

**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. Thomas J. Tucker
	:	
	X	

**CITY OF DETROIT'S SECOND STATUS REPORT
WITH REGARD TO PREFERENCE ACTIONS**

The City of Detroit, Michigan (the "City") hereby submits its second status report (the "Second Status Report") pursuant to this Court's *Order Scheduling Further Status Conference Regarding Preference Actions, and Continuing in Effect the Provisions of the November 24, 2015 Procedures Order* (Docket No. 11178) (the "Second Procedures Order") and, in that connection, requests that the Court permit the process established by the Second Procedures Order to continue. For its Second Status Report, the City respectfully represents as follows:

BACKGROUND

1. The City filed its petition for relief under chapter 9 of title 11 of the United States Code (the "Bankruptcy Code") on July 18, 2013. On December 5, 2013, the Court entered an order for relief after finding that



the City was eligible to be a debtor in a chapter 9 bankruptcy case (Docket No. 1946).

2. On November 12, 2014, the Court issued an Order confirming the *Eighth Amended Plan for the Adjustment of Debts of the City of Detroit* (the “Plan”) (Docket No. 8272). On December 31, 2014, the Court entered the *Supplemental Opinion Regarding Plan Confirmation, Approving Settlements, and Approving Exit Financing* (Docket No. 8993).

3. The Plan provided, among other things, that the City would retain and enforce claims, rights and Causes of Action (as defined in the Plan), including claims to recover transfers that are avoidable and recoverable pursuant to sections 547 and 550 of the Bankruptcy Code (collectively, the “Preferential Transfers”). See Plan, Article III(D)(2).

4. The Plan expressly preserved the City’s right to assert Causes of Action on account of Preferential Transfers against 324 parties identified in the City’s nonexclusive schedule of parties against whom Causes of Action could be asserted, which schedule was filed as an exhibit to the Plan. See Plan, Exhibit III.D.2 (Docket No. 8192).

5. On December 10, 2014 (the “Effective Date”), the Plan became effective in accordance with its terms. See *Notice of (I) Entry of Order Confirming Eighth Amended Plan for the Adjustment of Debts of the City of Detroit and (II) Occurrence of Effective Date* (Docket No. 8649).

6. On February 26, 2015, the City filed the Post-Confirmation Status Report of the City of Detroit Michigan (Docket No. 9306) (the “Post-Confirmation Status Report”), which is incorporated herein by reference.

7. The Post-Confirmation Status Report stated that: (i) the City deferred the analysis of potential Preferential Transfers until after the Effective Date; (ii) only after the Effective Date was the City able to devote resources to its diligence regarding the Preferential Transfers; and (iii) as of February 26, 2015, the City had identified approximately 300 parties who had received potential Preferential Transfers.

8. Thereafter, as a result of additional diligence, the City further reduced the number of parties from whom Preferential Transfers may be recovered to approximately 185 transferees (the “Transferees” or “Defendants”).

STATUS REGARDING PREFERENCE ACTIONS

9. On November 14, 2015, the Court entered the *Order Approving Procedures for Adversary Proceedings to Avoid and Recover Preferential Transfers* (the “First Procedures Order”) (Docket No. 10280), which had been sought at the City’s request. The First Procedures Order sets forth the processes and procedures intended to promote amicable

resolution of adversary proceedings (the “Preference Actions”) brought in connection with the Preferential Transfers by the City against Transferees.

10. Thereafter, in or about December 2015, the City commenced 185 Preference Actions against the Defendants, seeking the avoidance and recovery of the Preferential Transfers, pursuant to sections 547 and 550 of the Bankruptcy Code.

11. On April 29, 2016, the City filed and served the *City of Detroit’s Status Report with Regard to Preference Actions* (Docket No. 11137) (the “Status Report”). As set forth in the Status Report, between December 2015 and April 2016, the City resolved 106 out of the 185 Preference Actions, whether through settlement, discontinuance or otherwise, leaving 79 remaining proceedings. Attached hereto as Exhibit “A” is a schedule identifying the Preference Actions resolved as of April 29, 2016.

12. Following a status conference held by the Court on May 18, 2016, at which counsel for the City and numerous Defendants appeared, the Court entered the Second Procedures Order. Pursuant to the Second Procedures Order, the processes and procedures which had been implemented in these proceedings pursuant to the First Procedures Order, including the stay of Federal Rule of Civil Procedure 26(f), remain in effect unless and until the Court orders otherwise.

13. Following the filing of the Status Report, the City resolved an additional 21 actions, as identified on Exhibit “B” attached hereto. Included in these resolutions was the settlement of one of the City’s most heavily litigated and contentious Preference Actions.

