (f) Any claim with respect to which the holder already has filed a signed proof of claim against the City with the Clerk of this Court in a form substantially similar to Official Bankruptcy Form No. 10.
- (g) Any claim that is listed on the List of Claims if (i) the claim is not listed as "disputed," "contingent" or "unliquidated;" and (ii) such entity agrees with the amount, nature and priority of the claim as set forth in the List of Claims.
- (h) Any claim that previously has been allowed by order of the Court.
- (i) Any claim that has been paid in full by the City.
- (j) Any claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration (other than any 503(b)(9) Claim or any portion of a Rejection Damages Claim asserting administrative priority under section 503(b) of the Bankruptcy Code).

For the avoidance of doubt, nothing herein or in the Bar Date Order affects any right that the claimants identified in subsections (a) through (h) of this Section 1 may have to vote on and receive distributions under any Plan proposed by the City. Further, nothing herein or in the Bar Date Order should be construed as an agreement by the City or a determination by the Court that any particular party is the proper holder of any specific claim against the City with the right to vote on any Plan proposed by the City and receive distributions from the City on account of such claim.

Nothing in this Section 1 limits the right of any entity (including, without limitation, the City, the Retiree Committee, the Retirement Systems or the City's unions, employees, retirees, bondholders, bond insurers, trustees, paying agents or any other entity) to (a) assert any proof of claim authorized under the Bankruptcy Code or (b) object to any proof of claim on any grounds to the extent permitted under the Bankruptcy Code.

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SECTION 2 — WHO MUST FILE A PROOF OF CLAIM

SUMMARY

- **Section 2 explains who must file a claim. If none of the exceptions in Section 1 apply to you, then you must file a claim.**
- Note that the instructions in this document are for filing claims for any amounts owed to you by the City that "arose" before July 18, 2013, when this bankruptcy case was filed. That may include amounts promised to you before July 18, 2013, even if they were not due until later.
- If you are the holder of a bond listed at the end of this document, or the holder of a Certificate of Participation, a trustee or agent has indicated that it will file a claim on your behalf.
- If you hold general obligation bonds, you are not required to file claims for your *pro rata* share of distributions on account of the amount of principal and interest listed on the City's list of claims. *See Section 8 for more details about the list of claims.* Claims for other amounts should be filed by the deadline.
- **Even if you are not required to file a claim form, you are permitted to do so.**

If none of the exceptions described in Section 1 applies, and if you have a claim that arose or is deemed to have arisen prior to the Filing Date (any such claim, a "Prepetition Claim"), you **MUST** file a proof of claim to share in distributions from the City's bankruptcy case and to vote on a Plan. Claims based on acts or omissions of the City that occurred before the Filing Date must be filed on or prior to the applicable Bar Date, even if such claims are not now fixed, liquidated or certain or did not mature or become fixed, liquidated or certain before the Filing Date.

Except where one of the exceptions described in Section 1 applies (or where the Rejection Damages Bar Date, the Amended Claims List Bar Date or the Governmental Bar Date applies to establish a different deadline), the following entities must file proofs of claim on or before the General Bar Date:

- (a) any entity (i) whose Prepetition Claim against the City is not listed in the City's List of Claims or is listed as "disputed," "contingent" or "unliquidated" and (ii) that desires to share in any distribution in this bankruptcy case and/or otherwise participate in the proceedings in this bankruptcy case associated with the confirmation of any Plan; and
- (b) any entity that believes its Prepetition Claim is improperly classified in the List of Claims or is listed in an incorrect amount or priority and that desires to have its claim allowed in a classification, priority or amount other than that identified in the List of Claims, *provided that* any holder of GO Bonds asserting a claim for principal and interest in connection with such bonds is not required to file a proof of claim to preserve its right to a *pro rata* share of distributions on account of the amount of principal and interest under such bonds listed in the City's List of Claims.

Note that the Bar Date Order should not be construed as an agreement by the City or a determination by the Court that any particular party is the proper holder of any specific claim against the City with the right to vote on any Plan proposed by the City and receive distributions from the City on account of such claim.

