

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

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

**CITY OF DETROIT’S MOTION TO OPEN THE RECORD OF THE
HEARING ON CONFIRMATION OF THE CITY’S PLAN OF
ADJUSTMENT ON AUGUST 18, 2014,
FOR THE LIMITED PURPOSE OF ADMITTING THE TESTIMONY
OF AN OTHERWISE UNAVAILABLE KEY WITNESS**

On July 29, 2014, the Court entered its Sixth Amended Order Establishing Procedures, Deadlines and Hearing Dates Relating to the Debtor’s Plan of Adjustment. The Order continued the start of the hearing on confirmation of the City’s Plan of Adjustment from August 14 to August 21.

As the City advised the Court at the July 14, 2014 status conference, Robert Cline – one of the City’s key expert witnesses – will not be available after August 19, 2014. Mr. Cline is retiring from Ernst & Young as of August 1, and will be taking a position with the Organisation for Economic Cooperation and Development (the “OECD”), a prestigious non-governmental organization headquartered in Paris, of which the United States and several dozen other

countries are members. Mr. Cline will be resident in the OECD's Paris office. Once Mr. Cline's employment with the OECD begins, the OECD's conflicts of interest policy will prevent him from testifying at the confirmation hearing. Although Mr. Cline was originally scheduled to begin his work at the OECD one week after his retirement, the City negotiated with the OECD to delay Mr. Cline's start date so that he could return to the U.S. to testify on August 18-19. However, further delay will not be possible and, under Mr. Cline's engagement letter with Jones Day, Mr. Cline is not obligated to provide any services after August 19. *See Ex. 6.*¹

Mr. Cline's testimony is central to the City's case. Mr. Cline, an economist, was instrumental in building Ernst & Young's revenue projections for the City's income taxes, wagering taxes and utility users' taxes. Those revenue projections are a cornerstone of the City's Plan, and Mr. Cline is a critical expert on this foundational issue. His testimony will be relevant both to the feasibility of the Plan and the best interest of creditors test. Given the importance of Mr. Cline's expert opinion and the inherent complexities involved in financial projections and revenue forecasts, it is essential that the Court hear Mr. Cline's testimony live and have the opportunity to ask clarifying questions as necessary.

Accordingly, the City respectfully requests that the Court open the record of the hearing on confirmation of the City's Plan of Adjustment on August

¹ Upon Mr. Cline's retirement from Ernst & Young, Jones Day retained him directly as an independent expert.

18, 2014, to admit Mr. Cline's live testimony and provide sufficient time for cross-examination. The City does not believe that this will prejudice other parties to the case, since Mr. Cline's testimony does not involve matters that were newly disclosed, is largely self-contained, and would not otherwise interfere with the order of proof at the hearing. The City expects that Mr. Cline's testimony (including time for cross-examination) should take no more than one day, although Mr. Cline is prepared to appear on August 19 as well if needed.

Dated: July 30, 2014

Respectfully submitted,

/s/ Deborah Kovsky-Apap
Robert S. Hertzberg (P30261)
Deborah Kovsky-Apap (P68258)
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51 Louisiana Avenue, N.W.
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Telephone: (202) 879-3939
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**ATTORNEYS FOR THE CITY OF
DETROIT**

SUMMARY OF EXHIBITS

The following exhibits are attached to this motion, labeled in accordance with Local Rule 9014-1(b):

Exhibit 1	Proposed Order
Exhibit 2	Notice
Exhibit 3	None (Not Applicable)
Exhibit 4	Certificate of Service
Exhibit 5	None (Not Applicable)
Exhibit 6	Robert Cline Engagement Letter

