

**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
	)

---

**MOTION *IN LIMINE* BARRING THE CITY AND PLAN SUPPORTERS  
FROM INTRODUCING EVIDENCE REGARDING THE POTENTIAL  
PERSONAL HARDSHIP OF PENSIONERS**

---

Syncora Capital Assurance Inc. and Syncora Guarantee Inc. (“Syncora”) submit this motion *in limine* (the “Motion”) to bar the City of Detroit (the “City” or “Debtor”) and Plan Supporters from introducing evidence regarding the potential personal hardship of pensioners. In support of their Motion, Syncora respectfully states as follows:

**INTRODUCTION**

1. On May 5, 2014, Syncora served its Rule 30(b)(6) deposition topics [Dkt. No. 4403], which included a request that the City provide a designee on the subject of the identity, location, and financial position of the City’s retirees. After a meet-and-confer between Syncora and the City regarding this topic, the City filed a motion for a protective order, claiming that the requested information was irrelevant, overly burdensome, and personally-intrusive.

2. On June 26, 2014, the Court granted the City's motion for a protective order, reasoning that the Bankruptcy Code and the cases interpreting the Code's requirements for plan confirmation do not take into account the effect of plan treatment on individual creditors. (Ex. 6A, Hr'g Tr. at 104:13–19, June 26, 2014.) Thus, the Court found that the effect of the Plan's proposed treatment on creditors was irrelevant to Plan confirmation. Order Regarding City's Motion for Entry of a Protective Order [Dkt. No. 5625]. Indeed, the Court reiterated its holding at a hearing on August 6, 2014, explaining that:

I do not want and don't think it relevant to consider a series of retirees or employees, for that matter, testifying about their individual hardship. In my view, neither fair and equitable nor unfair discrimination has ever in any bankruptcy case considered the impact of a plan on a creditor; that is to say, the adverse impact of a plan on a creditor. The issue always is the business justification for the treatment from the debtor's perspective.

(Ex. 6B, Hr'g Tr. at 81:9-17, Aug. 6, 2014.)

3. However, it appears that the City intends to argue that one of its grounds for the significant discrimination between the COP-holders and the pensioners is the effect of the proposed cuts on the pensioners. For example, in its *Consolidated Reply to Certain Objections to Confirmation of the Fourth Amended Plan for the Adjustment of Debts of the City of Detroit*, the City asserted that the “marginal harm that will result from each dollar of pension cuts is far greater than the harm that will result from each dollar of cuts imposed on bondholders.”

Consol. Reply [Dkt. No. 5034], ¶ 73. Based on this “marginal harm,” the City claims that the significant discrimination between the pensioners and the COP-holders is justified.

4. More ominously, during his recent deposition, Mr. Orr repeatedly testified that one of the reasons he decided to discriminate in favor of retirees was because of compassion toward retirees and the position of the retirees in the aggregate — what he called “personal hardship” or the “human dimension.” (Ex. 6C, Orr Dep. Tr. at 233:25–234:12, July 22, 2014.) Finally, other Plan supporters have listed the impact of treatment under the Plan as a topic of witness testimony. *See, e.g.*, Official Committee of Retirees List of Fact Witnesses in Support of Plan Confirmation [Dkt. No. 5688].

5. In light of the Court’s ruling, evidence of “personal hardship” — *i.e.*, the effect of the Plan on the pensioners — is not relevant. Accordingly, Syncora respectfully requests that the Court bar the City and Plan Supporters from introducing evidence regarding the effect of the Plan’s proposed treatment on individual creditors.

### **JURISDICTION**

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

## **RELIEF REQUESTED**

7. Syncora respectfully moves the Court to bar the City and Plan Supporters from introducing evidence regarding the potential personal hardship of pensioners and enter an order substantially in the form of Exhibit 1 attached hereto.

## **BASIS FOR RELIEF**

8. Under Federal Rule of Evidence 401, “[r]elevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Whether evidence is relevant is determined in the context and arguments of a particular case. *Sprint/United Mgmt. v. Mendelsohn*, 552 U.S. 379, 387 (2008). Evidence that is not relevant is not admissible. FED. R. EVIDENCE 402.

9. On May 5, 2014, Syncora served its list of 30(b)(6) topics on the City. Topic 29 on Syncora’s list of 30(b)(6) deposition topics requested that the City provide a designee who would be knowledgeable about “[t]he identity, location, and financial position of the City’s retirees.” Syncora’s Notice of 30(b)(6) Deposition to the City of Detroit [Dkt. No. 4403], Schedule A at 6. During a subsequent meet-and-confer regarding Syncora’s 30(b)(6) topics, Syncora explained that the “personal hardship” argument that the City raised in its reply put the identity and financial condition of the retirees at issue. (Ex. 6D, 6/13/14 Email

from G. Shumaker to B. Arnault at 2.) In response, the City took the position that the retirees' financial position is "irrelevant, overly burdensome, and personally intrusive." (*Id.*) The City subsequently filed a motion for a protective order asking the Court to strike topic no. 29 from Syncora's 30(b)(6) notice. Mot. for Protective Order [Dkt. No. 5442].

10. During argument on the City's motion for a protective order, the Court expressed the view that personal hardship is not relevant to plan confirmation standards:

I'm going to -- I'm going to say here as unequivocally as I can that as a matter of law, creditors' needs is not an issue when it comes to determining unfair discrimination. It's the business judgment of -- the business rationale of the debtor taking into account the debtor's needs that is critical."

(Ex. 6A, Hr'g Tr. at 104:14–19, June 26, 2014.) Following the hearing, the Court issued an Order granting the City's motion for a protective order.

11. According to the Court, "retirees' hardships are not relevant to the issues of either unfair discrimination or fair and equitable treatment." Order Regarding City's Motion for Entry of a Protective Order [Dkt. No. 5625]. Indeed, the Court reiterated this finding during the August 6, 2014 status hearing when it stated that

I do not want and don't think it relevant to consider a series of retirees or employees, for that matter, testifying about their individual hardship. In my view, neither fair and equitable nor unfair discrimination has ever in any bankruptcy case considered the impact

of a plan on a creditor; that is to say, the adverse impact of a plan on a creditor. The issue always is the business justification for the treatment from the debtor's perspective.

(Ex. 6B, Hr'g Tr. at 81:9-17, Aug. 6, 2014.)

12. Notwithstanding the Court's order, Mr. Orr testified repeatedly at his deposition that one of the justifications for the enhanced treatment of the retiree creditors was the so-called "human dimension." And, when asked why he did not believe he could cram down pensioners under his first Plan, Mr. Orr again referred to the "human dimension." (Ex. 6C, Orr Dep. Tr. at 200:22–201:2, July 22, 2014.) When asked what he meant by the human dimension, Mr. Orr explained that he was referring to the impact of the plan on the individual creditors:

Q. And when you're talking about the human dimension what are you talking about there?

A. Very simply, and I think I've said this before, the -- the pensioners are people many of whom are in their sixties, seventies, and eighties and don't have an option. They have worked for the City, most of them have done nothing wrong. They are -- the covenant that the City had with its employees and retirees was that if they perform work for the City that upon their retirement they'd be taken care of for the rest of their natural life, that some of this came as quite a shock to them because they had planned their affairs accordingly. Many of them, like my own family members or grandmother, wouldn't have options of going back into the job market to supplement income or make up for some of the cuts and that there were -- there was a real-world dimension impact to the people that were going to be affected by these cuts.

(*Id.* at 201:13–202:6.)

13. Mr. Orr also testified that he reviewed aggregate financial data regarding the average size of the pensions when determining the effect of the Plan on the individual retirees:

Q. Okay. So you relied on aggregate financial data about the approximate average size of pensions as well as oral testimonies to you about how steeper cuts would impose personal hardship on the pensioners?