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SECTION 3 — THE BAR DATES

SUMMARY

- Section 3 states that the general deadline for creditors to file claims is **February 21, 2014 at 4:00 p.m., Eastern Time.**
- "Bar date" is the legal term for the deadline to file a claim form.
- There are other later deadlines for filing claims that apply to certain parties. Additional information about these deadlines will be sent to those parties. These deadlines also are explained in Section 3.

The Bar Date Order establishes the following bar dates for filing proofs of claim in this case (collectively, the "Bar Dates"):

- (a) The General Bar Date. Pursuant to the Bar Date Order, except as described below, all entities holding claims against the City that arose (or are deemed to have arisen) prior to the commencement of this case are required to file proofs of claim by the General Bar Date (*i.e.*, by February 21, 2014 at 4:00 p.m., Eastern Time). This case was commenced on July 18, 2013 (the "Filing Date"). The General Bar Date applies to all types of claims against the City that arose prior to the Filing Date, including secured claims, unsecured priority claims and unsecured nonpriority claims. For the avoidance of doubt, the General Bar Date applies to all claims asserting administrative expense priority under section 503(b)(9) of the Bankruptcy Code, subject to Section 4 below.
- (b) The Rejection Damages Bar Date. Pursuant to the Bar Date Order, any entity asserting claims arising from or relating to the rejection of executory contracts or unexpired leases, in accordance with section 365 of the Bankruptcy Code and pursuant to an order entered prior to the confirmation and effectiveness of a Plan (any such order, a "Rejection Order"), or claims otherwise related to such rejected agreements, including (i) secured claims, unsecured priority claims and unsecured nonpriority claims that arose or are deemed to have arisen prior to the Filing Date and (ii) administrative claims under section 503(b) of the Bankruptcy Code (collectively, "Rejection Damages Claims") are required to file proofs of claim by the later of (a) the General Bar Date and (b) 4:00 p.m., Eastern Time, on the first business day that is at least 30 days after the entry of the relevant Rejection Order. The later of these dates is referred to in this Notice as the "Rejection Damages Bar Date." *For the avoidance of doubt, all prepetition and postpetition claims of any kind or nature arising from or relating to executory contracts or unexpired leases rejected by a Rejection Order must be filed by the Rejection Damages Bar Date.* In accordance with the Bar Date Order, any Rejection Order entered by the Bankruptcy Court will specify the Rejection Damages Bar Date applicable to any executory contracts or unexpired leases rejected thereunder.
- (c) The Amended Claims List Bar Date. Pursuant to the Bar Date Order, if, subsequent to the date of this Notice, the City amends or supplements its List of Claims to: (i) reduce the undisputed, noncontingent and liquidated amount of a claim; (ii) change the nature, classification or priority of a Scheduled Claim in a manner adverse to the listed creditor; or (iii) add a new Scheduled Claim to the List of Claims with respect to a party that was not previously served with notice of the Bar Dates (in each case, a "Modified Claim"), the affected claimant shall be permitted to file a proof of claim, or amend any previously filed proof of claim, in respect of the Modified Claim in accordance with the procedures described herein by the later of (i) the General Bar Date; and (ii) 4:00 p.m., Eastern Time, on the first business day that is at least 30 days after the date that notice of the applicable amendment to the List of Claims is served on the claimant (the "Amended Claims List Bar Date"). The City will provide notice of any Amended Claims List Bar Date to affected claimants. Affected claimants that previously filed a proof of claim (any such claim, a "Filed Claim") with respect to the liabilities giving rise to any Modified Claim need not refile their proof of claim because the Filed Claim is deemed to supersede and replace the original Scheduled Claim and the Modified Claim. In addition, if the City's amendment to the List of Claims improves the amount or treatment of a Scheduled Claim or a Filed Claim, a claimant that previously was served with a notice of the Bar Dates is not permitted to file additional claims by

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the Amended Claims List Bar Date; provided, however, that nothing contained in the Bar Date Order shall be construed to limit, enhance or otherwise affect a claimant's right to amend a timely filed proof of claim. In addition, notwithstanding the foregoing, nothing contained herein precludes the City from objecting to any Scheduled Claim or Filed Claim on any grounds.

