

**United States Bankruptcy Court
For the Eastern District of Michigan
Southern Division**

In re

City of Detroit

Debtor,
.

Chapter 9

Case No. 13-53846

Judge Steven W.

Rhodes

Objection to Amended
Disclosure Statement by
Creditor, Ben McKenzie, Jr.

David G. Heiman (OH 0038271)
Heather Lennox (OH 0059649)
JONES DAY
Attorneys for the City of Detroit
North Point
90I Lakeside Avenue
Cleveland, Ohio 44114
Telephone: (216) 586-3939
dgheiman@jonesday.com
hlennox@jonesday.com

Bruce Bennett (CA 105430)
JONES DAY
Attorney for the City of Detroit
555 South Flower Street
Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 243-2382
bbennett@jonesday.com

Jonathan S. Green (MI P33140)
Stephen S. LaPlante (MI P48063)

Donnelly W. Hadden (P- 14507)
Donnelly W. Hadden, P.C.
Attorney for Creditor, Ben McKenzie, Jr.
2002 Bancroft
Ann Arbor, Michigan 48108
Telephone: 734-213-7002
dwhadden@umich.edu

Ellen Dennis (P-24400)
Law Office of Ellen Dennis
Attorney for Creditor, Ben McKenzie, Jr.
101 S. Ann Arbor St., Ste. 203A
Saline, Michigan 48176
Telephone: 734 944-5819
m.ellen.dennis@gmail.com



MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.
Attorneys for the City of Detroit
150 West Jefferson
Suite 2500
Detroit, Michigan 48226
Telephone: (313) 963-6420
green@millercanfield.com
laplante@millercanfield.com

OBJECTION TO Amended DISCLOSURE STATEMENT,
by CREDITOR BEN McKENZIE, JR. and
MEMORANDUM OF LAW

Creditor, Ben McKenzie, Jr., by his attorneys, Donnelly W. Hadden and Ellen Dennis, OBJECTS to the Amended Disclosure Statement filed by the debtor (Doc 3382) because it does not adequately state the information. The Statement does not reveal the availability of \$15,200,000.00 being held in escrow by the State of Michigan Department of Treasury for the purpose of paying pre-petition claims relating to the operation of motor vehicles for which the city is self-insured. See Memorandum of Understanding dated June 4th, 2013 copy attached, Exhibit 1.

1. Ben McKenzie, Jr. has standing to make this objection because he is the holder of two claims. He was a pedestrian struck by a bus on January 7th, 2010. His claims are:

- No. 578, filed Jan 21st, 2014, a claim for unpaid No-Fault Personal Protection Benefits (“PIP” claim) *q.v.*, and
- No. 579, filed Jan 21st 2014, a claim for residual liability non-economic damages (“NI” claim) *q.v.*

His actions against the debtor are stayed by the Automatic Stay Order issued in this case on August 6th, 2013, copy attached, Exhibit 2.

2. This court, in Docket No. 2302, Alternative Dispute Resolution Procedures, recognizes *inter alia* “(3) claims, to the extent not satisfied in the ordinary course, relating to the operation of motor vehicles for which the city is self-insured pursuant to...MCL §500.3101 *et seq.*” Mr. McKenzie’s claims have not been satisfied.

3. On May 2nd 2013 debtor’s application for a Certificate of Self-Insurance was submitted but the city did not qualify because it could not meet the net worth requirement. See Exhibit 1.

4. The Department of Treasury agreed with the Department of Insurance and Financial Affairs to put \$15.2 million in escrow to pay claims and judgments stemming from the city’s obligations under the No-Fault law which it could not pay. In exchange, the latter department issued a Certificate of Self-Insurance to the city, valid until June 9th, 2014, Certificate No. 695, copy attached, Exhibit 3.

5. On July 18th, 2013, the city filed this bankruptcy case and became unable to pay pre-petition claims in the ordinary course of business.

6. Although this \$15.2 million is escrowed exclusively for the payment of claims related to the operation of motor vehicles, it should be included in the Disclosure Statement because by reserving those funds for their purpose, that makes available \$15.2 million for distribution to other creditors.

7. The existence of this fund is not listed in the Amended Disclosure Statement, Doc 3382.

MEMORANDUM OF LAW

MCL 500.3101 mandates that the owner or registrant of a motor vehicle required to be registered in Michigan shall maintain “...**security** for the payment of benefits under personal injury protection (PIP), property protection insurance (PPI) and residual liability insurance.” Security may be provided by purchasing automobile insurance per MCL 500.2101 -or- by

qualifying as a “self-insured” fleet owner of more than 25 vehicles under MCL 500.3101d.

