

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

In re:)	Chapter 9
)	
CITY OF DETROIT, MICHIGAN,)	Case No. 13-53846
)	
Debtor.)	Hon. Thomas J. Tucker
)	

**STATUS REPORT ON IMPLEMENTATION OF THE PLAN FILED BY
THE GENERAL RETIREMENT SYSTEM FOR THE CITY OF DETROIT**

The General Retirement System of the City of Detroit (the “GRS”) respectfully states as follows:

1. On February 19, 2015, the Court entered the Order Scheduling Post-Confirmation Status Conference [Dkt. No. 9292] (the “Scheduling Order”) which schedules a post-confirmation status conference on March 4, 2015.
2. The Scheduling Order instructs the City to file a status report no later than February 26, 2015 on a number of issues, including the status of the implementation of the confirmed Plan.¹

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Eighth Amended Plan for the Adjustment of Debts of the City of Detroit (October 22, 2014)* [Dkt. No. 8045] (the “Plan”), which was confirmed by the *Order Confirming Eighth Amended Plan for the Adjustment of Debts of the City of Detroit* [Dkt. No. 8272] (the “Confirmation Order”).



3. The GRS offers three discrete issues for the Court's consideration regarding Plan implementation. Specifically, the GRS requests guidance and clarification regarding: (a) whether individuals that signed and returned the ASF Recoupment Cash Option Election Form (the "Cash Option Form") but who failed to check the election box are nonetheless entitled to repay their ASF Recoupment amount in a lump-sum cash payment; (b) whether individuals whose Cash Option Forms were correctly completed and but untimely by one or two days should be counted as successful electors; and (c) whether Income Stabilization Payments are to be paid to Eligible Pensioners under the Income Stabilization Fund program to restore pension benefits reduced specifically as a result of ASF Recoupment, as well as resulting from base benefit and COLA reductions under the Plan.

4. The GRS has had some discussions regarding the first two issues with the City and the third issue with the State. However, those discussions have not resulted in any consensual resolutions of these issues to date. Accordingly, the GRS seeks guidance and clarification of these issues from the Court in order to ensure that the GRS implements the Plan correctly and appropriately.

A. ASF Recoupment Cash Option Election

5. Under the Plan, a retired ASF Distribution Recipient is entitled to elect to make the ASF Recoupment Cash Payment and thereby repay in a lump

sum the total amount of ASF Recoupment shown on the ASF Distribution Recipient's Ballot. Plan § II.B.3.r.ii.D.2.ii.

6. ASF Distribution Recipients were required to return the completed Cash Option Form by January 21, 2015 in order to elect to repay the ASF Recoupment amount by a lump-sum ASF Recoupment Cash Payment.²

7. The Plan caps at \$30 million the aggregate amount that may be paid back by ASF Distribution Recipients via the lump sum option. *Id.* If the aggregate value for all those ASF Distribution Recipients electing the ASF Recoupment Cash Option exceeds \$30 million, then the ASF Recoupment Cash Payment for each ASF Distribution Recipient is limited to its pro rata portion of \$30 million, and the remaining ASF Recoupment amount will be annuitized at 6.75% per year and deducted from the ASF Distribution Recipient's pension check, as provided for in section II.B.3.r.ii.D.2.i. Plan § II.B.3.r.ii.D.2.ii.

8. If a retired ASF Distribution Recipient did not timely elect to make the ASF Recoupment Cash Payment or fails to timely deliver the ASF Recoupment Cash Payment to the GRS, the ASF Recoupment will be converted into monthly annuity amounts based on common actuarial assumptions and amortized using a 6.75% interest rate, and deducted from the ASF Distribution Recipient's monthly

² The original balloting deadline provided under the Plan fell on January 19, 2015, a federal holiday. In consultation with the GRS, the City agreed to extend the deadline to January 21, 2015.

pension check. Plan at II.B.3.r.ii.D.2.i. The amount deducted from an ASF Distribution Recipient's monthly pension check will be limited by the ASF Recoupment Cap or the Current GRS Retiree Adjustment Cap, if applicable. *Id.*

(i) Timely Submitted Forms With Unchecked Election Boxes

9. Kurtzman Carson Consultants, the City's Balloting Agent ("KCC"), has advised the GRS that of the 1,054 ASF Distribution Recipients who timely returned the Cash Option Form, 239 of them (*i.e.*, 22.7% of such Recipients) completed, signed, and returned the Cash Option Form but failed to check the box on the form next to the words "ASF Recoupment Cash Option Repayment Election." A copy of the Cash Option Form is attached hereto as Exhibit 1.