- (d) The Governmental Bar Date. Governmental units (as defined in section 101(27) of the Bankruptcy Code) are not subject to the General Bar Date. Pursuant to Bankruptcy Rule 3002(c)(1), the date by which governmental units must file proofs of claim in this case (the "Governmental Unit Bar Date") is the later of: (i) the first business day that is at least 180 days following the date of the entry of an order for relief in this case; and (ii) any Rejection Damages Bar Date or Amended Claims List Bar Date applicable to the governmental unit. No order for relief has yet been entered in the City's chapter 9 case, and proceedings to establish the City's eligibility to be a chapter 9 debtor are ongoing at this time. If the City prevails in establishing eligibility, the Court will enter an order for relief consistent with section 921(d) of the Bankruptcy Code. **[Update as appropriate at time that this Notice is finalized.]** The City will provide notice of the entry of an order for relief to all known creditors that are governmental units of the Court's entry of an order for relief and the resulting Governmental Bar Date.

SECTION 4 — WHAT TO FILE

SUMMARY

- Section 4 explains the paperwork for filing a claim.
- The claim form is sometimes called a "proof of claim."
- You must complete and sign the claim form and provide all necessary supporting documentation or a summary of this documentation.
- The amount owed to you must be listed in U.S. dollars, and the form must be filled out in English.
- The claim form includes instructions and explanations to assist you.
- A claim form is enclosed. Extra copies are available for free on the internet at www.kccllc.net/detroit.

As noted above, the City is enclosing a Claim Form for use in this case, or you may use another proof of claim form that conforms substantially to Official Bankruptcy Form No. 10. If your claim is listed by the City on its List of Claims (other than claims arising from GO Bonds), the attached Claim Form sets forth: (a) the amount of your claim (if any) as listed by the City; (b) whether your claim is listed as disputed, contingent or unliquidated; and (c) whether your claim is listed as a secured claim or an unsecured nonpriority claim. *If you are the holder of a GO Bond, please note that the List of Claims identifies the City's calculation of the total bond debt by series as of the Filing Date, and the List of Claims does not identify the amount owed to any particular bondholder. If you are a holder of a GO Bond, the amount listed by the City in the List of Claims for each series of GO Bonds is provided with your Claim Form.*

You will receive a different Claim Form for each claim listed in your name by the City. You may utilize the Claim Form(s) provided by the City to file your claim. Additional proof of claim forms may be obtained at the following websites: (a) www.kccllc.net/detroit for a blank Claim Form designed specifically for this case or (b) www.uscourts.gov/bkforms for a copy of Official Bankruptcy Form No. 10. **[Note: The preceding two paragraphs are for the service version, not the publication version, of this Notice.]**

To file your claim, you may use (a) the Claim Form specifically prepared for this chapter 9 case, which is available at www.kccllc.net/detroit or (b) another proof of claim form that conforms substantially to Official Bankruptcy Form No. 10 (which form is available at www.uscourts.gov/bkforms). **[Note: This paragraph is for the publication version of this Notice.]**

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All proof of claim forms must be **signed** by the claimant or by an authorized agent of the claimant. The proof of claim form must be written in English and be denominated in United States currency. You should attach to your completed proof of claim form any documents on which the claim is based (the "Supporting Documents") (or, if the Supporting Documents are voluminous, you may attach a summary) or an explanation as to why the documents are not available. If you file a summary of the Supporting Documents because they are voluminous, you must transmit the Supporting Documents to (a) the City of Detroit Claims Processing Center (as defined below) and (b) the City within ten days after the date of a written request by the City for such documents.

Each entity asserting a Rejection Damages Claim with an administrative claim component must file, along with its proof of claim, a detailed statement describing the nature and basis of the portion of the Rejection Damages Claim asserting an administrative priority under section 503(b) of the Bankruptcy Code (the "Administrative Claim Supplement").

Under the Bar Date Order, the filing of a proof of claim form satisfies the procedural requirements for the assertion of any administrative priority claims under section 503(b)(9) of the Bankruptcy Code. Likewise, the filing of a proof of claim form, along with an attached Administrative Claim Supplement, if applicable, satisfies the procedural requirements for the assertion of a Rejection Damages Claim (including any administrative claim included therein). Claims asserting administrative expense priority (a) under section 503(b)(9) of the Bankruptcy Code or (b) as a portion of a Rejection Damages Claim must be filed by the General Bar Date and the Rejection Damages Bar Date, respectively.