A. Yeah, the approximate average size -- you know, included in this documentation for instance, I've reviewed rolls of information regarding the actual amount of pensions that thousands of pensioners have, which have been provided to me by professionals. So it's not just summary information, it's actually sometimes raw data discussions with -- with my advisors, including attorneys, as well as discussions with representatives including depositions of the -- of the -- some of whom are here today, representatives of the various funds.

(*Id.* at 231:19–232:9.)

14. Yet, as the Court has previously held, creditor needs and retiree hardship are not relevant considerations in the unfair discrimination or fair and equitable contexts. Consistent with this holding, Syncora was not permitted to obtain discovery regarding the financial position of the retirees — discovery that would be necessary to test the extent of the hardship at issue.<sup>1</sup> Consistent with that

---

<sup>1</sup> Without the opportunity to conduct discovery regarding the financial position of the retirees, the introduction of evidence on this issue would also result in unfair prejudice and surprise to Syncora.

ruling, the City should not be able to introduce any evidence regarding the potential personal hardship of pensioners.<sup>2</sup>

### **CONCLUSION**

15. For the foregoing reasons, Syncora respectfully requests that the Court bar the City and Plan Supporters from introducing evidence regarding the potential personal hardship of pensioners.

*[Remainder of Page Intentionally Left Blank]*

---

<sup>2</sup> Nor should the Court allow the Retirement Systems to backdoor this issue by seeking to introduce evidence of “aggregate” personal hardship. (Ex. 6B, Hr’g Tr. at 10:22-11:17; 81:8-82:15, Aug. 6, 2014.) Aggregate personal hardship data is just individual personal data in another guise.

Dated: August 22, 2014

Respectfully submitted,

**KIRKLAND & ELLIS LLP**

By: /s/ Stephen C. Hackney

James H.M. Sprayregen, P.C.

Ryan Blaine Bennett

Stephen C. Hackney

KIRKLAND & ELLIS LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Stephen M. Gross

David A. Agay

Joshua Gadharf

MCDONALD HOPKINS PLC

39533 Woodward Avenue

Bloomfield Hills, MI 48304

Telephone: (248) 646-5070

Facsimile: (248) 646-5075

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

## Summary of Exhibits

Exhibit 1 - Proposed Order

Exhibit 2 - Notice of Motion and Opportunity to Object

Exhibit 3 - None [Brief Not Required]

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

Exhibit 5 - Affidavits [Not Applicable]

Exhibit 6 A - June 26, 2014 Hearing Transcript

Exhibit 6 B - August 6, 2014 Hearing Transcript

Exhibit 6 C - July 22, 2014 K. Orr Deposition Transcript

Exhibit 6 D - 6/13/14 Email from G. Shumaker to B. Arnault

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

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

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

---

**ORDER GRANTING MOTION *IN LIMINE* BARRING THE CITY AND  
PLAN SUPPORTERS FROM INTRODUCING EVIDENCE REGARDING  
THE POTENTIAL PERSONAL HARDSHIP OF PENSIONERS**

---

This matter having come before the Court on Syncora’s Motion *in Limine* Barring the City and Plan Supporters from Introducing Evidence Regarding the Potential Personal Hardship of Pensioners (the “Motion”), the Court having reviewed Syncora’s Motion, and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

**IT IS HEREBY ORDERED THAT:**

1. Syncora’s Motion is GRANTED.
2. The City and Plan Supporters are barred from introducing evidence regarding the potential hardship of pensioners.
3. Syncora is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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

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

**IT IS SO ORDERED.**

**Exhibit 2**

**Notice of Motion and Opportunity to Object**

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

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

---

**NOTICE OF MOTION *IN LIMINE* BARRING THE CITY AND PLAN  
SUPPORTERS FROM INTRODUCING EVIDENCE REGARDING THE  
POTENTIAL PERSONAL HARDSHIP OF PENSIONERS**

---

**PLEASE TAKE NOTICE** that on August 22, 2014 Syncora Capital Assurance Inc. and Syncora Guarantee Inc. (“Syncora”) filed the *Motion in Limine Barring the City and Plan Supporters from Introducing Evidence Regarding the Potential Personal Hardship of Pensioners* (the “Motion”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) seeking entry of an order to bar the City from introducing evidence regarding the potential hardship of pensioners.

**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 Syncora’s Motion or you want the Bankruptcy Court to consider your views on the Motion, by **September 5, 2014**, you or your attorney must:

File with the Court a written 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:<sup>1</sup>

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

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

James H.M. Sprayregen, P.C.  
Ryan Blaine Bennett  
Stephen C. Hackney  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

- and -

Stephen M. Gross  
David A. Agay  
Joshua Gadharf  
MCDONALD HOPKINS PLC  
39533 Woodward Avenue  
Bloomfield Hills, MI 48304  
Telephone: (248) 646-5070  
Facsimile: (248) 646-5075

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.**

---

<sup>1</sup> A response must comply with F. R. Civ. P. 8(b), (c) and (e).

Dated: August 22, 2014

Respectfully submitted,

**KIRKLAND & ELLIS LLP**

By: /s/ Stephen C. Hackney

James H.M. Sprayregen, P.C.

Ryan Blaine Bennett

Stephen C. Hackney

KIRKLAND & ELLIS LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Stephen M. Gross

David A. Agay

Joshua Gadharf

MCDONALD HOPKINS PLC

39533 Woodward Avenue

Bloomfield Hills, MI 48304

Telephone: (248) 646-5070

Facsimile: (248) 646-5075

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

**Exhibit 3**

**None [Brief Not Required]**

**Exhibit 4**

**Certificate of Service [To be filed separately]**

**Exhibit 5**  
**Affidavits**  
**[Not Applicable]**

**Exhibit 6A**

**June 26, 2014 Hearing Transcript**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
. Detroit, Michigan  
. June 26, 2014  
Debtor. . 9:00 a.m.

. . . . .

HEARING RE. (#5259) STATUS CONFERENCE ON PLAN CONFIRMATION PROCESS (RE. FIFTH AMENDED ORDER ESTABLISHING PROCEDURES, DEADLINES AND HEARING DATES RELATING TO THE DEBTOR'S PLAN OF ADJUSTMENT. STATUS HEARINGS REGARDING PLAN CONFIRMATION PROCESS; (#5285) CORRECTED MOTION TO QUASH SYNCORA'S SUBPOENA TO DEPOSE ATTORNEY GENERAL BILL SCHUETTE FILED BY INTERESTED PARTY BILL SCHUETTE; (#5250) MOTION OF THE CITY OF DETROIT FOR SITE VISIT BY COURT IN CONNECTION WITH THE HEARING ON CONFIRMATION OF THE CITY'S PLAN OF ADJUSTMENT FILED BY DEBTOR IN POSSESSION CITY OF DETROIT, MICHIGAN; (#5300) JOINT MOTION TO QUASH SUBPOENAS DUCES TECUM FILED BY INTERESTED PARTIES A. PAUL AND CAROL C. SCHAAP FOUNDATION, CHARLES STEWART MOTT FOUNDATION, COMMUNITY FOUNDATION FOR SOUTHEAST MICHIGAN, HUDSON-WEBBER FOUNDATION, MAX M AND MARJORIE S. FISHER FOUNDATION, MCGREGOR FUND, THE FORD FOUNDATION, THE FRED A. AND BARBARA M. ERB FAMILY FOUNDATION, W.K. KELLOGG FOUNDATION, WILLIAM DAVIDSON FOUNDATION; (#5478) MOTION OF THE GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT TO DESIGNATE AND DETERMINE ADDITIONAL LEGAL ISSUE REGARDING METHODOLOGY FOR ASF RECOUPMENT FROM RETIREES FILED BY CREDITOR GENERAL RETIREMENT SYSTEM OF THE CITY OF DETROIT; (#5442) MOTION FOR PROTECTIVE ORDER CITY OF DETROIT'S MOTION FOR ENTRY OF A PROTECTIVE ORDER STRIKING SYNCORA'S DEMAND IN ITS RULE 30(b)(6) DEPOSITION NOTICE FOR THE PERSONAL FINANCIAL INFORMATION OF ALL CITY RETIREES FILED BY DEBTOR IN POSSESSION CITY OF DETROIT, MICHIGAN; (#5436) MOTION TO COMPEL FULL AND FAIR RESPONSES TO SYNCORA'S INTERROGATORIES FILED BY INTERESTED PARTIES SYNCORA CAPITAL ASSURANCE, INC., SYNCORA GUARANTEE, INC.  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

