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

FIRST AMENDED
Order Regarding Eligibility Objections
Notices of Hearings
and
Certifications Pursuant to 28 U.S.C. § 2403(a) & (b)

This order includes a special notice of hearing to individuals who filed eligibility objections, and includes provisions of interest to: Dennis Taubitz, Heidi Peterson Hassan Aleem, and Carl Williams.
Please see Part VIII, page 6.

I. Introduction

One hundred ten parties filed timely objections to the City's eligibility to file this bankruptcy case under § 109 of the Bankruptcy Code.

The Court appreciates the effort of each of the parties in this process.

The Court has thoroughly reviewed each of the filed objections, as well as the Statement Regarding the Michigan Constitution and the Bankruptcy of the City of Detroit that Michigan Attorney General Bill Schuette filed. (Dkt. #481) Some objections raise only legal issues, while others require the Court to resolve factual issues. The Court will address each in an appropriate manner.

II. Eligibility Objections Raising Only Legal Issues

On a preliminary basis, the following objections appear to raise only legal issues:[1]

[1] This summary of the parties' objections in Parts II & V is intended to capture in a shorthand form the substance of the parties' objections for identification purposes only and is not intended to limit, diminish or restate those objections.

1. Chapter 9 of the Bankruptcy Code violates the United States constitution.
   Asserted by:
   - 484 Local 324, International Union of Operating Engineers
   - 486 Local 517M, Service Employees International Union
   - 505 Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
   - 805 Official Committee of Retirees

2. The Bankruptcy Court does not have the jurisdiction to determine the constitutionality of Chapter 9 of the Bankruptcy Code.
   Asserted by:
   - 484 Local 324, International Union of Operating Engineers
   - 486 Local 517M, Service Employees International Union
   - 505 Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
   - 805 Official Committee of Retirees

3. Michigan Public Act 436 of 2012 violates the Michigan constitution and therefore the City was not validly authorized to file this bankruptcy case as required for eligibility by 11 U.S.C. § 109(c)(2).
   Asserted by:
   - 484 Local 324, International Union of Operating Engineers
   - 486 Local 517M, Service Employees International Union
   - 504 Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman
   - 505 Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
   - 506 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
   - 519 General Retirement System of the City of Detroit, Police and Fire Retirement System of the City of Detroit
   - 520 Retired Detroit Police Members Association
   - 805 Official Committee of Retirees

4. The Bankruptcy Court does not have the jurisdiction to determine the constitutionality of Michigan Public Act 436 of 2012.
   Asserted by:
   - 384 Krystal Crittendon
   - 805 Official Committee of Retirees

5. Detroit's Emergency Manager is not an elected official and therefore did not have valid authority to file this bankruptcy case as required for eligibility by 11 U.S.C. § 109(c)(2).
   Asserted by:
   - 384 Krystal Crittendon

505 Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
805 Official Committee of Retirees

6. Because the Governor's authorization to file this bankruptcy case did not prohibit the City from impairing the pension rights of its employees and retirees, the authorization was not valid under the Michigan constitution, as required for eligibility by 11 U.S.C. § 109(c)(2).

Asserted by:

484 Local 324, International Union of Operating Engineers
486 Local 517M, Service Employees International Union
495 David Sole
502 Retired Detroit Police & Fire Fighters Association, Donald Taylor, the Detroit Retired City Employees Association, and Shirley V. Lightsey
504 Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman
505 Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
506 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
512 The Detroit Fire Fighters Association, the Detroit Police Officers Association, the Detroit Police Lieutenants & Sergeants Association, and the Detroit Police Command Officers Association
514 Center for Community Justice and Advocacy
519 General Retirement System of the City of Detroit, Police and Fire Retirement System of the City of Detroit
520 Retired Detroit Police Members Association
805 Official Committee of Retirees

7. Because of the proceedings and judgment in *Gracie Webster, et al. v. The State of Michigan, et al.*, Case No. 13-734-CZ (Ingham County Circuit Court), the City is precluded by law from claiming that the Governor's authorization to file this bankruptcy case was valid, as required for eligibility by 11 U.S.C. § 109(c)(2).