All other administrative claims under sections 503(b) and 507(a)(2) of the Bankruptcy Code will not be deemed proper if asserted by proof of claim. The City intends to establish a process for the assertion of such claims at a future date if and to the extent necessary or appropriate. Note that the claim priorities provided under subsections (a)(1) and (a)(3) through (a)(10) of section 507 of the Bankruptcy Code are inapplicable in chapter 9 pursuant to section 901(a) of the Bankruptcy Code.

SECTION 5 — WHEN AND WHERE TO FILE

SUMMARY

- Section 5 explains that claims may be mailed or hand delivered to *either*: (a) the City's Claims Processing Center in California or (b) the Clerk's Office at the Bankruptcy Court in Detroit, Michigan.
- The addresses for filing are listed in Section 5 below.
- All claims must be received by **February 21, 2014 at 4:00 p.m., Eastern Time**, if that deadline applies to you.
- **All claims must be mailed or delivered by hand. Fax and e-mail submissions are not allowed. Also, electronic filing of claims on the Court's docketing system is not permitted.**
- If you would like to receive an acknowledgment of your filing, you must provide an extra copy of your claim. If you are filing your claim by mail, or delivering it to the claims center in California, you also must provide a self-addressed, postage prepaid return envelope.

All proofs of claim must be mailed or delivered so as to be received **on or before the applicable Bar Date**, at either one of the following two locations:

- (a) the City of Detroit Claims Processing Center at the following address:

**City of Detroit Claims Processing Center
c/o Kurtzman Carson Consultants, LLC
2335 Alaska Avenue
El Segundo, CA 90245**

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(b) the Clerk's office at the Court (the "Clerk's Office") at the following address:

**Office of the Clerk of Court
United States Bankruptcy Court
for the Eastern District of Michigan
211 West Fort Street
Suite 1700
Detroit, MI 48226**

Proofs of claim will be deemed filed only when **actually received** by the City of Detroit Claims Processing Center or the Clerk's Office on or before the applicable Bar Date. **Proofs of claim may NOT be delivered by facsimile or electronic mail transmission.** Any submissions by facsimile, electronic mail or electronic (ECF) court filing will not be accepted and will not be deemed filed until a proof of claim is submitted by one of the methods described above.

Proof of claim forms will be collected from the City of Detroit Claims Processing Center and the Clerk's Office, docketed and maintained by the City's claims agent, KCC. If you wish to receive acknowledgement of receipt of a proof of claim, you must submit by the applicable Bar Date and concurrently with submitting your original proof of claim (a) a copy of the original proof of claim and (b) for claims submitted to KCC or by mail to the Clerk's Office, a self-addressed, postage prepaid return envelope.

SECTION 6 — EXECUTORY CONTRACTS AND UNEXPIRED LEASES

SUMMARY

- Section 6 provides special rules for creditors asserting claims arising from contracts that the City rejects during its bankruptcy case.
- "Rejecting" a contract is a special bankruptcy power that allows the City to stop performing certain agreements upon approval of the Bankruptcy Court.

As described in Section 3 above, any entity wishing to assert a Rejection Damages Claim must file a proof of claim for any prepetition or postpetition damages caused by such rejection, or any other prepetition or postpetition claims of any kind or nature whatsoever relating to the rejected agreement, by the Rejection Damages Bar Date.

SECTION 7 — CONSEQUENCES OF FAILURE TO FILE A PROOF OF CLAIM BY THE APPLICABLE BAR DATE

SUMMARY

- Section 7 explains what happens if you are required to file a claim by the deadline, but do not.
- In that case, you will lose the right to vote on or receive payments under the City's restructuring plan.