1 THE COURT: What other ways?

2 MR. SHUMAKER: I mean you can still make those  
3 arguments in a nonindividual way. It's a collective personal  
4 hardship. Your Honor can not believe that the retirees will  
5 suffer more than the other creditors, but you can argue that  
6 through the kinds of evidence that has already been provided  
7 to Syncora, and they would say, well --

8 THE COURT: Well, but that evidence only goes so  
9 far. It doesn't describe all of the income of all of the  
10 retirees. Some of them may have other jobs or other sources  
11 of income, and it says nothing about assets at all.

12 MR. SHUMAKER: That's true. That information is not  
13 in those actuarial reports, but I do think that, you know --  
14 in terms of how I see the case, no, but this is not just any  
15 old case. This is a case, as everyone has talked about --

16 THE COURT: Well, hold on. Hold on. There are lots  
17 of Chapter 11 cases where employees are dealt with  
18 differently than other creditors.

19 MR. SHUMAKER: Certainly.

20 THE COURT: Have any of those cases ever taken into  
21 account the greater needs of the employees compared to the  
22 needs of, for example, trade creditors --

23 MR. SHUMAKER: I'm not --

24 THE COURT: -- or bondholders?

25 MR. SHUMAKER: I'm not certain as I stand here, your

1 Honor, whether -- excuse me, your Honor, if I may.

2 THE COURT: Yes. I mean I have to say that in the  
3 case law I'm familiar with where the issue is the business  
4 justification for whatever discrimination is in the plan is  
5 determined based on the business needs of the debtor, not the  
6 business or financial needs of the creditors. That's the  
7 distinction.

8 MR. SHUMAKER: I understand where you're coming  
9 from, your Honor. I have consulted with Ms. Lennox, as you  
10 saw. I think that the -- I can affirm that the city is not  
11 going to be standing on the personal hardship argument, so  
12 perhaps this is --

13 THE COURT: Well, I think that's the appropriate  
14 decision. I'm going to -- I'm going to say here as  
15 unequivocally as I can that as a matter of law, creditors'  
16 needs is not an issue when it comes to determining unfair  
17 discrimination. It's the business judgment of -- the  
18 business rationale of the debtor taking into account the  
19 debtor's needs that is critical.

20 MR. SHUMAKER: Understood, your Honor. Now, with  
21 what I just -- my statement about what the city is not going  
22 to be relying on, I still have the concern about the personal  
23 and financial information. I don't know whether Mr. Hackney  
24 is willing --

25 THE COURT: Well, let me ask you to pause, and let

1 me get back to Mr. Hackney because I did interrupt his  
2 argument to call on you for this question. Mr. Hackney, do  
3 you still need this?

4 MR. HACKNEY: No.

5 THE COURT: All right. Then we will enter an order  
6 that you are withdrawing this request from the city.

7 MR. HACKNEY: In reliance on the Court's ruling.

8 THE COURT: In reliance on what I have held here  
9 today, absolutely.

10 MR. HACKNEY: Your Honor, I won't go on and on, but  
11 I would like somewhat of a brief opportunity to defend  
12 myself, though.

13 THE COURT: You may have that, sir.

14 MR. HACKNEY: This motion did not fairly describe to  
15 you the efforts that I took in that meet and confer to  
16 address the concerns of the city, and, in particular -- and  
17 Mr. Shumaker just did it again when he got up here today. He  
18 said they want all the retiree income for all 20,000 of them.  
19 That's not true. What I told them in the meet and confer and  
20 what Mr. Arnault's e-mail says, if you read it, at the end  
21 the last two sentences were, "I said that I want to know what  
22 you know." And I know that it's -- I know the substance  
23 we've resolved, but I wanted -- what I want to tell you is  
24 that I took steps on every point, relevance, privacy, burden,  
25 to address them. There was never a substantive response

**Exhibit 6B**

**August 6, 2014 Hearing Transcript**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
. Detroit, Michigan  
. August 6, 2014  
Debtor. . 9:00 a.m.  
. . . . .

HEARING RE. STATUS CONFERENCE RE. PLAN CONFIRMATION  
PROCESS (#6376) SIXTH AMENDED ORDER ESTABLISHING  
PROCEDURES, DEADLINES AND HEARING DATES RELATING TO  
THE DEBTOR'S PLAN OF ADJUSTMENT  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day  
By: HEATHER LENNOX  
222 East 41st Street  
New York, NY 10017  
(212) 326-3837  
  
Jones Day  
By: THOMAS CULLEN  
GREGORY SHUMAKER  
51 Louisiana Avenue, N.W.  
Washington, DC 20001  
(202) 879-3939  
  
For National Public Finance  
Guarantee Corp.: Sidley Austin, LLP  
By: GUY NEAL  
1501 K Street, N.W.  
Washington, DC 20005  
(202) 736-8041  
  
For Assured Guaranty Municipal  
Corp.: Chadbourne & Parke, LLP  
By: ROBERT SCHWINGER  
30 Rockefeller Plaza  
New York, NY 10112  
(212) 408-5364  
  
For the Official Committee of Retirees: Dentons US, LLP  
By: SAM J. ALBERTS  
1301 K Street, NW, Suite 600, East Tower  
Washington, DC 20005  
(202) 408-7004

1 THE COURT: Good.

2 MR. HACKNEY: So kind of going maybe from the more  
3 mundane to the more philosophical, whether the Court has a  
4 problem with parties using video clips in the opening so long  
5 it's as -- so long as the video clip is of otherwise  
6 admissible deposition testimony, meaning rather than merely  
7 using transcripts; whether the Court would mind just  
8 approving now briefs in excess of the page limit on the post-  
9 trial briefs and supplemental objections because we intend  
10 them to be very substantive and evidence-based documents that  
11 will save you a bunch of ex parte motions; confirming that  
12 documents can be used for cross-examination even if they're  
13 not on a witness list under the custom of the idea that you  
14 don't know what you'll need to impeach a witness with, and it  
15 may not be on your exhibit list. I have thoughts for the  
16 Court on how we might streamline the process of getting  
17 exhibits into evidence, particularly on the subject of  
18 authenticity. I wanted to address with the Court motions in  
19 limine and Daubert motions that we intend to file and get a  
20 sense of both -- well, principally how you wanted to handle  
21 them and when you wanted to hear them. Deposition  
22 designations are an important subject, your Honor, and I  
23 wanted to discuss that with you. Post-trial findings of fact  
24 and conclusions of law are another one that's important. A  
25 more broad question, I think, I know that you noted was the

1 question of time allocation both in terms of total time but  
2 also intracreditor time.

3           The last one, your Honor, goes a little bit more to  
4 some of the issues we've raised before, for example, just  
5 sort of the impact on the case of things like when we're  
6 going to get the definitive documents on the DIA settlement,  
7 the LTGO settlement. I've raised those with you before. The  
8 ongoing DWSD issue, I want to discuss with you principally  
9 how we're supposed to try that up to you and then the issue  
10 of exit financing. Those were my bullets, your Honor.