Asserted by:

495 David Sole
519 General Retirement System of the City of Detroit, Police and Fire Retirement System of the City of Detroit

III. Notice of Hearing on Eligibility Objections That Raise Only Legal Issues

The Court further concludes that a prompt oral argument on these legal issues will promote a just, speedy, and efficient determination of the City's eligibility to be a debtor in Chapter 9 under § 109(c) of the Bankruptcy Code. Accordingly, the Court will hear oral argument on these legal issues on **October 15, 2013 at 10:00 a.m.** and **October 16, 2013 at**

10:00 a.m. in Courtroom 716, Theodore Levin U.S. Courthouse, 231 West Lafayette Blvd., Detroit, Michigan.

At the conclusion of the opening arguments, the Court will offer the objecting parties an opportunity to confer for the purpose of allocating and organizing their rebuttal arguments.

At the conclusion of the oral argument, the Court will not rule on legal issues, but will announce its determination as to which of the objections raise only legal issues and which require the resolution of genuine issues of material fact at the eligibility hearing previously set for October 23, 2013.

IV. Procedures Regarding Hearing on Eligibility Objections That Appear to Raise Only Legal Issues

At the oral argument, the objecting parties shall proceed first and share 210 minutes for their opening arguments and 60 minutes for their rebuttal arguments. The City and the Attorney General shall then share 210 minutes for their opening arguments and 60 minutes for their surrebuttal arguments.

On the objecting parties' side, the parties that are identified above are requested to confer in advance of the oral argument for the purpose of agreeing on the allocation of time among them (within the time limits established in this order) and on the order of their presentations. Attorney Robert Gordon is requested to organize and supervise these discussions.

Designates of the City, the Michigan Attorney General, the Attorney General of the United States, and the United States Attorney for the Eastern District of Michigan are requested to confer in advance of the oral argument for the purpose of agreeing on the allocation of time among them (within the time limits established in this order) and on the order of their presentations. Attorney David Heiman (or his designate) is requested to organize and supervise these discussions.

By the day before the argument, each side shall file its agreement, if any, regarding the allocation of time and the order of presentation. If either side is unable to agree, the Court will determine the allocation of time among the parties and the order of their presentations, and will announce its determination at the beginning of the argument.

Because the objecting parties as a group are required to comply with the time limits for the oral argument established in this order, some of the objecting parties may be limited in their oral argument on particular legal objections. Therefore, the fact that an objecting party did not present oral argument on a particular legal objection does not constitute a waiver of any written objection made by that party.

V. Eligibility Objections That Require the Resolution of Genuine Issues of Material Fact

The Court further concludes that the following specific objections require the resolution of genuine issues of material fact at the trial that the Court previously scheduled for October 23, 2013:

8. The City was not "insolvent," as required for eligibility by 11 U.S.C. § 109(c)(3) and as defined in 11 U.S.C. § 101(32)(C).

Asserted by:

484 Local 324, International Union of Operating Engineers
486 Local 517M, Service Employees International Union
502 Retired Detroit Police & Fire Fighters Association, Donald Taylor, the Detroit Retired City Employees Association, and Shirley V. Lightsey
505 Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
520 Retired Detroit Police Members Association

9. The City does not desire "to effect a plan to adjust such debts," as required for eligibility by 11 U.S.C. § 109(c)(4).

Asserted by:

484 Local 324, International Union of Operating Engineers
486 Local 517M, Service Employees International Union
504 Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman
506 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
520 Retired Detroit Police Members Association

10. The City did not negotiate in good faith with creditors, as required (in the alternative) for eligibility by 11 U.S.C. § 109(c)(5)(B).

Asserted by:

484 Local 324, International Union of Operating Engineers
486 Local 517M, Service Employees International Union
502 Retired Detroit Police & Fire Fighters Association, Donald Taylor, the Detroit Retired City Employees Association, and Shirley V. Lightsey
504 Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman
505 Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
506 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
512 The Detroit Fire Fighters Association, the Detroit Police Officers Association, the Detroit Police Lieutenants & Sergeants Association, and the Detroit Police Command Officers Association
517 Michigan Auto Recovery Service
519 General Retirement System of the City of Detroit, Police and Fire Retirement System of the City of Detroit
520 Retired Detroit Police Members Association
805 Official Committee of Retirees

11. The City was not "unable to negotiate with creditors because such negotiation is impracticable," as required (in the alternative) for eligibility by 11 U.S.C. § 109(c)(5)(C).