14. Out of the 185 Preference Actions initially commenced by the City, only 58 remain. These remaining Preference Actions involve complex and difficult issues, necessitating in-depth analyses and time consuming negotiations. Attached hereto as Exhibit “C” is a schedule identifying the Preference Actions that remain pending.

A. Common Defenses

15. The Defendants in many of these remaining Preference Actions are asserting one or more of the following three defenses.

(i) Trust Fund / Earmarking:

16. Approximately twenty-five (25) Defendants are asserting that the Preferential Transfers they received consisted of “trust funds” or other “earmarked” monies that were not property of the City. *See* Ex. C.

17. The City is working with these Defendants to assess the merits of each Defendant’s position, as each involves its own set of facts. Factual issues raised by this defense include whether the funds transferred by the City were, in fact, to be held in trust by the City or were otherwise not “an interest of the debtor in property.” To the extent the transferred

funds were federal or state government grant funds or were otherwise not property of the City, factual issues include whether such transferred funds are properly traceable to the trust *res*. Tracing gives rise to additional fact issues which must be explored on a case-by-case basis as the City typically paid the Transferees from its general disbursement account using commingled funds. Furthermore, in certain instances, the City paid the Defendants before it had received federal or state government grant funds. In those instances, the City advanced funds to the Defendants with the expectation of later being reimbursed by a state or federal government agency pursuant to a grant program. It remains unclear whether, and to what extent, the City did in fact receive federal and/or state grant funds that correspond to the Preferential Transfers received by Defendants asserting this defense.

18. Because assessment of this defense involves a heavily fact based analysis, the City submits that this defense is not appropriate for resolution on summary judgment.

(ii) Contract Assumption:

19. Approximately thirteen (13) Defendants are asserting that the Preferential Transfers they received from the City were made on account of an executory contract assumed by operation of the City's Plan. *See* Ex. C. As the City's Plan provided for the assumption of all executory

contracts not specifically rejected, the City is working with the Defendants who have asserted this defense to assess whether the Preferential Transfers that the Defendants received were made in connection with a contract which was not rejected and remained executory on December 10, 2014, the Effective Date of the Plan.

20. While the City does not contest the merits of this defense for those parties who received payments pursuant to an executory contract which remained operative on the Effective Date and which was not explicitly rejected under the Plan, establishing the elements of this defense requires a factual analysis. For this reason, the City submits that this issue is not appropriate for summary judgment.

(iii) Critical Vendor:

21. Approximately nine (9) Defendants are asserting that they have a “critical vendor” defense to the Preference Actions because they purportedly received a form letter from the City characterizing them as an “essential vendor.” *See* Ex. C. Attached hereto as Exhibit “D” is a copy of one of the form letters distributed by the City. In addition to disputing the Defendants’ interpretation of the form letter, the City contends that it remains to be established whether such Defendant was the actual recipient of the letter (as certain versions of the letter are not

addressed to a specific party), and likewise contends that the applicable case law does not support a critical vendor defense under the present facts.

22. The City submits that whether a Defendant's receipt of an "essential vendor" letter entitles that Defendant to an absolute defense to the City's Preference Action is an issue that is ripe for summary judgment.

B. Future Procedures

23. As set forth above, only 58 of the original 185 Preference Actions remain unresolved. The City continues to work with the remaining Defendants to amicably resolve their Preference Actions. As the City believes that the process established by the First Procedures Order, and continued in the Second Procedures Order, is effective in facilitating the resolution of the Preference Actions without the need for costly and time consuming litigation and/or third-party mediation, the City believes the Court should provide a further opportunity for the process the Court established to proceed. The City, therefore, requests that the terms and conditions of the First Procedures Order (and continued by the Second Procedures Order) should remain in effect through December 31, 2016. The City is cautiously optimistic that this additional period of time without the distraction and costs of formal discovery, litigation and/or mediation will facilitate the resolution of many of the remaining Preference Actions.

24. The City will be prepared to discuss this Second Status Report and the remaining Preference Actions at the status conference currently scheduled for September 26, 2015.

25. A copy of this Second Status Report has been served on all Defendants listed on Exhibit "C" hereto, including their respective counsel.