11           THE COURT: Thank you. Does anyone else have any  
12 other items to add for the agenda today?

13           MR. DECHIARA: Good morning, your Honor. Peter  
14 DeChiara for the UAW. The UAW may have one additional item.  
15 We have a discrete supplemental discovery request to the  
16 city. We've discussed it with the city. The city may agree  
17 to provide it to us, in which case there will be no need to  
18 raise it with the Court. We hope before the end of the  
19 hearing today we'll hear from the city on that matter. Thank  
20 you.

21           THE COURT: Mr. Gordon.

22           MR. GORDON: Good morning, your Honor. Just one  
23 discrete item that kind of popped into my head this morning  
24 really, and I thought it was more maybe in the nature of a  
25 housekeeping matter, but since you're bringing this up now, I

1 just wanted to raise it. I believe a couple of weeks ago in  
2 the context of a motion to quash a subpoena by Syncora, the  
3 Court asked in the middle of the hearing specifically about  
4 whether evidence of individual hardship was even relevant for  
5 purposes of the trial, and on the fly I think parties sort of  
6 agreed that that wouldn't be relevant. However, I was  
7 concerned that maybe the record wasn't really clear because I  
8 think that the case law supports the concept that hardship on  
9 a more macroscopic level to the community, to individuals and  
10 the community as a whole in a Chapter 9 case is something  
11 that is relevant. And I know that the city, in particular,  
12 cited in its consolidated reply the Barnwell Hospital case  
13 and the Corcoran Hospital case as well, so I wanted to make  
14 sure that everyone was clear as to the ability to present  
15 some evidence as to the hardship to the community as a whole  
16 of certain, you know, potential scenarios in connection with  
17 the plan and that those things could be relevant.

18 THE COURT: Thank you.

19 MR. GORDON: Thank you, your Honor.

20 THE COURT: Any others? I actually have a couple  
21 myself. I'm sorry, sir. Were you standing?

22 MR. QUINN: Yes, your Honor. Your Honor, John  
23 Quinn. I think the Court should address the question of how  
24 to provide an opportunity for individual objectors to cross-  
25 examine witnesses and present evidence without extending the

1 trial unduly and causing confusion.

2 THE COURT: All right. We'll add that to the  
3 agenda. I actually have a couple of additions myself. An  
4 issue I've been struggling with is -- one second. Chris, is  
5 there a Bankruptcy Code here? Yes, there is. One second,  
6 please. An issue that I've been struggling with here and  
7 that I'd like to discuss with you how to process is the issue  
8 of the meaning of Section 943(b)(3) relating to fees and the  
9 question of to what extent does that provision give the Court  
10 jurisdiction over fees, whether it's fees of the city's  
11 professionals or creditors' professionals or otherwise, so  
12 let's put that on the agenda. And, finally, probably at the  
13 very end, I need to meet with the attorneys who I've been  
14 working with on the site visit. Okay.

15 So let's begin then with how to address Ms. Kopacz's  
16 report and testimony. The first question I raised is who  
17 will discuss -- who will conduct Ms. Kopacz's direct  
18 examination? I had thought and assumed that I would actually  
19 be the one doing that, and so I would ask whether anyone has  
20 any objection to that.

21 MR. CULLEN: No, your Honor.

22 THE COURT: No objections? All right. Then let's  
23 just presume that that's the direction we will proceed in.  
24 Next question is at what point in the proceedings will she  
25 testify, and on this point I welcome your thoughts, anyone.

1 agenda.

2 MR. DECHIARA: Thank you.

3 THE COURT: Before you go, sir, I think it was your  
4 client and maybe AFSCME or one other client -- creditor -- I  
5 can't remember -- raised an objection recently about the plan  
6 impairing the claims of noncity employees.

7 MR. DECHIARA: That would be the UAW. Our claim is  
8 that the plan impairs the accrued pension benefits of  
9 retirees and employees of the library, which is a legally  
10 separate --

11 THE COURT: Yeah.

12 MR. DECHIARA: -- entity, and that's essentially the  
13 gist of our case, that we believe that that's improper,  
14 that --

15 THE COURT: Um-hmm, but wasn't there another  
16 objection from another creditor that came in?

17 MR. DECHIARA: There may have been, but I can't  
18 speak to that.

19 THE COURT: Sir.

20 MR. MACK: Yes, your Honor. Richard Mack with  
21 AFSCME. We joined the -- or we've also filed the same  
22 objection for noncity employees at the library. We also have  
23 eight, I think it is -- five, rather, employees of the Cobo  
24 Hall Regional Authority, so --

25 THE COURT: Oh, yes. That was it. Thank you. All

1 right. So this is an issue that I'll want the city to  
2 address at some point. Maybe we'll include it on our list of  
3 issues for you to brief.

4 MS. LENNOX: Yes. We're prepared to do that, your  
5 Honor.

6 THE COURT: Okay. Mr. Gordon.

7 MR. GORDON: Yes, your Honor.

8 THE COURT: You raised, you know, the very  
9 interesting issue of community hardship. I do not want and  
10 don't think it relevant to consider a series of retirees or  
11 employees, for that matter, testifying about their individual  
12 hardship. In my view, neither fair and equitable nor unfair  
13 discrimination has ever in any bankruptcy case considered the  
14 impact of a plan on a creditor; that is to say, the adverse  
15 impact of a plan on a creditor. The issue always is the  
16 business justification for the treatment from the debtor's  
17 perspective. Now, to the extent that issue encompasses  
18 consideration of hardship, I would leave it to the proponents  
19 of the plan to argue and prove that, but that's a much -- I  
20 don't know -- broader and differently focused question than  
21 just plain hardship to retirees.

22 MR. GORDON: Yes, your Honor, and I would agree with  
23 you that the colloquy at that status conference a few weeks  
24 ago was focused on much more granular individual data and  
25 obtaining that data. I just wanted to make sure that it was

1 clear or understood by all parties that if there is  
2 information or an argument to be made as to the impact more  
3 broadly on retirees, not just as creditors but more  
4 specifically as a part of the entity that we are trying to  
5 rehabilitate, that that is relevant and fair game in the  
6 context of a Chapter 9.

7 THE COURT: Right. The city will bear the burden of  
8 showing why its very significant discrimination in favor of  
9 retirees and against the financial creditors here in this  
10 case is not unfair. It knows that.

11 MR. GORDON: Agreed, your Honor, and I just wanted  
12 to make clear that that would be one of the things that could  
13 be identified is if there was, you know, broad impoverishment  
14 of retirees, for example, that's something that could be  
15 considered.

16 THE COURT: All right.

17 MR. GORDON: Thank you, your Honor.

18 THE COURT: Okay. That was all I had for my agenda  
19 on the record here. Is there anything that anyone else would  
20 like to bring up before I handle some matters off the record?  
21 Oh, yes. There was your issue, sir. Thank you for reminding  
22 me. Your name again, sir?

23 MR. QUINN: John Quinn, your Honor.

24 THE COURT: Yes. Mr. Quinn raised the issue of  
25 individual creditors, and by that I assume he means

1 unrepresented creditors --

2 MR. QUINN: Yes.

3 THE COURT: -- having an opportunity to either  
4 present evidence or cross-examine witnesses. Anyone have any  
5 thoughts on this question?

6 MR. HACKNEY: I do. I do, your Honor.

7 THE COURT: Go ahead.

8 MR. HACKNEY: And first let me just express my  
9 personal admiration for Mr. Quinn for coming in here and  
10 standing up for himself.