In addition to having more than 25 vehicles the rules require that a fleet owner must prove to possess a net worth of more than \$5 million, Michigan Administrative Code, R.257.538. On May 9th, 2013 the debtor did not meet the net worth criteria. The Commissioner of Insurance and Industry Services was required to deny a self-insurance certificate to the city. Also, R.257.538(2)(d) provides that a Certificate of Self-Insurance can be cancelled if the owner/registrant files a petition in bankruptcy or is declared bankrupt by a federal court.

Instead, the Director issued a Certificate of Self-Insurance to the debtor, valid until June 9th, 2014, upon consideration of \$15.2 million being placed in an escrow account with the state Treasury Department as security for the payment of benefits. There is no likelihood the bankrupt debtor will be able to satisfy those claims. These funds are available to those creditors holding pre-petition PIP, PPI and residual liability claims and ought to be listed as assets in the Disclosure Statement because they free other assets to be used to satisfy other creditors.

WHEREFORE Creditor, Ben McKenzie, Jr. requests that the Disclosure Statement be Amended to show an additional \$15.2 million as stated above.

/s/ Ellen Dennis (P-24400)
Attorney for Creditor Ben Mckenzie, Jr.
101 S. Ann Arbor St., Suite 203A
Saline, MI 48176
(734) 944-5819
m.ellen.dennis@gmail.com

DONNELLY W. HADDEN, P.C.
By: /s/ Donnelly W. Hadden (P-14507)
Donnelly W. Hadden
Attorney for Creditor, Ben Mckenzie, Jr.
2002 Bancroft Drive
Ann Arbor, MI 48108-9307
(734) 213-7002
dwhadden@umich.edu

March 14, 2014

Certificate of Service

I hereby certify that on April 7, 2014, I electronically filed the foregoing paper with the Clerk of the Bankruptcy Court using the ECF system which will send notification of such filing to the following:

David G. Heiman (OH 0038271)

Heather Lennox (OH 0059649)

JONES DAY

Attorneys for the City of Detroit

North Point

90I Lakeside Avenue

Cleveland, Ohio 44114

Telephone: (216) 586-3939

dgheiman@jonesday.com

hlennox@jonesday.com

Bruce Bennett (CA 105430)

JONES DAY

Attorney for the City of Detroit

555 South Flower Street

Fiftieth Floor

Los Angeles, California 90071

Telephone: (213) 243-2382 bbennett@jonesday.com

Jonathan S. Green (MI P33140) Stephen S. LaPlante (MI P48063) MILLER,
CANFIELD, PADDOCK AND STONE, P.L.C.

Attorneys for the City of Detroit

150 West Jefferson

Suite 2500

Detroit, Michigan 48226

Telephone: (313) 963-6420

green@millercanfield.com laplante@millercanfield.com

/s/Ellen Dennis

Attorney for Creditor,

Ben McKenzie, Jr.

101 S. Ann Arbor St., Ste. 203A

Saline, MI 48176

Telephone: 734-944-5819

m.ellen.dennis@gmail.com

Index of Exhibits

1. Memorandum of Understanding
2. Notice of Automatic Stay
3. Certificate of Self-Insurance

MEMORANDUM OF UNDERSTANDING
Between the
MICHIGAN DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
and the
MICHIGAN DEPARTMENT OF TREASURY

CITY OF DETROIT - CERTIFICATE OF SELF INSURANCE ESCROW

I. PURPOSE AND BACKGROUND:

1. The purpose of this Memorandum of Understanding [MOU] is to describe the commitment from the Michigan Department of Treasury [Treasury] to the Michigan Department of Insurance and Financial Services [DIFS] concerning funds that Treasury intends to escrow and issue in the event the City of Detroit [City] does not pay claims and judgments relative to the City's Self Insurance Certificate under the authority of the Michigan Administrative Code - Certificates of No-Fault Self-Insurance [the Code] [R 257.531 *et seq.*].

2. On May 2, 2013, the City submitted a certificate of self insurance application [application] to the Director. The City asked the Director to issue a certificate of self insurance under authority the Code, section 3101 of the Insurance Code of 1956 [MCL 500.3101]. This certificate would enable the City to comply with state law requiring insurance on vehicles it operates.

As reported on the application, the City's net worth is (\$371,973,905). This negative amount fails to meet certificate of self insurance qualifications requiring a net worth greater than \$5,000,000; a sound financial condition and utilization of financial practices and methods that would not bring into question the ability to pay claims fully and in a timely manner. [Rule 2 (2)(d) and (e); R 257.532].

Rule 8 of the Code [R 257.538] allows the Director to disapprove the application of an applicant who fails to possess a qualification for the issuance of a certificate of self insurance as set forth in R 257.232. The Director intended to deny the City's application for this reason.

In reliance on Treasury's commitment to escrow funds and to pay claims and judgments, the Director will issue a Certificate to the City.

