

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

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In re	:	
	:	Chapter 9
CITY OF DETROIT, MICHIGAN,	:	
	:	Case No. 13-53846
Debtor.	:	
	:	Hon. Steven W. Rhodes
-----	:	
	:	
CITY OF DETROIT, MICHIGAN,	x	
	:	
Plaintiff,	:	Chapter 9
	:	
vs.	:	Adv. Pro. No. 14-04112
	:	
DETROIT GENERAL RETIREMENT	:	Hon. Steven W. Rhodes
SYSTEM SERVICE CORPORATION,	:	
DETROIT POLICE AND FIRE	:	
RETIREMENT SYSTEM SERVICE	:	
CORPORATION, DETROIT	:	
RETIREMENT SYSTEMS FUNDING	:	
TRUST 2005, and DETROIT	:	
RETIREMENT SYSTEMS FUNDING	:	
TRUST 2006	:	
	:	
Defendants.	:	
-----X		

**CITY OF DETROIT’S *EX PARTE* MOTION FOR LEAVE TO FILE A
REPLY IN SUPPORT OF ITS MOTION TO DISMISS THE FUNDING
TRUSTS’ COUNTERCLAIMS ON OR BEFORE SEPTEMBER 18, 2014**

Plaintiff, the City of Detroit, makes this motion for leave to file its reply brief on a schedule consistent with that of L.B.R. 9014-1(e) and in keeping with the briefing schedule for a parallel motion on the same issues.

1. On March 17, 2014, the Funding Trusts filed an answer and counterclaims against the City (the “Funding Trust Counterclaim”). The Funding Trusts’ counterclaim propounded claims for (among other things) fraudulent inducement, misrepresentation, unjust enrichment and estoppel.

2. On April 10, 2014, the City moved to dismiss the Funding Trust Counterclaim. However, on April 25, the Court stayed further briefing on the City’s motion pending the Court’s determination of motions to intervene in the proceeding by FGIC and the COPs holders.

3. On July 31, 2014, the Court held a hearing and, among other things, entered an order directing the Funding Trusts to respond to the City’s motion to dismiss by August 13, with the City’s reply due on August 18 and a hearing set for August 20 (the “Briefing Order”).

4. On August 13, 2014, with leave of the Court, defendant-intervenor FGIC filed counterclaims against the City (the “FGIC Counterclaim”). The FGIC Counterclaim, like the Funding Trusts Counterclaim, includes claims against the City for fraudulent inducement, misrepresentation, unjust enrichment and estoppel.

5. Also on August 13, the Court granted the Funding Trusts' *ex parte* motion for an extension of time to file their response to the City's motion to dismiss until August 14.

6. On August 14, the Court held a status conference and entered a scheduling order (the "Scheduling Order"), which cancelled the August 20 hearing date on the City's motion to dismiss the Funding Trusts Counterclaim in contemplation of the City's filing a similar motion to dismiss the FGIC Counterclaim. The Scheduling Order set the deadline of September 18 for the City's reply brief in support of its motion to dismiss the FGIC Counterclaim and provided that a hearing on both motions to dismiss would be set, if at all, after completion of all briefing.

7. On August 14, 2014, the Funding Trusts filed a 64-page response to the City's motion to dismiss. On August 15, the Court entered an order authorizing the Funding Trusts' filing in excess of the page limit. Under the Briefing Order, the City's reply to the Funding Trusts' 64-page brief would have been due the very next business day.

8. The City, in the belief that the Scheduling Order superseded the prior Briefing Order, did not file its reply brief the next business day, believing instead that the briefing schedule for its motion to dismiss the Funding Trusts counterclaims was on the same schedule as that for FGIC's counterclaims. After

receiving an inquiry from counsel to a party in the case and contacting chambers, counsel learned that the Scheduling Order had not, in fact, modified the date for the City to file its reply brief.

9. The City respectfully requests leave to file a reply to the Funding Trusts' response at the same time that it will file its reply to FGIC's opposition papers. The City submits that this request is in keeping with orderly adjudication of the motions because (a) the Funding Trusts Counterclaim and the FGIC Counterclaim are largely overlapping and raise the same legal issues, (b) briefing of the two motions should be on the same schedule, especially since it is likely that the motions will be argued, if at all, at the same time, (c) this will permit the City to file a single omnibus reply brief, simplifying the record, and (d) the City would suffer prejudice if it were not afforded the opportunity to reply to arguments raised in the Funding Trusts' papers. The City does not believe that there will be prejudice to the Funding Trusts, since the City should have the customary right to file a reply brief and its filing of a reply brief will not deny the Funding Trusts any substantive or procedural rights.

10. The City is informed that the Funding Trusts do not oppose the relief requested herein.

WHEREFORE, the City respectfully requests that the Court enter the order attached hereto as Exhibit 1, granting it leave to file an omnibus reply in

support of its motions to dismiss the Funding Trusts Counterclaim and the FGIC Counterclaim by September 18, 2014.

Dated: August 20, 2014

Respectfully submitted,

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Attorneys for the City of Detroit

EXHIBIT 1
Proposed Order

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
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TRUST 2005, and DETROIT	:	
RETIREMENT SYSTEMS FUNDING	:	
TRUST 2006	:	
	:	
Defendants.	:	
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**ORDER GRANTING CITY OF DETROIT LEAVE TO FILE A REPLY IN
SUPPORT OF ITS MOTION TO DISMISS THE FUNDING TRUSTS'
COUNTERCLAIMS ON OR BEFORE SEPTEMBER 18, 2014**

This matter having come before the Court on the City of Detroit's *Ex Parte* Motion for Leave to File a Reply in Support of Its Motion to Dismiss the Funding Trusts' Counterclaims On or Before September 18, 2014 (the "Motion")¹ and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the Motion is GRANTED; and

IT IS FURTHER ORDERED that the City may file an omnibus reply brief in support of its motions to dismiss the Funding Trusts Counterclaim and the FGIC Counterclaim on or before September 18, 2014.

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.