ANY ENTITY THAT IS REQUIRED TO FILE A PROOF OF CLAIM WITH RESPECT TO A PARTICULAR CLAIM AGAINST THE CITY, BUT THAT FAILS TO DO SO BY THE APPLICABLE BAR DATE DESCRIBED IN THIS NOTICE, SHALL BE FOREVER BARRED, ESTOPPED AND ENJOINED FROM THE FOLLOWING: (A) ASSERTING ANY CLAIM AGAINST THE CITY OR PROPERTY OF THE CITY THAT (I) IS IN AN AMOUNT THAT EXCEEDS THE AMOUNT, IF ANY, THAT IS IDENTIFIED IN THE LIST OF CLAIMS ON BEHALF OF SUCH ENTITY AS UNDISPUTED, NONCONTINGENT AND

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LIQUIDATED OR (II) IS OF A DIFFERENT NATURE OR A DIFFERENT CLASSIFICATION OR PRIORITY THAN ANY CLAIM IDENTIFIED IN THE LIST OF CLAIMS ON BEHALF OF SUCH ENTITY (ANY SUCH CLAIM BEING REFERRED TO IN THIS NOTICE AS AN "UNSCHEDULED CLAIM"); (B) VOTING UPON, OR RECEIVING DISTRIBUTIONS UNDER, ANY PLAN IN THIS CHAPTER 9 CASE IN RESPECT OF AN UNSCHEDULED CLAIM; OR (C) WITH RESPECT TO ANY 503(B)(9) CLAIM OR ADMINISTRATIVE PRIORITY CLAIM COMPONENT OF ANY REJECTION DAMAGES CLAIM, ASSERTING ANY SUCH PRIORITY CLAIM AGAINST THE CITY OR PROPERTY OF THE CITY.

SECTION 8 — THE CITY'S LIST OF CLAIMS

SUMMARY

- Section 8 explains that the City filed a list of the claims that it believes it owes.
- The enclosed claim form will show how the City listed your claim. A copy of the claim list also is available on the internet at www.kccllc.net/detroit.
- Note that the City's bond debt was listed by bond series. Individual bondholders were not listed. The claim form sent to holders of general obligation bonds will include a list of all series of general obligation bonds, showing the City's calculation of the total principal and interest as of the date the bankruptcy was filed.
- If your claim is on the claim list, that means the City may have filed a claim for you. Please review the information carefully. If the City listed your claim with any of these labels, you cannot rely on the City's claim: "contingent" or "unliquidated" or "disputed." If you see any of these words next to your claim, you must file the claim form by the deadline if the claim deadline applies to you. ***The parties listed in Section 1 do not have to file a claim form by the deadline.***

You may be listed as the holder of a claim against the City in the City's List of Claims. To determine if and how you are listed on the List of Claims, please refer to the descriptions set forth on the enclosed proof of claim form(s) regarding the nature, amount and status of your claim(s). See Section 10 below for instructions regarding how to access the List of Claims. If you received postpetition payments from the City on account of your claim, the information on the enclosed proof of claim form may reflect the net remaining amount of your claims.

If you rely on the City's List of Claims, it is your responsibility to determine that the claim is accurately listed in the List of Claims. However, you may rely on the enclosed form, which sets forth (a) the amount of your claim (if any) as listed; (b) specifies whether your claim is listed in the List of Claims as disputed, contingent or unliquidated; and (c) identifies whether your claim is listed as a secured, unsecured priority or unsecured nonpriority claim. *If you are the holder of a GO Bond, please note that the List of Claims identifies the City's calculation of the total bond debt by series as of the Filing Date, and the List of Claims does not identify the amount owed to any particular bondholder. If you are a holder of a GO Bond, the amount listed by the City in the List of Claims for each series of GO Bonds is provided with your Claim Form.*

As described above, if you agree with the nature, amount and priority of your claim as listed in the City's List of Claims, and if your claim is not described in the Schedules as "disputed," "contingent" or "unliquidated," you do not need to file a proof of claim. Otherwise, or if you decide to file a proof of claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this Notice. [Note: **This Section 8 is for the service version, not the publication version, of this Notice.**]

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SECTION 9 — RESERVATION OF RIGHTS

SUMMARY

- Section 9 explains that the City has the right to "object" to any claim you may file.
- This means that the City can challenge your claim in Court. If the City challenges your claim, you will be notified.

