

**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 Plan for  
the Adjustment of Debts by  
Creditor, Ben McKenzie, Jr.

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OBJECTION TO AMENDED PLAN FOR THE ADJUSTMENT  
OF DEBTS, by CREDITOR, BEN McKENZIE, JR. and  
MEMORANDUM OF LAW

Ben McKenzie, Jr., on behalf of himself and all others similarly situated, by his attorneys OBJECTS to the Amended Plan for the Adjustment of Debts filed by the debtor (Doc 3380) because it does not provide for paying pre-petition claims relating to the operation of motor vehicles for which the city is self-insured. There is a fund of \$15,200,000.00 being held in escrow by the State of Michigan Department of Treasury for the purpose of securing payment of such claims. See, Memorandum of Understanding dated June 4, 2013, copy attached as Exhibit 1 to this Objection and to Mr. McKenzie's Objection to Amended Disclosure Statement (Doc No 3846).

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

- No. 578, filed Jan 21, 2014, a claim for unpaid No-Fault Personal Protection Benefits ("PIP" claim) *q.v.*, and
- No. 579, filed Jan 21, 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 6, 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 2, 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 4.

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 9, 2014, Certificate No. 695, copy attached, Exhibit 3.

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

6. This \$15.2 million is escrowed exclusively for the payment of claims related to the operation of motor vehicles. It is not available to other creditors.

7. In Schedule G “Litigation and Other Claims” (Doc 258-1) the debtor does not distinguish whether, which or how many of those pre-petition claims are related to the operation of motor vehicles for which the city is self-insured.

8. It is probable that there are several such claims included in that mix. Those are entitled to discrete treatment and payment from the escrow funds.

9. The Amended Plan (redlined version, Doc. 3384 at page 66) provides for payment of Workers’ Compensation Claims for which the city is self-insured, but makes no provision for payment of claims related to the operation of motor vehicles for which the city is self-insured and with respect to which there is an escrow for payment.

## 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." (Emphasis supplied) 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. Debtor had, as of May 2, 2013, 3,351 vehicles. Exhibit. 4, attached.

In addition to having more than 25 vehicles the rules require that a fleet owner must prove itself to possess a net worth of more than \$5 million, Michigan Administrative Code, R.257.538. On May 9, 2013 the debtor did not meet the net worth criteria. The Department 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/registant files a petition in bankruptcy or is declared bankrupt by a federal court. As of May 2, 2013 the city's net worth was a negative \$371,973,905. [Exhibit. 4] The city was not qualified to be self-insured, not entitled to a self-insured certificate and its application should have been denied.

Instead, the Director issued a Certificate of Self-Insurance to the debtor, valid until June 9, 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 only to those creditors holding pre-petition PIP, PPI and residual liability claims and ought to be distributed to such creditors from the escrowed money, freeing an equal amount of other assets to satisfy other creditors.

Because these funds are limited in purpose by law and set aside solely for maintaining security for the payment of a class of creditors who hold claims arising out of the operation of debtor's vehicles, they should be listed as secured creditors to the extent of the escrow.

WHEREFORE objector requests that the Amended Plan for the Adjustment of Debts (Doc. 3380) be amended to provide as follows:

- A. Compel debtor and Kurtzman Carson Consultants LLC to break out and list a separate class of claimants: those who hold claims related to the operation of motor vehicles, with three sub-classes; (1) Personal Injury Protection (PIP) cases (2) Property Protection Insurance (PPI) cases and (3) residual liability (NI) cases.
- B. Compel these claims be sorted out and separated from other tort or contractual claims and process compensation for them out of the \$15.2 million dollar fund.
- C. Treat holders of these claims as secured creditors to the extent of an aggregate \$15,200,000.00 until the escrow fund is exhausted.

Respectfully submitted;

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April 7, 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:

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Index of Exhibits

1. Memorandum of Understanding
2. Notice of Automatic Stay
3. Certificate of Self-Insurance
4. Application for 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**

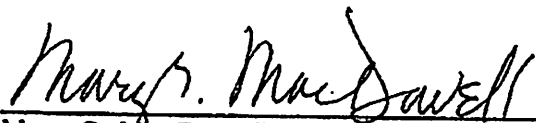


R. Kevin Clinton  
Director  
Department of Insurance and Financial Services  
Lansing, Michigan

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").<sup>1</sup> 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

<sup>1</sup> 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](http://www.kccllc.net/Detroit); the court's website, [www.mieb.uscourts.gov](http://www.mieb.uscourts.gov); or, on a paid subscription basis, through the Bankruptcy Court's PACER system at [ecf.mieb.uscourts.gov](http://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](http://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)