Dated: September 16, 2016
New York, New York

Respectfully submitted,

TOGUT, SEGAL & SEGAL LLP
By:

/s/ Scott E. Ratner
ALBERT TOGUT (AT-9759)
SCOTT E. RATNER (SER-0015)
Members of the Firm
One Penn Plaza, Suite 3335
New York, New York 10119
(212) 594-5000

*Counsel for the City of Detroit,
Michigan*

City of Detroit, Michigan, Case No. 13-53846
Resolved Actions on or prior to 4/29/16

	Adv Pro Number	Defendant Name
1	15-05241	1 WAY SERVICE INC
2	15-05240	ABM TOTAL BUILDING SERVICE
3	15-05307	AMERICAN SUPERCONDUCTOR CORP
4	15-05301	APPLIED INDUSTRIAL TECHNOLOGIES
5	15-05270	ARGUS GROUP INC DBA ARGUS HAZCO
6	15-05287	ARROW OFFICE SUPPLY CO
7	15-05274	CAMDEN INSURANCE AGENCY INC
8	15-05364	CAPP INC/CAPP USA
9	15-05273	CINTAS CORPORATION
10	15-05254	CLOW WATER SYSTEMS COMPANY
11	15-05268	COMMUNICATIONS PROFESSIONALS INC
12	15-05325	CUMMINS BRIDGEWAY LLC
13	15-05226	DECANTER MACHINE INC
14	15-05289	ELECTION SYSTEMS & SOFTWARE
15	15-05267	ELECTRONIC DATA MAGNETICS
16	15-05311	EXAMWORKS INC
17	15-05343	FOSTER SWIFT COLLINS & SMITH PC
18	15-05174	G4S SECURE SOLUTIONS USA INC
19	15-05314	GILLIG CORPORATION
20	15-05309	GRAINGER
21	15-05215	GREAT LAKES POWER INC
22	15-05304	GUARDIAN GUARD SERVICE INC
23	15-05358	HINSHON ENVIRONMENTAL CONSULTING INC
24	15-05189	HUBB SYSTEMS LLC
25	15-05368	Infinite Strategic Innovations dba ISI
26	15-05209	INFLECTION POINT SOLUTIONS
27	15-05164	INLAND WATERS POLLUTION CONTROL INC
28	15-05217	ITERIS MICHIGAN LLC
29	15-05332	JEFFREY J ELLISON PLLC
30	15-05229	JENKINS CONSTRUCTION INC
31	15-05290	KIRK'S AUTOMOTIVE INC
32	15-05253	LEXIS NEXIS
33	15-05295	MACOMB PIPE & SUPPLY
34	15-05336	MICHIGAN CAT
35	15-05300	MOORE MEDICAL CORP
36	15-05259	MORTON SALT INC
37	15-05214	NEXTEL COMMUNICATIONS
38	15-05232	OLIVE DELIVERY SERVICE LLC
39	15-05296	OSBURN ASSOCIATES INC
40	15-05187	PLANTE & MORAN LLP
41	15-05327	PMSI INC

City of Detroit, Michigan, Case No. 13-53846
Resolved Actions on or prior to 4/29/16

	Adv Pro Number	Defendant Name
42	15-05321	ROBERT W BAIRD & CO
43	15-05228	RS TECHNICAL SERVICES INC
44	15-05334	SAFETY SERVICES INC
45	15-05341	SEHI COMPUTER PRODUCTS INC
46	15-05222	SEMCO ENERGY GAS CO
47	15-05251	SIEMENS INDUSTRY INC
48	15-05302	SPRINT
49	15-05264	SPS WOODBRIDGE COMPANY LLC
50	15-05225	SYSTEMS & SOFTWARE INC
51	15-05280	TETRA TECH MPS
52	15-05284	TMESYS INC
53	15-05193	TUCKER YOUNG JACKSON TULL INC
54	15-05276	VALLEY TRUCK PARTS INC
55	15-05279	W C DUCOMB CO
56	15-05170	WASTE MANAGEMENT OF MICHIGAN INC
57	15-05200	WCI CONTRACTORS
58	15-05244	WRIGHT TOOL CO
59	15-05275	YTI OFFICE EXPRESS
60	15-05261	CLAYTON INDUSTRIES INC
61	15-05315	1959 EAST JEFFERSON LLC
62	15-05339	APPLIED POWER & CONTROLS INC
63	15-05281	ATWOOD TRUCKING CO
64	15-05328	BILL JOHNSON GROUP
65	15-05294	C & H BUILDERS
66	15-05305	DETROIT ROLLING DOOR & GATE INC
67	15-05323	GLORIA STOKES
68	15-05298	GOVERNMENTAL CONSULTANT SERVICES INC
69	15-05330	H C M INC
70	15-05338	JEANETTE POWELL
71	15-05361	JULIAN WATKINS DANIEL REID
72	15-05357	LORENZO TATE
73	15-05297	NEW TECHNOLOGY DEVELOPMENT LIMITED PARTNERSHIP
74	15-5359	NUTECH GRAPHICS & SYSTEM
75	15-05246	PROJECT INNOVATIONS
76	15-05269	TJA STAFFING SERVICES INC
77	15-05277	YOLANDA JOHNSON
78	15-05221	BAUER & HUNTER PLLC
79	15-05235	BDM LLC
80	15-05201	CADILLAC TOWER MI LLC
81	15-05335	CRANBROOK GENERAL UNDERWRITERS AGENCY
82	15-05237	DAVID WM RUSKIN