10. The City has indicated that it may be required to treat these 239 Cash Option Forms as *rejections* of the ASF Recoupment Cash Payment option. However, it does not appear that there would be any reason why an ASF Distribution Recipient would remit the Cash Option Form except to *exercise* the lump-sum cash payment option; an ASF Distribution Recipient not wishing to make the cash payment need do *nothing* in order to have the ASF Recoupment implemented through monthly deductions from his/her pension benefit payment. As such, the requirement to check the box indicating the Recipient's intent to exercise the option is arguably an unnecessary, surplus requirement, and the failure to check the box does not necessarily indicate a desire to reject the option.

11. In any event, in order to ensure proper Plan implementation and avoid any potential liability on this issue, the GRS suggests that the parties and the Court address whether the 239 ASF Distribution Recipients that failed to check the box on Item 1 of the Cash Option Form should be afforded the opportunity to affirm their intent to make the election or whether they should be deemed not to have made the election.

(ii) Completed But Untimely Received Forms

12. KCC has also advised the GRS and the City that 39 Cash Option Forms were correctly completed, by signing and checking the box, but were received by KCC on January 22 and 23, after the balloting deadline. KCC reviewed the postmarks for these ballots, which show a range in postmark between January 15 and January 20, 2015 for those 33 envelopes that had a postmark. Six had no postmark.

13. The GRS has been contacted by several members who have stated that they believe they mailed their Cash Option Forms in time to reach KCC by the balloting deadline of January 21, but have been advised by KCC that their Forms were received and recorded by KCC as untimely.

14. KCC has also reported that:

- a. the aggregate ASF Recoupment amount of the 815 timely, correctly completed Cash Option Forms is \$26,470,789.43;

- b. the aggregate ASF Recoupment amount of the 239 Cash Option Forms which were timely but which did not have the box checked is \$5,306,868.00; and
- c. the aggregate ASF Recoupment amount of the 39 Cash Option Forms that were received late on January 22 and 23, though properly completed, is \$829,393.09.

15. ASF Final Payment Notices have been properly issued to the 815 indisputably successful electors.

16. In light of the foregoing, in order to ensure proper Plan implementation and avoid any potential liability on this issue, the GRS suggests that the parties and the Court address whether these Cash Option Forms which were received after the balloting deadline should be considered successful electors and allowed to make the lump sum cash payment.

B. Applying Income Stabilization Payments to Restore Pension Benefits Reduced on Account of ASF Recoupment.

17. Pursuant to a settlement of UTGO bond claims under the Plan, an Income Stabilization Fund was created. This Fund is to be funded from a portion of an annual City tax levy that, prior to the bankruptcy, was to be applied exclusively to the payment of debt service on the UTGO bonds. Under the Plan and the State Contribution Agreement, an Income Stabilization Fund program (the “ISF Program”) was established, pursuant to which Eligible Pensioners entitled to

receive the Income Stabilization Benefit and the Income Stabilization Benefit Plus will have a portion of their monthly pension benefits restored from the Income Stabilization Fund. *See* Plan § IV.D.2, and Plan Ex. I.A.332, State Contribution Agreement at ¶ 3.

18. As described above, a retired ASF Distribution Recipient that does not elect to pay the ASF Recoupment amount in cash will have that amount deducted from the ASF Distribution Recipient's monthly pension benefit.

19. The Plan appears to contemplate that Income Stabilization Payments may restore *any* reduction in an Eligible Pensioner's monthly pension benefit, including reductions resulting from ASF Recoupment. *Id.* Similarly, the State Contribution Agreement does not appear to differentiate between use of Income Stabilization Benefits to restore pension benefit reductions resulting from reductions of base benefits or COLAs, on the one hand, and reductions resulting from ASF Recoupment on the other hand. *Id.*

20. Notwithstanding the foregoing, the State has advised the GRS that it is taking the position that Income Stabilization Benefits may only be used to restore pension benefit reductions resulting from reductions of base benefits or COLAs, and not reductions resulting from ASF Recoupment.

21. Again, in order to ensure proper Plan implementation and avoid any potential liability on this issue, the GRS suggests that the parties and the Court

address whether the ISF Program contemplates that Income Stabilization Benefits will be paid to Eligible Pensioners in order to restore Eligible Pensioners' monthly pension benefits reduced specifically on account of ASF Recoupment.