II. TREASURY AGREES TO:

1. Escrow an amount of at least fifteen million, two hundred thousand dollars (\$15,200,000) in a separate segregated account to be used to pay claims during the period of the Certificate of Self Insurance issued to the City.
2. If the City is unable to or fails to pay a judgment or claim pursuant to the law, make appropriate payments from the escrowed funds.

III. MDIFS AGREES TO:

1. Issue a Certificate of Self Insurance to the City for a period of one year, beginning June 9, 2013.
2. Perform its responsibilities under the Code.

IV. EFFECTIVE DATE AND LENGTH:

1. This MOU goes into effect when both parties have signed it and shall be in effect for the duration of the Certificate of Self Insurance issued to the City.

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

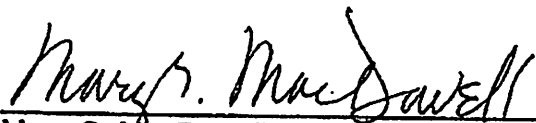


R. Kevin Clinton
Director
Department of Insurance and Financial Services
Lansing, Michigan

6/4/13

Date

DEPARTMENT OF TREASURY



Mary G. MacDowell
Chief Deputy Treasurer
Department of Treasury
Lansing, Michigan

5/21/2013

Date

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

**NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 9, NOTICE OF AUTOMATIC STAY
AND PURPOSES OF CHAPTER 9, NOTICE OF DEADLINE AND PROCEDURES FOR FILING
OBJECTIONS TO THE CHAPTER 9 PETITION AND NOTICE OF CITY'S MOTION TO LIMIT NOTICE**

**TO ALL CREDITORS OF THE CITY OF DETROIT, MICHIGAN, AND TO OTHER PARTIES IN INTEREST:
PLEASE TAKE NOTICE OF THE FOLLOWING:**

Commencement of Chapter 9 Case

1. On July 18, 2013, the City of Detroit, Michigan commenced a case (the "Chapter 9 Case") under chapter 9 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division (the "Bankruptcy Court"). The City's Chapter 9 Case was commenced pursuant to an order issued by Kevyn D. Orr, in his capacity as emergency manager of the City (in such capacity, the "Emergency Manager") under section 18 of Public Act 436 of 2012 ("PA 436"). The Chapter 9 Case is pending before the Honorable Steven W. Rhodes, United States Bankruptcy Judge.

Automatic Stay

2. Pursuant to sections 362 and 922 of the Bankruptcy Code, the filing of the City's chapter 9 petition operates as an automatic stay of actions against the City, including, among other things: (a) the enforcement of any judgment; (b) any act to obtain property from the City; (c) any act to create, perfect or enforce any lien against property of the City; (d) any act to collect, assess or recover a claim against the City; and (e) the commencement or continuation of any judicial, administrative or any other action or proceeding against the City, the Emergency Manager or any other officer or inhabitant of the City that seeks to enforce a claim against the City (the "Chapter 9 Stay").

3. On July 25, 2013, the Bankruptcy Court entered discrete orders: (a) confirming that the protections of the Chapter 9 Stay apply to the City and its officers and inhabitants, including the Emergency Manager (Docket No. 167); and (b) extending the Chapter 9 Stay to (i) the Governor of the State of Michigan (the "Governor"), the Treasurer of the State of Michigan and the Local Emergency Financial Assistance Loan Board of the State of Michigan, together with each entity's staff, agents and representatives, (ii) employees of the City that are neither City officers nor inhabitants of the City and (iii) agents and representatives of the Governor and the Emergency Manager (Docket No. 166).

Purpose of the Chapter 9 Filing

4. Chapter 9 of the Bankruptcy Code provides a means for a municipality (such as the City) that has encountered financial difficulty to work with its creditors to adjust its debts. The primary purpose of chapter 9 is to allow the municipality to continue its operations and its provision of services while it adjusts or restructures creditor obligations. In a chapter 9 case, the jurisdiction and powers of the Bankruptcy Court are limited such that it may not interfere with any of the political or governmental powers of the City or the City's use or enjoyment of any income-producing property. During this Chapter 9 Case, the Emergency Manager will continue to manage the affairs of the City according to his authority under PA 436. Under section 18(1) of PA 436, the Emergency Manager acts exclusively on the City's behalf in this Chapter 9 Case.

5. The City intends to propose a plan for the adjustment of its debts. Future notice concerning any such plan will be provided to all known creditors.