City of Detroit, Michigan, Case No. 13-53846
Resolved Actions on or prior to 4/29/16

	Adv Pro Number	Defendant Name
83	15-05169	DEMARIA BUILDING COMPANY
84	15-05356	DETROIT RADIO TEAM
85	15-05177	DTE ENERGY
86	15-05218	FREEDMAN LESSING KUTINSKY
87	15-05272	GEORGE T ROUMELL JR
88	15-05248	INGRAM LIBRARY SERVICES
89	15-05278	JAMES G JOHNSON
90	15-05308	JIMMY SEALS
91	15-05249	KOTZ SANGSTER WYSOCKI & BERG PC
92	15-05282	MCNAUGHTON MCKAY ELECTRIC COMPANY
93	15-05207	MOTOROLA SOLUTIONS INC
94	15-05316	NAPA DETROIT DISTRIBUTION and Genuine Parts Company
95	15-05234	NEW ENGLAND FERTILIZER COMPANY
96	15-05306	NOVITEX ENTERPRISE SOLUTIONS INC
97	15-05286	OVERDRIVE INC
98	15-05256	PES GROUP PC
99	15-05329	RICKARD DENNEY GARNO & ASSOCIATES
100	15-05242	ROBINSON & ASSOCIATES PC
101	15-05252	SBC GLOBAL SERVICES
102	15-05355	SMART
103	15-05197	STRATEGIC STAFFING SOLUTIONS
104	15-05322	TELNET WORLDWIDE INC
105	15-05191	WALKERS HEATING & COOLING
106	15-05168	TRINITY ENVIRONMENTAL SOLUTIONS LLC

City of Detroit, Michigan, Case No. 13-53846
Resolved Actions on or after 4/29/16

	Adv Pro Number	Defendant Name
1	15-05324	AUDIO VISUAL EQUIPMENT & SUPPLIES
2	15-05303	C E POLLARD COMPANY
3	15-05194	CLARK ASSOCIATES INC
4	15-05183	COMPUTECH CORPORATION
5	15-05266	COVER YOUR ASSETS LLC
6	15-05167	CW PROFESSIONAL SERVICES LLC AND COMPUWARE CORPORATION
7	15-05337	D A CENTRAL INC
8	15-05367	DETROIT ADVANCED TECHNOLOGY APPLICATION NETWORK
9	15-05185	EJ USA INC
10	15-05223	ELECTRONIC DATA SYSTEMS CORPORATION
11	15-05293	FORT WAYNE CONTRACTING INC
12	15-05182	HERCULES & HERCULES INC
13	15-05189	HUBB SYSTEMS LLC
14	15-05186	IMPERIAL CONSTRUCTION CO
15	15-05247	J RANCK ELECTRIC INC
16	15-05176	L D' AGOSTINI & SONS INC
17	15-05250	METCO SERVICES INC
18	15-05224	PREVOST PARTS/PREVOST CAR INC.
19	15-05319	SBM INC
20	15-05195	SIGMA ASSOCIATES INC
21	15-05291	WOLVERINE OIL & SUPPLY CO INC

City of Detroit, Michigan, Case No. 13-53846
Open Preference Actions as of 9/16/16 with Defenses Asserted