EXHIBIT 1

Proposed Order

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

In re)	
)	
)	Chapter 9
CITY OF DETROIT,)	
MICHIGAN)	Case No.: 13-53846
)	
Debtor.)	Hon. Steven W. Rhodes
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**ORDER GRANTING CITY OF DETROIT’S MOTION TO OPEN THE
RECORD OF THE HEARING ON CONFIRMATION OF THE CITY’S
PLAN OF ADJUSTMENT ON AUGUST 18, 2014,
FOR THE LIMITED PURPOSE OF ADMITTING THE TESTIMONY
OF AN OTHERWISE UNAVAILABLE KEY WITNESS**

This matter having come before the Court on the City of Detroit’s Motion to Open the Record of the Hearing on Confirmation of the City’s Plan of Adjustment on August 18, 2014, for the Limited Purpose of Admitting the Testimony of an Otherwise Unavailable Key Witness (the “Motion”)¹ and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the Motion is GRANTED; and

IT IS FURTHER ORDERED that the record of the hearing on confirmation of the City’s Plan of Adjustment shall be opened on August 18, 2014

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

at __:__ a.m. (prevailing Eastern Time) before the Hon. Steven Rhodes in Courtroom ____, Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan, for the limited purpose of permitting the live testimony of Robert Cline, including direct and cross-examination; and

IT IS FURTHER ORDERED that the examination of Mr. Cline may continue, if necessary, on August 19, 2014, beginning at __:__ a.m. (prevailing Eastern Time) before the Hon. Steven Rhodes in Courtroom ____, Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan.

EXHIBIT 2

Notice

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

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

NOTICE OF MOTION AND OPPORTUNITY TO RESPOND

PLEASE TAKE NOTICE that on July 30, 2014, the City of Detroit filed its *Motion for an Order Shortening Notice and Scheduling an Expedited Hearing with Respect to the City’s Motion to Open the Record of the Hearing on Confirmation of the City’s Plan of Adjustment on August 18, 2014, for the Limited Purpose of Admitting the Testimony of an Otherwise Unavailable Key Witness* (the “**Motion**”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “**Bankruptcy Court**”), seeking entry of an order opening the confirmation hearing record on August 18, 2014 to enable the Court to hear the live testimony of Robert Cline, one of the City’s key expert witnesses.

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

PLEASE TAKE FURTHER NOTICE that if you do not want the Bankruptcy Court to grant the City’s Motion, or you want the Bankruptcy Court to consider your views on the Motion, within **17 days**¹ you or your attorney must:

¹ Concurrently herewith, the City has filed an *ex parte* motion to shorten notice of and expedite the hearing on the Motion (the “Motion to Expedite”). If the Court grants the Motion to Expedite, an order will be entered setting forth the shortened deadline to respond to the Motion.

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

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

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

Jones Day
51 Louisiana Ave. NW
Washington, D.C. 20001-2113
Attention: Gregory Shumaker

-and-

Pepper Hamilton LLP
Suite 1800, 4000 Town Center
Southfield, Michigan 48075
Attn: Robert Hertzberg and Deborah Kovsky-Apap

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

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

[signature page follows]

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

Dated: July 30, 2014

Respectfully submitted,

/s/ Deborah Kovsky-Apap
Robert S. Hertzberg (P30261)
Deborah Kovsky-Apap (P68258)
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**ATTORNEYS FOR THE CITY OF
DETROIT**

EXHIBIT 3
Brief (Not Applicable)

EXHIBIT 4
Certificate of Service

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 SERVICE

I hereby certify that on July 30, 2014, I electronically filed the *City's Motion to Open the Record of the Hearing on Confirmation of the City's Plan of Adjustment on August 18, 2014, for the Limited Purpose of Admitting the Testimony of an Otherwise Unavailable Key Witness*, which sends notice by operation of the Court's electronic filing service to all ECF participants registered to receive notice in this case.