Deadline for Objections to Petition and Entry of an Order for Relief

6. The City has filed papers in support of its eligibility to be a debtor under chapter 9 of the Bankruptcy Code (the "Documentary Support").¹ Objections to the City's chapter 9 petition may be filed by a creditor or party in interest by August 19, 2013 (the "Eligibility Objection Deadline"). Any such objection shall state the facts and

¹ The Documentary Support includes: (a) a Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 10); (b) an accompanying memorandum of law (Docket No. 14); (c) supporting declarations of Kevyn D. Orr (Docket No. 11), Gaurav Malhotra (Docket No. 12) and Charles M. Moore (Docket No. 13); and (d) the accompanying exhibits for each of the foregoing. The City reserves the right to file additional papers in support of its eligibility for chapter 9 relief and in opposition to any objections thereto.

legal authorities in support of such objection; shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court; and shall be filed with the Bankruptcy Court.

7. If any Eligibility Objections are filed on or before the Eligibility Objection Deadline in accordance with the above procedures, the following schedule shall apply to the adjudication of the Eligibility Objections:

- August 23, 2013 shall be the deadline for the City and any party that files a timely and proper Eligibility Objection to serve written discovery requests;
- September 6, 2013 shall be the deadline for the City to file responses to the Eligibility Objections;
- September 13, 2013 shall be the deadline for compliance with written discovery requests;
- September 23, 2013 shall be the deadline to complete non-expert depositions;
- September 23, 2013 shall be the deadline to designate expert witnesses and submit expert reports;
- October 3, 2013 shall be the deadline for the counter-designation of experts and submission of reports;
- October 10, 2013 shall be the deadline for the completion of expert depositions; and
- October 17, 2013 shall be the deadline for the filing of any pre-trial briefs.

8. A pre-trial conference shall be conducted on October 21, 2013 at 10:00 a.m., Eastern Time, in Courtroom 100 at the United States Bankruptcy Court for the Eastern District of Michigan, 231 West Lafayette Street, Detroit, Michigan 48226.

9. A hearing on the Eligibility Objections (an "Eligibility Hearing") shall be conducted on October 23, 2013 at 9:00 a.m., Eastern Time, in Courtroom 100 at the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division, 231 West Lafayette Street, Detroit, Michigan 48226 (with additional days to be scheduled as necessary).

10. Any Eligibility Objections must be advocated in person at all hearings on such objections, including, without limitation, the Eligibility Hearing, or the Court in its discretion may not consider such Eligibility Objections.

11. Proceedings in this Chapter 9 Case will not be stayed pending the Court's adjudication of any Eligibility Objections and entry of an order for relief.

12. If no timely and proper Eligibility Objections are filed and served in accordance with this Order, no Eligibility Hearing will be conducted and the City's request for relief under chapter 9 of the Bankruptcy Code will be deemed granted.

IF NO OBJECTIONS ARE TIMELY AND PROPERLY FILED, OR IF ALL TIMELY AND PROPER ELIGIBILITY OBJECTIONS ARE OVERRULED BY THE COURT OR RESOLVED, THE FILING OF THE CITY'S CHAPTER 9 PETITION SHALL BE DEEMED AN ORDER FOR RELIEF UNDER CHAPTER 9 OF THE BANKRUPTCY CODE, AND THIS NOTICE SHALL BE DEEMED NOTICE OF SUCH ORDER FOR RELIEF.

Motion to Limit Notice

13. The City also has requested that the Bankruptcy Court enter an order limiting notice of certain initial filings in the City's bankruptcy case to certain creditors and interested parties. If you wish to receive further notices in this case, you are encouraged to appear formally in this Chapter 9 Case and file with the Bankruptcy Court a written request for service of papers pursuant to the Federal Rules of Bankruptcy Procedure.

Case Information

14. All documents filed in this case are available free of charge at the City's restructuring website at www.kccllc.net/Detroit; the court's website, www.mieb.uscourts.gov; or, on a paid subscription basis, through the Bankruptcy Court's PACER system at ecf.mieb.uscourts.gov. Additional information about the City's restructuring is available at the Emergency Manager's page on the City's website at www.detroitmi.gov/EmergencyManager. Inquiries about this case also may be directed to the City's Chapter 9 Information Hotline at (877) 298-6236.

Dated August 6, 2013

/s/ Katherine B. Gullo
Clerk of Court

State of Michigan



Certificate Number 695

Department of Insurance and Financial Services
Lansing, Michigan

I, R. Kevin Clinton, Director, certify that

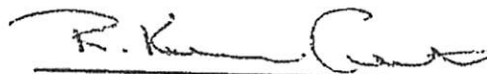
City of Detroit
611 C.A.Y.M.C.
Detroit, MI 48226-3462

Coverage Effective: 06/09/2013 thru 06/09/2014

Qualifies as a self-insurer for the purposes of Act 204, P.A. 2012.

This certificate covers all vehicles owned or registered by the named self-insurer.




R. Kevin Clinton, Director

6/4/13
Dated

FIS 2270 (03/13)