11 THE COURT: Of course.

12 MR. HACKNEY: There is the balance that has to be  
13 struck, I think, in terms of protecting people's rights, on  
14 the one hand, and then allowing for an orderly trial, on the  
15 other hand, and what it seems to me might be a good first  
16 step would be to get a sense of how many people there are  
17 that are like Mr. Quinn that actually intend to cross-examine  
18 or introduce evidence, start there and then perhaps engage  
19 the concept of amongst those creditors, much like other  
20 creditors have been required to coordinate and utilize lead  
21 examination methodologies, a steering committee of sorts for  
22 them and a consideration of what time allotment is  
23 appropriate for them --

24 THE COURT: Um-hmm.

25 MR. HACKNEY: -- but that would be a way to try to

**Exhibit 6C**

**July 22, 2014 K. Orr Deposition Transcript**

Page 162

1 KEVYN ORR, VOLUME 2  
 2 IN THE UNITED STATES BANKRUPTCY COURT  
 3 FOR THE EASTERN DISTRICT OF MICHIGAN  
 4  
 5  
 6  
 7 In Re: ) Chapter 9  
 8  
 9 CITY of DETROIT, MICHIGAN, ) Case No. 13-53846  
 10  
 11 Debtor. ) Hon. Steven Rhodes  
 12 \_\_\_\_\_  
 13  
 14 VOLUME 2  
 15  
 16 The Videotaped Deposition of KEVYN ORR,  
 17 in his personal capacity and as Rule 30(b)(6) witness,  
 18 Taken at 2 Woodward Avenue,  
 19 Detroit, Michigan,  
 20 Commencing at 9:10 a.m.,  
 21 Tuesday, July 22, 2014,  
 22 Before Leisa M. Pastor, CSR-3500, RPR, CRR.  
 23  
 24  
 25

Page 164

1 KEVYN ORR, VOLUME 2  
 2 STEPHEN C. HACKNEY, ESQ.  
 3 Kirkland & Ellis, LLP  
 4 300 North Lasalle Street  
 5 Chicago, Illinois 60654  
 6 Appearing on behalf of Syncora.  
 7  
 8  
 9  
 10 JEFFREY BEELAERT, ESQ.  
 11 Sidley Austin, LLP  
 12 1501 K Street, N.W.  
 13 Washington, D.C. 20005  
 14 Appearing on behalf of National Public Financing.  
 15  
 16  
 17  
 18 ERNEST J. ESSAD, JR., ESQ.  
 19 Williams, Williams, Rattner & Plunkett, P.C.  
 20 380 North Old Woodward Avenue, Suite 300  
 21 Birmingham, Michigan 48009  
 22 Appearing on behalf of Financial Guaranty Insurance  
 23 Company.  
 24  
 25

Page 163

1 KEVYN ORR, VOLUME 2  
 2 APPEARANCES:  
 3  
 4 GREGORY M. SHUMAKER, ESQ.,  
 5 DAN T. MOSS, ESQ.  
 6 Jones Day  
 7 51 Louisiana Avenue, N.W.  
 8 Washington, D.C. 20001  
 9 Appearing on behalf of the Debtor.  
 10  
 11  
 12  
 13  
 14 ROBERT HERTZBERG, ESQ.  
 15 Pepper Hamilton, LLP  
 16 4000 Town Center, Suite 1800  
 17 Southfield, Michigan 48075  
 18 Appearing on behalf of Debtor.  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 165

1 KEVYN ORR, VOLUME 2  
 2 ALFREDO R. PEREZ, ESQ.  
 3 Weil, Gotshal & Manges, LLP  
 4 700 Louisiana Street, Suite 1700  
 5 Houston, Texas 77002  
 6 Appearing on behalf of Financial Guaranty Insurance  
 7 Company.  
 8  
 9  
 10  
 11 LISA SCHAPIRA, ESQ.  
 12 Chadbourne & Parke, LLP  
 13 30 Rockefeller Plaza  
 14 New York, New York 10112  
 15 Appearing on behalf of Assured Guaranty Municipal  
 16 Corporation.  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 KEVYN ORR, VOLUME 2  
 2 isn't that correct?  
 3 **A. I believe that's correct.**  
 4 Q. Now, you understand that one of the complexities of  
 5 the case has been that the retirees are -- are kind of  
 6 disbursed out there in the world, and as a practical  
 7 matter you've typically been dealing either with  
 8 retiree associations, retirement trusts, or the  
 9 official committee of retirees when it came to  
 10 negotiating plan treatment; is that a fair statement?  
 11 **A. Yes. I think it's a fair statement to say we tried to**  
 12 **deal with representative organizations as opposed to**  
 13 **individual retirees.**  
 14 Q. The general strategy was you deal with the  
 15 representative organizations and if you can strike  
 16 agreements with them, the hope is that they'll then  
 17 recommend approval of the plan and the retirees will  
 18 -- will vote consistently with that recommendation,  
 19 correct?  
 20 **A. Yes, I think that's fair.**  
 21 Q. Now, as of February 21st, 2014, you had just over  
 22 seven months left on your term; isn't that correct?  
 23 **A. Yes, I think that's fair.**  
 24 Q. Okay. And you said in the press at the time of the  
 25 first plan that it was quote/unquote crucial that the

1 KEVYN ORR, VOLUME 2  
 2 City reach an agreement with its creditors, correct?  
 3 **A. Yes, I believe I said that.**  
 4 Q. And in particular, you were referring to the  
 5 pensioners, correct?  
 6 **A. I was referring to everyone.**  
 7 Q. Okay. And you also said at that time: "We really do  
 8 not have time for a lot of acrimony and litigation."  
 9 Isn't that correct?  
 10 **A. Yes, I probably said that.**  
 11 Q. Okay. Now, you said that it was crucial that the City  
 12 reach agreement with its creditors in part because  
 13 time was short on your tenure as emergency manager,  
 14 correct?  
 15 **A. I suppose you could say in part, but it was also that**  
 16 **the City needed to get out of a space that it had been**  
 17 **in effectively for almost two years, that we needed to**  
 18 **get to revitalization, and I said a bunch of other**  
 19 **things during that time about how important it was to**  
 20 **get out of this space.**  
 21 Q. And wasn't it also crucial that the retirees agree to  
 22 the first plan you proposed because you knew you  
 23 couldn't cram them down at the proposed pension cut  
 24 levels if they didn't agree?  
 25 **A. There were other reasons, not just the issue regarding**

1 KEVYN ORR, VOLUME 2  
 2 **cramdown. We certainly wanted people that were going**  
 3 **to be impacted and severely affected by this process**  
 4 **to have some level of buy-in for -- for the future of**  
 5 **the City and for their interests, I don't want to give**  
 6 **the impression that we were merely looking at it from**  
 7 **a technical perspective, there is a human dimension**  
 8 **here that we were very concerned about, too.**  
 9 Q. But as of the first plan the reason you were so  
 10 focused and in terms of saying it was crucial to reach  
 11 agreement, at least as we're talking about retirees,  
 12 it was because you knew that you couldn't cram them  
 13 down at the proposed plan levels, correct?  
 14 **A. I knew that we could not cram them down at proposed**  
 15 **plan levels, but I think there are plenty of**  
 16 **statements out there by me importuning the retirees to**  
 17 **support the plan for a number of other reasons, as**  
 18 **well.**  
 19 Q. And why couldn't -- why did you believe you couldn't  
 20 cram them down at the proposed plan levels in the  
 21 first plan?  
 22 **A. Well, I didn't know if we could get in consultant -- I**  
 23 **won't into discussions we had with counsel, but we**  
 24 **were concerned that we might not be able to meet some**  
 25 **of the requirements in the code but also here again,**