Case No. 13-53846 EXH. 3 to  
McKenzie Obj. to Discl. Statement

## APPLICATION FOR SELF-INSURANCE CERTIFICATE

Name of Applicant:	CITY OF DETROIT		
Address:	2 Woodward Ave. Ste 611 Coleman A. Young Municipal Center		
City, State, Zip:	Detroit Michigan 48226		
(Name and Address as it is to appear on Certificate)			
Telephone No.:	(313) 628-1159	Fax No.:	(313) 224-4247
E-Mail Address:	Donalds@detroitmi.gov		

List the names and addresses of the three principal officers of the company:

1.	Name:	The City of Detroit is a Municipal Corporation of the State of Michigan		
	Title:	with no Officers or Directors exactly analogous to those of a Private Corporation.		
	Address:	A Non-Partisan Elected Mayor and a Nine Member City Council direct the affairs of the City		
	City, State, Zip:			
	Telephone No.:		Fax No.:	
	E-Mail Address:	1644~		
2.	Name:	Mr. Kevin Orr		
	Title:	Emergency Manager		
	Address:	1126 C.A.Y.M.C.		
	City, State, Zip:	Detroit, MI. 48226		
	Telephone No.:	(313) 224-3400	Fax No.:	313.224.4128
	E-Mail Address:	All scheduling request should be sent to: EMSchedulingRequest@detroitmi.gov		
3.	Name:			
	Title:			
	Address:			
	City, State, Zip:			
	Telephone No.:		Fax No.:	
	E-Mail Address:			

Name and address of representative authorized to receive and process claims:

Name:	James Nosedo		
Title:	Supervising Assistant Corporation Counsel		
Address:	2 Woodward, Ste. 5th Floor - Law Department		
City, State, Zip:	Detroit, MI. 48226		
Telephone No.:	(313) 237-3057	Fax No.:	(313) 224 5505
E-Mail Address:	NoseJ@detroitmi.gov		



AMENDED

Name and address of person authorized to accept the invoice regarding the annual assessment for the Michigan Automobile Insurance Placement Facility, which maintains the Michigan Assigned Claims Plan:

Name:	Donald Settles		
Title:	Risk Manager		
Address:	2 Woodward, Ste. 611, Coleman A. Young Municipal Center, Risk Mgt. Division		
City, State, Zip:	Detroit, MI. 48226		
Telephone No.:	313.628-1159	Fax No.:	313.224-4247
E-Mail Address:	DonaldS@detroitmi.gov		

(A) The number of motor vehicles, excluding trailers, motorcycles, and mopeds registered in Michigan in the applicant's name as of the date of this application: A = 3,351

(B) The number of motor vehicles, not included in (A) including trailers with more than 2 wheels, but excluding motorcycles and mopeds owned by or registered to the Applicant, that are to be self-insured under this application, including motor vehicles or trailers having more than 2 wheels, rented or leased by the Applicant for more than 30 days. All motor vehicles, including trailers having more than 2 wheels must be accounted for in (A) or (B). In order to be self-insured under a Certificate of Self-Insurance issued for this application: B = 0

Total = 3351

Total Number of Vehicles (A + B):

Fill in Net Worth and Loss Reserve and cite reference (page number) as applicable to your Statement of Financial Status.

Net Worth: \$ (371,973,905) As documented in our audited Statement of Financial Status on page # 41

Loss Reserve: \$ 35,234,345 As documented in our audited Statement of Financial Status on page # 45

Name and address of financial institution in which Loss Reserve is maintained:

Name:	JP Morgan Chase
Address:	Michigan Florida Market
Address:	P.O. Box 659754
City, State, Zip:	San Antonio, TX 78265-9754

The Applicant hereby applies for the privilege of being a self-insurer under the No-Fault Insurance Act<sup>1</sup> and the Michigan Vehicle Code.<sup>2</sup> In consideration of the privilege of being certified as a self-insurer for the purposes of the No-Fault Insurance Act and the Michigan Vehicle Code, the Applicant hereby agrees to the following:

(a) To comply with all the provisions of the Michigan No-Fault Insurance Act, the Financial Responsibility Act,<sup>3</sup> and the Administrative Rules for no-fault self-insurers.<sup>4</sup>

(b) To notify the Director, promptly of any change in the Applicant's financial condition that may affect its ability to maintain the required loss reserve or of a reduction of the Applicant's net worth below that required by Rule 2 of the No-Fault Self-Insurance Rules<sup>5</sup> for the issuance of a Certificate of No-Fault Self-Insurance.

4/5/13