The City reserves the right to (a) dispute, or to assert offsets or defenses against, any filed claim or any claim listed or reflected in the List of Claims as to nature, amount, liability, priority, classification or otherwise; (b) subsequently designate any listed claim as disputed, contingent or unliquidated; and (c) otherwise amend or supplement the List of Claims. Nothing contained in this Notice shall preclude the City from objecting to any claim, whether listed or filed, on any grounds. Nothing herein or in the Bar Date Order limits, or is intended to limit, any claimant's rights to defend against any objection.

SECTION 10 — ADDITIONAL INFORMATION

SUMMARY

- Section 10 explains how you can get more information.
- If you have questions, you can call the **City of Detroit Claims Hotline toll-free at (877) 298-6236** between 9:00 a.m. and 5:00 p.m., Eastern Time, Monday through Friday. Or you can write to the address below.
- Information also will be available on the internet at www.kccllc.net/detroit.
- The people at the hotline cannot give you legal advice. Legal advice cannot be provided through the mailing address below or the City's website. If you want legal advice, you must contact a lawyer.

Copies of the City's List of Claims, the Bar Date Order and other information and documents regarding the City's chapter 9 case are available free of charge on KCC's website at www.kccllc.net/detroit or for a fee at the Court's website at <https://ecf.mieb.uscourts.gov>. A login identification and password to the Court's Public Access to Court Electronic Records ("PACER") are required to access this information through the Court's website and can be obtained through the PACER Service Center at www.pacer.psc.uscourts.gov. The List of Claims and other documents filed in this case may be accessed electronically, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday, at the public access terminals located in the Clerk's Office on the 17th Floor of the courthouse at 211 West Fort Street, Detroit, Michigan 48226. Copies of documents may be printed at the Clerk's Office for a charge.

If you require additional information regarding the filing of a proof of claim, you may contact the City of Detroit Claims Hotline toll-free at **(877) 298-6236** between 9:00 a.m. and 5:00 p.m., Eastern Time, Monday through Friday. You also may contact the City's claims agent, KCC, directly by writing to:

City of Detroit Claims Processing Center
c/o Kurtzman Carson Consultants, LLC
2335 Alaska Avenue
El Segundo, CA 90245

PLEASE NOTE THAT KCC IS NOT PERMITTED TO PROVIDE LEGAL ADVICE. YOU CANNOT GET LEGAL ADVICE BY CALLING THE CITY OF DETROIT CLAIM HOTLINE OR BY WRITING TO THE CITY OF DETROIT CLAIMS PROCESSING CENTER. YOU SHOULD CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS NOTICE OR FOR ANY LEGAL ADVICE, SUCH AS WHETHER YOU SHOULD FILE A PROOF OF CLAIM.

Dated: [_____] , 2013

BY ORDER OF THE COURT

EXHIBIT 6(K)

SCHEDULE OF SECURED BONDS

The applicable trustee or similar entity with respect to the following series of bonds has informed the City that it intends to: (a) file any proofs of claim against the City on behalf of the holders of these bonds; and (b) provide notice to the holders of the bonds.