1 KEVYN ORR, VOLUME 2  
 2 **wanted to be sure that we addressed the human**  
 3 **dimension.**  
 4 Q. And you didn't have -- is it -- are you referring to  
 5 the fact that as of the first plan, you didn't even  
 6 have an impaired assenting class?  
 7 **A. I think it's fair to say that we did not have -- well,**  
 8 **when was the date?**  
 9 Q. Feb 21, 2014.  
 10 **A. I don't know if that's true because I don't recall the**  
 11 **dates that we may have reached agreements with the**  
 12 **financial creditors.**  
 13 Q. And when you're talking about the human dimension,  
 14 what are you talking about there?  
 15 **A. Very simply, and I think I've said this before, the --**  
 16 **the pensioners are people many of whom are in their**  
 17 **sixties, seventies, and eighties and don't have an**  
 18 **option. They have worked for the City, most of them**  
 19 **have done nothing wrong. They are -- the covenant**  
 20 **that the City had with its employees and retirees was**  
 21 **that if they perform work for the City that upon their**  
 22 **retirement they'd be taken care of for the rest of**  
 23 **their natural life, that some of this came as quite a**  
 24 **shock to them because they had planned their affairs**  
 25 **accordingly. Many of them, like my own family members**

1 KEVYN ORR, VOLUME 2  
 2 or grandmother, wouldn't have options of going back  
 3 into the job market to supplement income or make up  
 4 for some of the cuts and that there were -- there was  
 5 a real-world dimension impact to the people that were  
 6 going to be affected by these cuts.  
 7 Q. Putting aside the human dimension, if you'd had an  
 8 impaired assenting class do you believe that you could  
 9 have crammed down the first plan on the pensioners?  
 10 MR. SHUMAKER: Object to the form.  
 11 A. Yeah, I don't know, I'd have to consult with my  
 12 attorneys.  
 13 BY MR. HACKNEY:  
 14 Q. Okay, and I mean back at the time. Did you believe  
 15 you could or could not?  
 16 A. To be honest with you Mr. Hartley (sic), I don't -- I  
 17 don't -- I don't really recall. I don't really recall  
 18 that being the crux of the discussion, but it might  
 19 have been true.  
 20 Q. Okay. You may have thought you could cram them down,  
 21 you may have thought you couldn't, you just don't  
 22 know?  
 23 A. I just don't remember.  
 24 Q. Okay. You previously called me Hartley --  
 25 A. Did I call you Hartley?

1 KEVYN ORR, VOLUME 2  
 2 Q. There is something in your brain --  
 3 A. No, I --  
 4 Q. -- that says Hartley when you see me.  
 5 A. This is going to be surprising, I have a friend named  
 6 Hartley, and he reminds me of you.  
 7 Q. And he's like a handsome, suave guy?  
 8 A. Let's not get carried away.  
 9 Q. Now, you did understand that the February 21st plan of  
 10 adjustment still discriminated in favor of retirees as  
 11 compared to COPs holders in terms of their respective  
 12 recoveries, correct?  
 13 A. Yes, I understand that there were -- there were a lot  
 14 of reports and the financial community was taking the  
 15 position that there was discrimination in the plan.  
 16 Q. But there was objectively discrimination in that first  
 17 plan, correct?  
 18 A. There was a higher percentage recovery relative to  
 19 some of the financial creditors.  
 20 Q. And you were aware of that discrimination at the time  
 21 you proposed that plan, correct?  
 22 A. Yes.  
 23 Q. And what was your basis for the level of  
 24 discrimination you proposed in the February 21st plan?  
 25 A. Well, I believe at that point, we were looking at some

1 KEVYN ORR, VOLUME 2  
 2 contribution from third parties, meaning the  
 3 foundations, the benefactors and others. We were  
 4 looking, we had been admonished I believe by the court  
 5 on several occasions to be compassionate in our  
 6 treatment of individuals and retirees. And unlike  
 7 financial creditors, the GRS and PFRS unlike some  
 8 financial creditors actually had assets in their  
 9 pension fund, so there was an existing basis by which  
 10 those assets would allow for a higher rate of recovery  
 11 ab initio, that is, from the start, as opposed to the  
 12 financial creditors to whom we owed money but did not  
 13 have a cache of money available to pay them.  
 14 Q. So there -- let me break down what I heard. You tell  
 15 me if I got it right.  
 16 A. Mm-hmm.  
 17 Q. I heard that the basis for the decision to  
 18 discriminate in the first plan was in part the  
 19 compassion for retirees, but it was also in part the  
 20 fact that there were assets in the retirement systems?  
 21 A. Yes.  
 22 Q. Okay, anything other than those two things?  
 23 A. No, as I said, there are a number of other factors in  
 24 trying to incentivize a workforce, in trying to keep  
 25 the covenant that the City made, a number of other

1 KEVYN ORR, VOLUME 2  
 2 factors, but generally those are the ones that seem to  
 3 be driving a sort of the treatment of those classes.  
 4 Q. Okay, so I heard compassion, the fact that assets  
 5 exist in the retirement trust, trying to incentivize  
 6 City workers. Anything else that justified that level  
 7 of discrimination?  
 8 A. There may have been other things that I said in terms  
 9 of the level of different treatment, you call  
 10 discrimination. That was reported out in the first  
 11 plan, but generally speaking, the principal driving  
 12 force was that the retirement systems had assets in  
 13 them and we were trying to bring levels down below to  
 14 the predictable funding level verse -- based upon the  
 15 unfunded actuarial liability of those funds. You  
 16 start with a cache of money in those funds that are  
 17 available conceivably to pay pensions if you are able  
 18 to adjust the payment levels, whereas with financial  
 19 creditors, we didn't have a cache of money available  
 20 to them. We're paying them out of existing City cash  
 21 flow going forward.  
 22 Q. But you understand that the amount of assets in the  
 23 pension systems, the difference between the amount of  
 24 assets and what is needed to fully fund pensions is  
 25 called the UAAL?

1 KEVYN ORR, VOLUME 2  
 2 information that you relied upon with respect to this  
 3 first ground which are assets held in the trust that  
 4 you relied on either financial information from the  
 5 trusts about their assets or expert analysis relating  
 6 to appropriate discount and other actuarial rates to  
 7 be applied to those assets and liabilities?  
 8 **A. Yes, I relied on things other than my own analysis**  
 9 **from professionals who do this.**  
 10 Q. But did I accurately describe kind of the body of  
 11 information?  
 12 **A. Yeah, you did. Yes, you did.**  
 13 Q. Okay. Now, with respect to the human dimension that  
 14 we talked about, with respect to the classes 10 and  
 15 11, what type of information did you rely upon in  
 16 connection with that judgment?  
 17 **A. Well, I think some of the information we just**  
 18 **discussed is captured within that, as well as the**  
 19 **representatives on the art -- on the retiree**  
 20 **committee, the pension boards, as well, as well as**  
 21 **individual meetings with individual employees and**  
 22 **pensioners who recount their stories in detail, as**  
 23 **well as statements made in court by the court itself**  
 24 **as well as others. I listened to the September 19th,**  
 25 **2013 tape of the meeting of creditors. I listened to**

1 KEVYN ORR, VOLUME 2  
 2 **the blog of last -- was it last Monday or Tuesday's**  
 3 **objectors meeting, general objectors meeting as well**  
 4 **as far as the impact, and from time to time obviously**  
 5 **I meet people on the street as well as hear their**  
 6 **accounts and press reports.**  
 7 Q. Is it fair to describe this body of information as,  
 8 you know, oral testimonies to you about the personal  
 9 hardship people will endure if there are -- if steeper  
 10 cuts are imposed?  
 11 **A. Yeah, I think it's fair to say oral testimony as well**  
 12 **as, as I said, the actual analyses that are provided**  
 13 **that, for instance, will tell you that general**  
 14 **retirement system employees get an average of 19,400**  
 15 **approximately in their pension, whereas PFRS may be in**  
 16 **the neighborhood of the mid-thirties. So it's**  
 17 **actually analyses as well as oral testimony, oral**  
 18 **statements, written statements, and press reports.**  
 19 Q. Okay. So you relied on aggregate financial data about  
 20 the approximate average size of pensions as well as  
 21 oral testimonies to you about how steeper cuts would  
 22 impose personal hardship on the pensioners?  
 23 **A. Yeah, the approximate average size -- you know,**  
 24 **included in this documentation for instance, I've**  
 25 **reviewed rolls of information regarding the actual**