    Asserted by:

    484 Local 324, International Union of Operating Engineers
    486 Local 517M, Service Employees International Union
    502 Retired Detroit Police & Fire Fighters Association, Donald Taylor, the Detroit Retired City Employees Association, and Shirley V. Lightsey
    504 Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington and Bruce Goldman
    505 Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
    506 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
    512 The Detroit Fire Fighters Association, the Detroit Police Officers Association, the Detroit Police Lieutenants & Sergeants Association, and the Detroit Police Command Officers Association
    519 General Retirement System of the City of Detroit, Police and Fire Retirement System of the City of Detroit
    805 Official Committee of Retirees

12. The City's bankruptcy petition should be dismissed because it was filed in bad faith under 11 U.S.C. § 921(c).

    Asserted by:

    484 Local 324, International Union of Operating Engineers
    486 Local 517M, Service Employees International Union
    505 Michigan Council 25 of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees
    506 International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
    512 The Detroit Fire Fighters Association, the Detroit Police Officers Association, the Detroit Police Lieutenants & Sergeants Association, and the Detroit Police Command Officers Association
    519 General Retirement System of the City of Detroit, Police and Fire Retirement System of the City of Detroit
    520 Retired Detroit Police Members Association
    805 Official Committee of Retirees

VI. Order Regarding the Eligibility Objection in Paragraph 9

[The Court concludes that Part VI of the original order was imprudent and it is therefore abrogated.]

VII. Order Regarding Discovery Related to Eligibility Objections and Amendments to Filed Objections

The Court concludes that the following limitations on discovery are appropriate:

1. [The Court concludes that the limitation on discovery in this sentence of the original order was imprudent and it is therefore abrogated.]

2. On the objecting parties' side, discovery may be propounded only by those parties who filed eligibility objections.

Based on evidence obtained during discovery, any objecting party may file an amended objection by October 11, 2013. Any such amended objection shall supersede the party's original objection.

VIII. Notice of Hearing to Individuals Who Filed Eligibility Objections

The Court recognizes that many individuals (other than those listed in paragraphs 1-12 above), most without counsel, also filed timely objections. The Court offers these individuals an opportunity to be heard on their objections. This hearing will be on **September 19, 2013, at 10:00 a.m.** in Courtroom 716, Theodore Levin U.S. Courthouse, 231 West Lafayette Blvd., Detroit, Michigan. *Except as ordered in the next paragraph, this opportunity is only for individuals that filed timely objections.* These parties are identified on the attached Exhibit A.

The Court has determined to add the objection filed by Hassan Aleem and Carl Williams (Dkt. #565) to Exhibit A even though their objection was untimely.

Just as the Court imposed time limits on the attorneys identified above, the Court must also impose a time limit on these individuals as well, due to the number of these individuals. Therefore, each individual who filed a timely objection may address the Court for 3 minutes regarding the objection. However, upon their requests, Dennis Taubitz and Heidi Peterson may address the Court for 15 minutes each.

The City shall have 30 minutes to respond. No rebuttal will be permitted.

Due to security screening, the Court encourages the individuals that accept this opportunity to address the Court regarding their eligibility objections to arrive at the courthouse at least 60 minutes before the scheduled start time of the hearing. At 9:00 a.m., the court staff will begin to check in these individuals and will give each party a number establishing the order of speaking.

IX. Certifications Pursuant to 28 U.S.C. § 2403(a) and (b)

Pursuant to 28 U.S.C. § 2403(a), the Court hereby certifies to the Attorney General of the United States that the constitutionality of Chapter 9 of Title 11 of the United States Code under the United States constitution is drawn in question in this case. The Court permits the United States to intervene for argument on the question of the constitutionality of Chapter 9 of the Bankruptcy Code and shall, subject to the applicable provisions of law, have all the rights of a party.

Pursuant to 28 U.S.C. § 2403(b), the Court hereby certifies to the Attorney General of the State of Michigan that the constitutionality of Michigan Public Act 436 of 2012 under the Michigan constitution is drawn in question in this case. The Court permits the State of Michigan

to intervene for argument on the question of the constitutionality of Michigan Public Act 436 of 2012 under the Michigan constitution and shall, subject to the applicable provisions of law, have all the rights of a party.

X. Untimely Objections

All untimely objections, identified on the attached Exhibit B, are overruled.

XI. Opportunity to Comment or Object

[This part of the original order is no longer necessary and it is therefore abrogated.]