Dated: July 30, 2014

/s/ Deborah Kovsky-Apap
Deborah Kovsky-Apap (P68258)

EXHIBIT 5
Affidavits (Not Applicable)

EXHIBIT 6
Robert Cline Engagement Letter

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001-2113
TELEPHONE: 202-879-3939 • FACSIMILE: 202-626-1700

Geoffrey S. Stewart
Direct Number: (202) 879-5445
gstewart@JonesDay.com

July 17, 2014

Robert Cline, Ph. D.
3041 Sedgwick St., Apt. 201D
Washington, DC 20008

Re: In re City of Detroit, Michigan, Case No. 13-53846
(Bankr. E.D. Mich.)

Dear Mr. Cline:

This letter agreement confirms and constitutes your engagement by Jones Day on behalf of the City of Detroit in connection with the above-referenced bankruptcy litigation (the "Bankruptcy Case").

1. Scope of Engagement

Jones Day hereby engages you to provide consulting services to us in connection with the Bankruptcy Case. These services shall include preparation for and provision of expert testimony related to tax forecasts prepared by Ernst & Young, LLP for the City of Detroit at the confirmation hearing to be held in connection with the Bankruptcy Case. These services shall begin on August 2, 2014, and conclude at 11:59 p.m. on August 19, 2014, and you shall have no ongoing obligation to provide services to Jones Day thereafter.

2. Fees and Expenses

Your professional fees for this engagement shall be as follows: (i) \$754 per hour for any time that you spend reviewing the reports of other expert witnesses, preparing to testify, or testifying, whether at deposition, at the confirmation hearing or otherwise, in connection with this engagement; and (ii) reimbursement of reasonable expenses as described below.

You will be reimbursed for all reasonable out-of-pocket expenses incurred in connection with this engagement (including travel expenses, miscellaneous printing, and shipping/delivery) promptly upon request and, in any case, within 30 days after you submit an invoice in respect thereto. Because you will be travelling to the United States from your new residence in Paris, France, we agree that it will be appropriate for you to travel in business class or its equivalent for any international travel.

ATLANTA • BEIJING • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • FRANKFURT • HONG KONG • HOUSTON
IRVINE • LONDON • LOS ANGELES • MADRID • MILAN • MOSCOW • MUNICH • NEW DELHI • NEW YORK • PARIS • PITTSBURGH
SAN DIEGO • SAN FRANCISCO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

Robert Cline, Ph. D.
July 17, 2014
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Jones Day will pay all of your fees and expenses. We would ask that you maintain detailed time sheets recording your work for us and receipts for any out-of-pocket expenses you incur on this engagement. Please send statements for your services and expenses to me at the above address.

3. Information

Jones Day may furnish you documents or information believed by you to be relevant or useful to your work. You shall keep such non-public documents or information in confidence and shall not, without our prior consent, disclose them to any person (except as required by applicable law). Unless otherwise agreed between us, all non-public documents and other materials prepared by you pursuant to this Agreement shall be confidential.

4. Termination

This Agreement shall terminate upon your completion of work on August 19, 2014. However, the provisions of Sections 2, 3 and 5 shall survive any such termination.

5. Miscellaneous

(a) You have been retained to act solely as an expert and, in such capacity, shall act as an independent contractor and in no other capacity. Any duties of you arising out of your engagement pursuant to this Agreement shall be owed solely to Jones Day.

(b) Jones Day agrees that the services you are providing to Jones Day shall be concluded at 11:59 p.m. on August 19, 2014, and that you shall have no ongoing obligation to provide services to Jones Day thereafter.

(c) No waiver, amendment, or other modification of this Agreement shall be effective unless in writing and signed by each party to be bound thereby.

This Agreement constitutes the full and entire understanding and agreement between Robert Cline and Jones Day with regard to the subjects hereof, and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

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JONES DAY

Robert Cline, Ph. D.
July 17, 2014
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Please confirm that the foregoing correctly sets forth our agreement by signing and returning to Jones Day the duplicate copy of this letter agreement enclosed herewith.


Very truly yours,

JONES DAY



Geoffrey S. Stewart

I confirm that this letter agreement accurately reflects the scope, terms, and conditions of this engagement.



Robert Cline

Dated: 7/17/14