1 KEVYN ORR, VOLUME 2  
 2 **amount of pensions that thousands of pensioners have,**  
 3 **which have been provided to me by professionals. So**  
 4 **it's not just summary information, it's actually**  
 5 **sometimes raw data discussions with -- with my**  
 6 **advisors, including attorneys, as well as discussions**  
 7 **with representatives including depositions of the --**  
 8 **of the -- some of whom are here today, representatives**  
 9 **of the various funds.**  
 10 Q. The financial data that you relied upon, though, was  
 11 the -- was limited to the size of their pensions,  
 12 whether it was aggregate or individual pensions,  
 13 right?  
 14 **A. No.**  
 15 Q. You didn't review personal financial information of  
 16 any of the retirees, did you?  
 17 **A. No, we didn't review -- I didn't review financial**  
 18 **statements of retirees but I did review reports as**  
 19 **indexed by account number on the pensions of**  
 20 **individual retirees.**  
 21 Q. Yes.  
 22 **A. Yeah. I did review things like that.**  
 23 Q. I'm trying to say that when it came to the financial  
 24 information you considered, it related to the size of  
 25 the pensions, correct?

1 KEVYN ORR, VOLUME 2  
 2 **A. As opposed to the personal financial situation of each**  
 3 **individual pensioner?**  
 4 Q. Right.  
 5 **A. No, I have seen no information like that.**  
 6 Q. And you haven't seen that in the aggregate, either,  
 7 correct?  
 8 **A. Well, let's be careful with aggregate. I mean, you**  
 9 **know, 14,000 approximately pensioners live within the**  
 10 **City of Detroit and/or Wayne County, I believe, so a**  
 11 **significant percentage live here, and when you look at**  
 12 **aggregate demographic data, you know, 40 percent of**  
 13 **our residents live at or below the poverty line per**  
 14 **capita GDP, all of this, I have reviewed aggregate**  
 15 **data, U.S. Census Bureau --**  
 16 Q. But this is stuff -- sorry to interrupt you.  
 17 **A. Yeah.**  
 18 Q. This is stuff that relates generally to the  
 19 population?  
 20 **A. Right.**  
 21 Q. It's not specific data to the retirees?  
 22 **A. No, but there was aggregate data that I did review**  
 23 **regarding retirees as a group but not their personal**  
 24 **financial information.**  
 25 Q. Right, the aggregate data on the retirees was with

1 KEVYN ORR, VOLUME 2  
 2 respect to their mean pensions.  
 3 **A. No, it was also with probable -- it wasn't just**  
 4 **pensions, it also -- there was aggregate data**  
 5 **regarding healthcare, there's aggregate data regarding**  
 6 **an alternative savings fund recoupment. So I know**  
 7 **you're focusing principally on pensions, but I looked**  
 8 **at a number of data as a composite of what the impact**  
 9 **would be to these pensioners from a human dimension.**  
 10 Q. Okay, and evaluating the personal hardship they would  
 11 suffer?  
 12 **A. Correct.**  
 13 Q. Okay. And that was -- was that one of the most  
 14 important things that drove you in connection with  
 15 this decision? It seems like it's moved you.  
 16 **A. Well, I don't know if it's one of the most important,**  
 17 **but it -- all of them are important, the amount of**  
 18 **money, the Grand Bargain, the -- the grantors have**  
 19 **given us \$866 million we didn't have seven months ago**  
 20 **so that's pretty important.**  
 21 **The human dimension certainly is something**  
 22 **that you have to take into account. These are real**  
 23 **people with real consequences. So all of it's fairly**  
 24 **important to me.**  
 25 Q. Okay. Now, you -- the third thing you talked about

1 KEVYN ORR, VOLUME 2  
 2 was the City's covenant, which I understood you to  
 3 mean the City's promise that it would pay these people  
 4 their pensions?  
 5 **A. Yes.**  
 6 Q. And I take it from that the information you would have  
 7 relied upon was just the contract saying that folks  
 8 were entitled to these pensions?  
 9 **A. No, you know, we -- I also had access -- you know, I**  
 10 **talked with some City employees, for instance, who**  
 11 **currently work for the City, Gary Brown, who is a**  
 12 **retired Detroit police officer but is on a personal**  
 13 **service contract here in the City now, PSC, and I**  
 14 **talked to him about the historical commitments that**  
 15 **the City has made, he's a lifetime resident, been here**  
 16 **a long time. Chief Craig, who was born here, for**  
 17 **instance, and his parents have been in the City, I**  
 18 **talked to him. I talked to individuals.**  
 19 **So it's not just an analysis of, say, raw**  
 20 **data. I mean, I have communications with people on**  
 21 **staff here in the City who will ask me if they can**  
 22 **come in and talk to me, and I'll listen to them.**  
 23 Q. I guess what I meant here is one of the factors you  
 24 identified as -- as informing your judgment with  
 25 respect to what to pay classes 10 and 11 versus COPs

1 KEVYN ORR, VOLUME 2  
 2 holders, you identified was the City's covenant.  
 3 **A. Yes.**  
 4 Q. And I took that to mean the fact that the City had a  
 5 contractual obligation to pay these people?  
 6 **A. Right, and what I'm trying to relay to you is it's not**  
 7 **just a fact that the City had a contractual**  
 8 **obligation; it is the commitment and reliance on that**  
 9 **commitment behind that contractual obligation that**  
 10 **various City employees and retirees will come and**  
 11 **express to me in very real terms what this means to**  
 12 **them.**  
 13 Q. I see.  
 14 **A. And so the covenant is not just a technical document,**  
 15 **it is also an expectation, a reliance, a commitment**  
 16 **the City has made, and employees and retirees express**  
 17 **it to me in very -- sometimes very candid terms.**  
 18 Q. I see. What you're saying is you relied not only the  
 19 existence of the legal obligation to pay but also  
 20 testimonies you got from people that they had relied  
 21 on that?  
 22 **A. Yes.**  
 23 Q. And isn't it fair to say that this is another element  
 24 of the human dimension, which is the unfairness of  
 25 cutting the pensions of people who relied on the

1 KEVYN ORR, VOLUME 2  
 2 City's covenant in making decisions about how to  
 3 allocate their work time?  
 4 **A. You could say that.**  
 5 Q. And then the last issue that you identified was the  
 6 invalidity of the COPs; do you remember that?  
 7 **A. Yes.**  
 8 Q. And that was something that you factored into your  
 9 decision in terms of paying the COPs less than classes  
 10 10 and 11, correct?  
 11 **A. Yes.**  
 12 Q. And I take it you relied upon legal analysis from your  
 13 counsel about the potential invalidity of the COPs,  
 14 correct?  
 15 **A. Yes.**  
 16 Q. And I know that there had been a lawsuit filed prior  
 17 to the time of the current plan being filed, but I  
 18 assume that if I asked you questions about what your  
 19 attorneys had advised you with respect to the  
 20 invalidity of the COPs you'll invoke the  
 21 attorney-client privilege and decline to answer?  
 22 **A. Yes.**  
 23 Q. Okay, so I hope we can stipulate that if I ask a bunch  
 24 of questions about how the COPs analysis factored into  
 25 the decision that the attorney-client privilege will

**Exhibit 6D**

**6/13/14 Email from G. Shumaker to B. Arnault**

---

**From:** Gregory Shumaker <gshumaker@JonesDay.com>  
**Sent:** Friday, June 13, 2014 3:17 PM  
**To:** Arnault, Bill  
**Cc:** Daniel T Moss; Hertzberg, Robert S.; Hackney, Stephen C.  
**Subject:** Re: Meet and Confer re 30(b)(6) Topics