Respectfully submitted,

CLARK HILL PLC

/s/ Robert D. Gordon

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Dated: February 26, 2015

*Counsel to the General Retirement System of
the City of Detroit*

EXHIBIT 1

**INSTRUCTIONS FOR COMPLETING THE ASF RECOUPMENT CASH OPTION
ELECTION FORM**

1. In the box provided in Item 1 of the Form, please check the box to indicate your election to repay your ASF Recoupment amount under the ASF Recoupment Cash Option.
2. Please complete Item 2 of the Election Form.
3. Sign, date and return the Election Form to:

Kurtzman Carson Consultants, LLC ("KCC")
2335 Alaska Avenue
El Segundo, CA 90245

KCC must actually receive your properly completed Election Form by **5:00 P.M. P.S.T. on January 19, 2015** (the "Election Deadline"). If your Election Form is received after the Election Deadline, it will not be valid and will not be given any effect. KCC will not accept Election Forms received after the Election Deadline, or Election Forms delivered by email, fax or any other electronic method. Election Forms should not be sent directly to the General Retirement System of the City of Detroit ("GRSD"), the City, the Bankruptcy Court or any entity other than KCC. Any Election Forms received by GRSD, the City or the Bankruptcy Court will not be valid and will not be given any effect.

4. If you believe that you are not subject to ASF Recoupment or that you are receiving this election in error, please contact KCC immediately at (877) 298-6236 or via email at detroitinfo@kccllc.com.

**PLEASE READ THE INSTRUCTIONS CAREFULLY
BEFORE FILLING OUT AND MAILING THE ELECTION FORM.**

ASF RECOUPMENT CASH OPTION ELECTION FORM

PLEASE READ THE ASF RECOUPMENT CASH OPTION INFORMATION AND INSTRUCTIONS ATTACHED BEFORE COMPLETING THIS ELECTION FORM.

IF YOU WISH TO TAKE THE ASF RECOUPMENT CASH OPTION, PLEASE CHECK THE BOX IN ITEM 1 AND COMPLETE THE SIGNATURE LINES AFTER ITEM 2 BELOW.

IF THIS ELECTION FORM IS NOT SIGNED ON THE APPROPRIATE LINES BELOW, THIS ELECTION FORM WILL NOT BE VALID AND YOUR MONTHLY PENSION BENEFIT WILL BE REDUCED AS PROVIDED IN THE ATTACHED ASF RECOUPMENT CASH OPTION ELECTION NOTICE.

Item 1. ☐ ASF Recoupment Cash Option Repayment Election. The undersigned, an ASF Distribution Recipient, elects to **ACCEPT** the ASF Recoupment Cash Option and agrees to make a lump sum cash payment to the General Retirement System of the City of Detroit ("GRSD") in the amount set forth on the Final Cash Payment Notice which I will receive approximately two weeks after the Election Deadline.

Item 2. Certifications. By signing this Election Form, the undersigned certifies that he or she:

- i. Is an ASF Distribution Recipient as of December 10 , 2014;
- ii. Received a copy of the ASF Recoupment Cash Option Election Notice, an ASF Recoupment Cash Option Election Form and an addressed return envelope;
- iii. Understands that the ASF Recoupment Cash Option is capped at \$30 million, and if the cash option elections returned by ASF Distribution Recipients exceed \$30 million, he or she will be permitted to make a lump sum cash payment of his or her PRO RATA share of the \$30 million cap; and
- iv. Further understands that if this Election Form is returned to KCC after the Election Deadline, if this Election Form is not signed on the appropriate lines below, or if a lump sum cash payment of the ASF Recoupment amount is not made to GRSD by the date set forth on the Final Cash Payment Notice, this election will not be valid and will not be given effect.

Printed Name

Signature

Street Address

City, State, Zip Code

Telephone Number

Date Completed

Last Four Digits of Social Security Number

EXHIBIT 2

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

In re:)	Chapter 9
)	
CITY OF DETROIT, MICHIGAN,)	Case No. 13-53846
)	
Debtor.)	Hon. Thomas J. Tucker
)	

CERTIFICATE OF SERVICE

The undersigned certifies that on February 26, 2015, the *Status Report on Implementation of the Plan Filed by the General Retirement System of the City of Detroit* was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

CLARK HILL PLC

/s/ Robert D. Gordon

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Dated: February 26, 2015

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