XII. Service

Pursuant to Rule 4(i) Federal Rules of Civil Procedure (applicable to the eligibility objections in this case under Rules 4(a)(1) and 9014(b) of the Federal Rules of Bankruptcy Procedure), the clerk shall also serve copies of the eligibility objections filed by the Official Committee of Retirees, by registered or certified mail, upon both the Attorney General of the United States at Washington, D.C. and the civil process clerk at the United States Attorney's office in the Eastern District of Michigan. Service of this paper upon the Michigan Attorney General has already be accomplished though ECF.

The clerk shall serve this amended order upon Dennis Taubitz, Heidi Peterson, Hassan Aleem, and Carl Williams.

This order supersedes this Court's Order Regarding Eligibility Objections entered on August 26, 2013. (Dkt #642)

It is so ordered.

/s/ Steven Rhodes
Steven Rhodes
United States Bankruptcy Judge

September 12, 2013

EXHIBIT A

Individuals Who Are Invited to Address the Court Regarding Their Objections to Eligibility at a Hearing on September 19, 2013 at 10:00 a.m.

NAME	Docket #
Michael Abbott	385
Hassan Aleem	565
Association of Professional and Technical Employee (APTE)	482
Aleta Atchinson-Jorgan	462
Linda Bain	474
Randy Beard	480
Russell Bellant	402,405
Michael G. Benson	388
Cynthia Blair	492
Dwight Boyd	412
Charles D. Brown	460, 491
Lorene Brown	403
Paulette Brown	431
Rakiba Brown	467
Regina Bryant	338, 339
Mary Diane Bukowski	440
David Bullock	393
Claudette Campbell	408
Johnnie R. Carr	413
Sandra Carver	469
Raleigh Chambers	409
Alma Cozart	400
Leola Regina Crittendon	454
Angela Crockett	455
Lucinda J. Darrah	447, 477
Joyce Davis	392
Sylvester Davis	435
William Davis	430
Elmarie Dixon	414
Mary Dugans	415
Lewis Dukens	394
David Dye	448
Jacqueline Esters	416
Arthur Evans	463
Jerry Ford	432
William D. Ford	417
Ulysses Freeman	429

EXHIBIT A

Individuals Who Are Invited to Address the Court Regarding Their Objections to Eligibility at a Hearing on September 19, 2013 at 10:00 a.m.

Olivia Gillon	401
Donald Glass	386
Lavarre W. Greene	465
William Hickey	442
LaVern Holloway	397
William J. Howard	433
Joanne Jackson	437
Ailene Jeter	457
Sheilah Johnson	451
Stephen Johnson	418
Joseph H. Jones	389
Sallie M. Jones	419
Michael Joseph Karwoski	510
Zelma Kinchloe	396
Timothy King	489
Keetha R. Kittrell	427
Roosevelt Lee	468
Althea Long	399
Edward Lowe	425
Lorna Lee Mason	428
Deborah Moore	470
Larene Parrish	420
Lou Ann Pelletier	335
Michael K. Pelletier	337
Heidi Peterson	513
Deborah Pollard	421
Helen Powers	404
Alice Pruitt	472
Samuel L. Riddle	422
Kwabena Shabu	426
Michael D. Shane	443
Karl Shaw	398
Frank Sloan, Jr.	436
Gretchen R. Smith	494
Cheryl Smith Williams	458
Horace E. Stallings	464
Thomas Stephens	461
Dennis Taubitz	446
Charles Taylor	423

EXHIBIT A

Individuals Who Are Invited to Address the Court Regarding Their Objections to Eligibility at a Hearing on September 19, 2013 at 10:00 a.m.

Marzelia Taylor	475
The Chair of St. Peter	493
Dolores A. Thomas	456
Shirley Tollivel	395
Tracey Tresvant	390
Calvin Turner	387
Jean Vortkamp	439
William Curtis Walton	411
Jo Ann Watson	490
Judith West	444
Preston West	407
Carl Williams	565
Charles Williams, II	391
Floreen Williams	496
Fraustin Williams	479
Leonard Wilson	466
Phebe Lee Woodberry	459
Anthony G. Wright, Jr.	485

EXHIBIT B

Eligibility Objections Overruled Because They Were Untimely

NAME	Docket #
Charles Chatman	539
Andrea Edwards	532
Richard Johnson El-Bey	536
Xylia Hall	541
Diane Hutchersun	530
Michael Jones	549
Nettie Reeves	534
Donald Richardson	633