Bill: I've set out our responses in red below. Your elaboration on these topics is helpful, and we plan on designating witnesses to address virtually all of the topics we discussed. That doesn't include Topic No. 29 which we continue to believe requests irrelevant, overly burdensome and personally intrusive information so our objection to that topic stands. Please advise as to whether you will withdraw that request. Thanks, Greg

Gregory M. Shumaker  
Partner  
[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)  
51 Louisiana Avenue, NW  
Washington, DC 20001  
Office: +1.202.879.3679  
Email: gshumaker@jonesday.com

From: "Arnault, Bill" <warnault@kirkland.com>  
To: "gshumaker@JonesDay.com" <gshumaker@JonesDay.com>, "Hertzberg, Robert S." <Hertzber@pepperlaw.com>, Daniel T Moss <dtmoss@JonesDay.com>,  
Cc: "Hackney, Stephen C." <shackney@kirkland.com>  
Date: 06/12/2014 06:02 PM  
Subject: Meet and Confer re 30(b)(6) Topics

---

Greg,

Thanks to you, Bob, and Dan for taking the time to work through our 30(b)(6) topics this morning. What follows is a summary of our discussion. Please let us know if we've misstated anything.

Topic No. 1: We agreed to withdraw this topic.

Topic No. 3: We explained that the purpose of this topic was not to delve into the merits of the COPs litigation but to determine how long the City anticipated it would take to obtain a final judgment on that litigation. We offered to enter into a stipulation wherein the City and Syncora stated that it was reasonable to assume that it will take [XX amount of time] to obtain a judgment by the bankruptcy court or, if necessary, an entry by the District Court of the Bankruptcy Court's findings of fact and conclusions of law.

**We plan on designating Kevyn Orr to testify on this topic as further articulated.**

Topic No. 4: We explained that there are three categories of information sought by this deposition topic. First, we are seeking the City's position regarding its authority to terminate retirees' other post-employment benefits. Second, we are seeking the City's view of the value of the retirees' other post-employment benefits. This information is relevant to understand the size of the OPEB class. Third, we are seeking the City's view of the value of the replacement OPEB benefits that the retirees will receive under the City's Plan of Adjustment. As we explained, we currently do not have much transparency into the value that the retirees are receiving under the new health care plan.

**We plan on designating Sue Taranto to testify on this topic as further articulated.**

Topics Nos. 8 and 9: We explained that both of these topics are relevant to the Markell test. We explained that we would be willing to enter into a stipulation with the City that it will not contend that Classes 10, 11 and 12 contributed non-financial value. This is consistent with our understanding of the case law interpreting the Markell test. If the City is willing to enter into this stipulation, then it should be sufficient to depose Guarav Malhotra on these topics to understand the financial contributions and consideration of creditors in Classes 10, 11, and 12. If the City intends to argue that the value either contributed to or obtained by classes 10, 11, and 12 includes non-financial consideration, then we will need to ask questions about these topics as written.

**We plan on designating Gaurav Malhotra to testify with respect to the financial value and Kevyn Orr with respect to the non-financial value for these topics as further articulated.**

Topic No. 29: We explained that there are three components to this topic: (1) The identity of the City's retirees; (2) The location of the City's retirees; and (3) The financial position of the City's retirees. We would be willing to withdraw our request for the specific identity of the retirees -- i.e., their names -- and instead provide a unique number. With respect to the location of the City's retirees, if providing specific addresses is an issue, we would be willing to accept the retirees' city and state of residence. For the financial position of the City's retirees, we want to know the retiree's current assets and income. We explained that this information is relevant to the hardship argument raised by the City in its reply brief. In lieu of designating and preparing a witness on these topics, it would be acceptable for the City to refer us to document(s) containing the requested information and stipulate that the City's knowledge regarding retirees is limited to the information contained in the document. Alternatively, if the City does not have the requested information, we would be willing to enter into a stipulation that the City does not know the financial position of the retirees. In short, we are trying to determine the extent of the City's knowledge regarding the location and financial position of the City's retirees.

**After checking, we do not believe the City maintains a collective database of retiree data. We understand, however, that Gabriel Roeder, actuarial advisor to the Retirement Systems, has census data that will provide the information responsive to items (1) and (2) that is available to the City. We also understand that you have already contacted the Retirement Systems' counsel to gain access to that information. We believe that asking a 30(b)(6) witness for the location/home addresses of the City's over 20,000 retirees is unduly burdensome and unnecessary particularly in light of your ability to gain that information from the Retirement Systems which supplies the City with that information. With respect to the third item - retirees' financial position - the City objects to that as a 30(b)(6) topic because it's irrelevant, overly burdensome and personally intrusive.**

Topic No. 30: We clarified that the information we are seeking in this topic relates to (a) the current status of the City's long-term urban development plan and its future plans; (b) how that plan harmonizes with the Detroit Future City Strategic Framework; and (c) the status of the City's potential transition of urban planning responsibilities from the Planning and Development Department to the Detroit Economic Governance Corporation. In addition, if Marcel Todd is not the person with relevant information on this topic, please let us know so that we can consider deposing a witness from the DEGC (if in fact there has been a transfer of responsibilities).

**We plan on designating Charles Moore and Mayor Duggan to testify on this topic as further articulated. We do not believe Mr. Todd is the person with relevant information on this topic, and there has been no transfer of responsibilities from the PDD to the DEGC.**

Topic No. 32: You explained that this particular topic -- as it relates to the request for information regarding the history of the DIA and the Collection -- was not sufficiently specific. We agreed to provide further specificity. In particular, we are seeking information relating to (a) the City's purchase of art that is or was contained in the DIA; (b) the City's funding and oversight of the DIA; (c) the City's historical position(s) on the ownership of the art in the DIA; (d) state funding of the DIA; and (e) any previous closures of the DIA.

**While we continue to have concerns about the burdensomeness of this request, we are looking into who would be an appropriate designee for the City on this topic as further articulated.**

Topic No. 34: We clarified that we are seeking any anticipated changes to the City Charter. We explained that we are not asking the City to gather up every idea for a City Charter change by various City employees. We are looking for anticipated changes that have reached the level of crystallization that they are anticipated to be proposed by Kevyn Orr or Mayor Duggan in the near future. If, as we suspect, Mr. Orr and Mr. Duggan are not contemplating making any changes to the City Charter, we would be willing to enter into a stipulation with the City stating as much. If the City is contemplating making any changes, we would also be willing to enter

into a stipulation specifying the changes that it intends to propose, leaving for another day whether we would need to ask questions regarding those proposed changes. (That is, our ability to stipulate that only changes x, y, and z are anticipated without any deposition may depend on what the changes are.)

**We plan on designating Kevyn Orr and Mayor Duggan to testify on this topic as further articulated.**

Topic No. 45: We explained that we want to know where in the City's plan it decided to use a 5% discount rate and why it decided to use that discount rate. We assume that the City used a 5% discount rate throughout its plan but you were going to confirm that we were correct. If we are not correct, we want to know where the City used a 5% discount rate, where it did not use that discount rate, and why.

**We plan on designating Ken Buckfire to testify on this topic as further articulated.**

Topic No. 48: We agreed to withdraw this topic.

**William E. Arnault**  
Kirkland & Ellis LLP  
300 North LaSalle Street, Chicago, IL 60654  
+1-312-862-3062 (Dir.) +1-312-862-2200 (Fax)  
[www.kirkland.com](http://www.kirkland.com)

\*\*\*\*\*

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. It is the property of Kirkland & Ellis LLP or Kirkland & Ellis International LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail or by e-mail to [postmaster@kirkland.com](mailto:postmaster@kirkland.com), and destroy this communication and all copies thereof, including all attachments.

\*\*\*\*\*

=====

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

=====