<u>Secured Bond</u>	<u>Trustee or Similar Entity</u>	<u>Secured Bond</u>	<u>Trustee or Similar Entity</u>
Sewage Disposal System Revenue Bond Series 1998-A	U.S. Bank National Association ("U.S. Bank")	Sewage Disposal System State Revolving Fund Revenue Bonds Series 2004-SRF2	U.S. Bank
Sewage Disposal System Revenue Bond Series 1998-B	U.S. Bank	Sewage Disposal System State Revolving Fund Revenue Bonds Series 2004-SRF3	U.S. Bank
Sewage Disposal System Revenue Bond Series 1999-A	U.S. Bank	Sewage Disposal System State Revolving Fund Revenue Bonds Series 2007-SRF1	U.S. Bank
Sewage Disposal System Revenue Bond Series 2001-B	U.S. Bank	Sewage Disposal System State Revolving Fund Revenue Bonds Series 2009-SRF1	U.S. Bank
Sewage Disposal System Revenue Bond Series 2001(C)(1)	U.S. Bank	Sewage Disposal System State Revolving Fund Revenue Bonds Series 2010-SRF1	U.S. Bank
Sewage Disposal System Revenue Bond Series 2001(C)(2)	U.S. Bank	Sewage Disposal System State Revolving Fund Revenue Bonds Series 2012-SRF1	U.S. Bank
Sewage Disposal System Revenue Bond Series 2001-D	U.S. Bank		
Sewage Disposal System Revenue Bond Series 2001-E	U.S. Bank	Water Supply System Revenue Bond Series 1993	U.S. Bank
Sewage Disposal System Revenue Bond Series 2003-A	U.S. Bank	Water Supply System Revenue Bond Series 1997-A	U.S. Bank
Sewage Disposal System Revenue Bond Series 2003-B	U.S. Bank	Water Supply System Revenue Bond Series 2001-A	U.S. Bank
Sewage Disposal System Revenue Bond Series 2004-A	U.S. Bank	Water Supply System Revenue Bond Series 2001-C	U.S. Bank
Sewage Disposal System Revenue Bond Series 2005-A	U.S. Bank	Water Supply System Revenue Bond Series 2003-A	U.S. Bank
Sewage Disposal System Revenue Bond Series 2005-B	U.S. Bank	Water Supply System Revenue Bond Series 2003-B	U.S. Bank
Sewage Disposal System Revenue Bond Series 2005-C	U.S. Bank	Water Supply System Revenue Bond Series 2003-C	U.S. Bank
Sewage Disposal System Revenue Bond Series 2006-A	U.S. Bank	Water Supply System Revenue Bond Series 2003-D	U.S. Bank
Sewage Disposal System Revenue Bond Series 2006-B	U.S. Bank	Water Supply System Revenue Bond Series 2004-A	U.S. Bank
Sewage Disposal System Revenue Bond Series 2006-C	U.S. Bank	Water Supply System Revenue Bond Series 2004-B	U.S. Bank
Sewage Disposal System Revenue Bond Series 2006-D	U.S. Bank	Water Supply System Revenue Bond Series 2005-A	U.S. Bank
Sewage Disposal System Revenue Bond Series 2012-A	U.S. Bank	Water Supply System Revenue Bond Series 2005-B	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 1992-B SRF	U.S. Bank	Water Supply System Revenue Bond Series 2005-C	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 1993-B SRF	U.S. Bank	Water Supply System Revenue Bond Series 2006-A	U.S. Bank

EXHIBIT 6(K)

Secured Bond	Trustee or Similar Entity	Secured Bond	Trustee or Similar Entity
Sewage Disposal System State Revolving Fund Revenue Bonds Series 1997-B SRF	U.S. Bank	Water Supply System Revenue Bond Series 2006-B	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 1999-SRF1	U.S. Bank	Water Supply System Revenue Bond Series 2006-C	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 1999-SRF2	U.S. Bank	Water Supply System Revenue Bond Series 2006-D	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 1999-SRF3	U.S. Bank	Water Supply System Revenue Bond Series 2011-A	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 1999-SRF4	U.S. Bank	Water Supply System Revenue Bond Series 2011-B	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2000-SRF1	U.S. Bank	Water Supply System Revenue Bond Series 2011-C	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2000-SRF2	U.S. Bank	Water Supply System State Revolving Fund Revenue Bonds Series 2005-SRF1	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2001-SRF1	U.S. Bank	Water Supply System State Revolving Fund Revenue Bonds Series 2005-SRF2	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2001-SRF2	U.S. Bank	Water Supply System State Revolving Fund Revenue Bonds Series 2006-SRF1	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2002-SRF1	U.S. Bank	Water Supply System State Revolving Fund Revenue Bonds Series 2008-SRF1	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2002-SRF2	U.S. Bank		
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2002-SRF3	U.S. Bank	Distributable State Aid Second Lien Bonds (Unlimited Tax General Obligation) Series 2010-A	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2003-SRF1	U.S. Bank	Distributable State Aid General Obligation Limited Tax Bonds Series 2010	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2003-SRF2	U.S. Bank	Distributable State Aid Third Lien Bonds (Limited Tax General Obligation) Series 2012-A(2), (A2-B), (B) & (B)(2)	U.S. Bank
Sewage Disposal System State Revolving Fund Revenue Bonds Series 2004-SRF1	U.S. Bank		
		Detroit Building Authority Bonds: Revenue Refunding Bonds Parking System-Series 1998-A	The Bank of New York Mellon Trust Company, National Association