	Adv Pro Number	Defendant Name	Trust Fund/Earmarking	Assumed Contract	Critical Vendor
1	15-05271	A & M TRUCKING INC			
2	15-05258	ABC DEMOLITION CO INC	Yes		
3	15-05216	ABLE DEMOLITION INC	Yes		
4	15-05299	AGAR LAWN SPRINKLER SYSTEMS INC			
5	15-05331	ALEXANDER CHEMICAL CORP			
6	15-05212	AMPRO CONSTRUCTION LLC	Yes		
7	15-05312	APPLIED SCIENCE INC		Yes	
8	15-05180	BANKSTON CONSTRUCTION INC			Yes
9	15-05238	BINKELMAN CORP			Yes
10	15-05320	BIRKS WORKS ENVIRONMENTAL LLC			
11	15-05204	BLUE STAR INC	Yes		
12	15-05206	BOB MAXEY FORD INC			Yes
13	15-05317	CAMP DRESSER & MCKEE	Yes	Yes	
14	15-05184	CARMEUSE LIME INC			
15	15-05260	CDM MICHIGAN INC		Yes	
16	15-05262	CLARKS CONSTRUCTION	Yes		
17	15-05199	COLASANTI CORPORATION			Yes
18	15-05362	DCI WOLVERINE JV	Yes		
19	15-05210	DELL COMPUTER CORPORATION	Yes		
20	15-05192	DETROIT CONTRACTING INC LLC	Yes	Yes	Yes
21	15-05172	DETROIT THERMAL LLC		Yes	
22	15-05288	E L BAILEY & CO INC	Yes		
23	15-05265	EASTERN OIL CO	Yes		
24	15-05188	FARROW GROUP INC	Yes		
25	15-05219	FEDERAL PIPE & SUPPLY INC			
26	15-05202	FEDERAL SIGNAL CORPORATION	Yes		
27	15-05220	FRASER TREBILCOCK DAVIS & DUNLAP PC			
28	15-05173	FUTURENET GROUP INC			Yes
29	15-05175	GIORGI CONCRETE LLC	Yes		
30	15-05363	HESCO HAMLETT ENGINEERING SALES COMPANY DBA HESCO			Yes
31	15-05179	INTERSTATE TRUCKSOURCE INC			
32	15-05198	J E ASSOCIATES INC			
33	15-05236	KEO AND ASSOCIATES INC	Yes	Yes	
34	15-05231	KESSLER INTERNATIONAL	Yes		
35	15-05285	KINGSWAY BUILDING & MAINTENANCE	Yes		
36	15-05166	LAKESHORE ENGINEERING SERVICE INC			
37	15-05318	MANNIK & SMITH GROUP INC			
38	15-05292	MIKE DONNELLY ELECTRICAL COLLEGE			
39	15-05245	MOTOR CITY ELECTRIC TECHNOLOGIES INC	Yes	Yes	
40	15-05178	MOTOR CITY PIPE & SUPPLY CO	Yes		
41	15-05227	NORTH-WEST TRADING CO		Yes	
42	15-05205	OAS GROUP INC			
43	15-05196	ORACLE CORPORATION		Yes	
44	15-05190	PARSONS BRINCKEROFF MICHIGAN INC			
45	15-05171	PVS TECHNOLOGIES INC	Yes		
46	15-05208	PYRATECH SECURITY SYSTEMS INC			
47	15-5360	RE-CONSTRUCTION	Yes		
48	15-05230	SAFECO INSURANCE COMPANY OF AMERICA			
49	15-05181	SHRADER TIRE & OIL INC			Yes
50	15-05233	T & N SERVICES INC			
51	15-05243	T & T BUILDERS	Yes		
52	15-05165	TOOLES CONTRACTING GROUP LLC		Yes	Yes
53	15-05257	TOTER INCORPORATED	Yes		
54	15-05333	UNIGLOBE CONSTRUCTION CO	Yes		
55	15-05213	UNIVERSAL SYSTEM TECHNOLOGIES INC		Yes	
56	15-05340	VANCON INC			
57	15-05326	WATERWORKS SYSTEMS & EQUIPMENT		Yes	
58	15-05239	Z CONTRACTORS INC	Yes	Yes	
TOTAL			25	13	9



CITY OF DETROIT
OFFICE OF THE EMERGENCY MANAGER

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVE., SUITE 1126
DETROIT, MICHIGAN 48226
PHONE 313•224•3703
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WWW.DETROITMI.GOV

August 2, 2013

Dear Essential Vendor:

We at the City of Detroit (the "City") believe you are an "essential vendor," something we are very pleased to name you. As an "essential vendor," the City will continue to make payments to you in the "ordinary course." This means that the City will pay all undisputed amounts owed to you, even if such amounts relate to your supplying the City with goods and services prior to the City's recent chapter 9 filing (the "Prepetition Amounts").

We very much hope to continue our fine relationship with you in the ordinary course of business between you and the City.

Please be advised that, by accepting payment on account of Prepetition Amounts, you are deemed to have agreed to continue to provide goods and services to the City in accordance with your prior terms (including credit terms) with the City. Should you decide to discontinue providing goods and services on such terms after cashing this payment, please be advised that the City must reserve the right to seek recovery of all Prepetition Amounts it may have paid to you, absent an agreement to the contrary with the City. Your anticipated cooperation is appreciated.

Sincerely,

Kevyn D. Orr
Emergency Manager
City of Detroit

KEVYN D. ORR, EMERGENCY MANAGER