EXHIBIT 6(K)

ANNEX II

EXHIBIT 6(K)

UNITED STATES BANKRUPTCY COURT		EASTERN DISTRICT of MICHIGAN		CHAPTER 9 PROOF OF CLAIM	
Name of Debtor: City of Detroit, Michigan			Case Number: 13-53846		
NOTE: <i>Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing.</i>					
Name of Creditor (the person or other entity to whom the debtor owes money or property):					
Name and address where notices should be sent:				COURT USE ONLY	
Telephone number: _____ email: _____				<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ <i>(If known)</i> Filed on: _____	
Name and address where payment should be sent (if different from above):				<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.	
Telephone number: _____ email: _____					
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.					
2. Basis for Claim: _____ (See instruction #2)					
3. Last four digits of any number by which creditor identifies debtor: _____			3a. Debtor may have scheduled account as: _____ (See instruction #3a)		
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate (when case was filed) _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable			Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
5. Amount of Claim Entitled to Priority as an Administrative Expense under 11 U.S.C. §§ 503(b)(9) and 507(a)(2). \$ _____					
5b. Amount of Claim Otherwise Entitled to Priority. Specify Applicable Section of 11 U.S.C. § _____. \$ _____					
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)					
7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. <i>(See instruction #7, and the definition of "redacted".)</i> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:					
8. Signature: (See instruction # 8) Check the appropriate box. <input type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.) (See Bankruptcy Rule 3004.) I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: _____ Title: _____ Company: _____ Address and telephone number (if different from notice address above): _____ (Signature) _____ (Date)					
Telephone number: _____ email: _____					

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

<p>Court, Name of Debtor, and Case Number: For the convenience of creditors, the Court, Name of Debtor and Case Number already have been completed on this modified proof of claim form.</p> <p>Creditor's Name and Address: Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).</p> <p>1. Amount of Claim as of Date Case Filed: State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.</p> <p>2. Basis for Claim: State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.</p> <p>3. Last Four Digits of Any Number by Which Creditor Identifies Debtor: State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.</p> <p>3a. Debtor May Have Scheduled Account As: Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as listed by the debtor on the Second Amended List of Creditors and Claims, Pursuant to Sections 924 and 925 of the Bankruptcy Code (Docket No. 1059), as it may be amended or supplemented from time to time.</p> <p>4. Secured Claim: Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and</p>	<p>value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.</p> <p>5. Amount of Claim Entitled to Priority as an Administrative Expense Under 11 U.S.C. §§ 503(b)(9) and 507(a)(2). If any portion of the claim is entitled to priority under U.S.C. §§ 503(b)(9) and 507(a)(2), state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority.</p> <p>6. Credits: An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.</p> <p>7. Documents: Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.</p> <p>8. Date and Signature: The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.</p>
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<p style="text-align: center;">_____ DEFINITIONS _____</p> <p>Debtor A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>Creditor A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).</p> <p>Claim A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p> <p>Proof of Claim A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form by sending or delivering the form to one of the addresses provided below.</p> <p>Secured Claim Under 11 U.S.C. § 506 (a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p>Unsecured Claim An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly</p>	<p style="text-align: center;">_____ INFORMATION _____</p> <p>Acknowledgment of Filing of Claim To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may view a list of filed claims in this case by visiting the Claims and Noticing Agent's website at http://www.kccilc.net/Detroit</p> <p>Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(c), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>PLEASE SEND OR DELIVER COMPLETED PROOFS OF CLAIM TO: City of Detroit Claims Processing Center c/o KCC 2335 Alaska Avenue El Segundo, CA 90245 -or- Office of the Clerk of Court United States Bankruptcy Court for the Eastern District of Michigan 211 West Fort Street, Suite 1700 Detroit, MI 48226</p> </div>
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