

**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
-----X
CITY OF DETROIT, MICHIGAN, : Chapter 9
Plaintiff, : Adversary Proceeding No. 14-04112
vs. : Hon. Steven W. Rhodes
DETROIT GENERAL RETIREMENT :
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 MOTION TO TAKE EXPEDITED DISCOVERY
OF THE SERVICE CORPORATIONS**

Under Rule 26(d), a court has discretion to order discovery prior to the parties’ Rule 26(f) conference. Courts in the Eastern District of Michigan

utilize a “good cause” standard to decide whether to permit such discovery.

Woodward v. Chetvertakov, 2013 U.S. Dist. LEXIS 155405, at *2 (E.D. Mich. Oct. 30, 2013); *McCluskey v. Belford High Sch.*, 2010 U.S. Dist. LEXIS 62608, 2010 WL 2696599, at *1 (E.D. Mich. June 24, 2010).

Good cause exists in this case to permit the City to take the depositions of the Service Corporations¹ due to the evasive and disingenuous manner in which the Service Corporations answered the City’s Complaint. Rather than seeking out information from predecessor officers, books and records or even the City ordinance that created the Service Corporations, the Service Corporations chose instead to claim ignorance as to their own basic actions. By way of example:

- The Service Corporations claim that they lack sufficient knowledge or information to admit or deny that they were created in 2005. (Answer, ¶ 12)
- The Service Corporations claim that they don’t know whether their boards regularly meet, whether meeting minutes are maintained, whether books and records are kept, or whether they observe other formalities of corporate existence. (Answer, ¶ 14)
- While admitting that Exhibit C to the Complaint is a copy of one of the Service Contracts, the Service Corporations claim lack of knowledge and actually deny that either of them entered into a Service Contract with the City in 2005. (Answer, ¶ 15)
- Similarly, the Service Corporations claim lack of knowledge of the 2005 Trust Agreement and actually deny having entered into it. (Answer, ¶ 19)

¹ The “Service Corporations” are defendant Detroit General Retirement Fund Service Corporation and defendant Detroit Police and Fire Retirement Fund Service Corporation.

Ordinarily, the City would seek discovery only after all parties had conferred pursuant to Rule 26(f) of the Federal Rules of Civil Procedure. As described above, however, this case presents the unique circumstance of a defendant that has all but denied knowledge of its own existence. As a result, the City cannot even frame the issues that it will be litigating with the Service Corporations, making a Rule 26(f) conference with them likely to be an exercise in futility. The City respectfully suggests that the most efficient way to obtain substantive responses to its allegations, and to get to the bottom of the issues as to which the Service Corporations claim ignorance, is through the sworn testimony of a corporate representative or representatives for each of the Service Corporations.

The City therefore respectfully requests that the Court enter an order in the form attached hereto as Exhibit 1, permitting the City to take the depositions of the Service Corporations under Fed. R. Civ. P. 30(b)(6), as set forth in Exhibit 6.

[signature page follows]

Dated: July 21, 2014

Respectfully submitted,

/s/ Deborah Kovsky-Apap
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ATTORNEYS FOR THE CITY OF DETROIT

EXHIBIT 1

Proposed Order

**UNITED STATES BANKRUPTCY COURT
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**ORDER AUTHORIZING THE CITY OF DETROIT TO TAKE
EXPEDITED DISCOVERY OF THE SERVICE CORPORATIONS**

This matter having come before the Court on the motion of the
Debtor, City of Detroit, for authorization to take expedited discovery of the Service

Corporations under Fed. R. Civ. P. 26(d) (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 make take the depositions of a corporate representative or representatives of each of the Service Corporations as set forth in the Rule 30(b)(6) notices attached to the Motion as Exhibit 6.

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

EXHIBIT 2

Notice

**UNITED STATES BANKRUPTCY COURT
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NOTICE OF MOTION AND OPPORTUNITY TO RESPOND

PLEASE TAKE NOTICE that on July 21, 2014, the City of Detroit filed its *Motion to Take Expedited Discovery of the Service Corporations* (the “**Motion**”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “**Bankruptcy Court**”), seeking entry of an order authorizing the City to depose a corporate representative or representatives of each of the defendant Service Corporations.

PLEASE TAKE FURTHER NOTICE that your rights may be affected by the relief sought in the Motion. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE that if you do not want the Bankruptcy Court to grant the City’s Motion, or you want the Bankruptcy Court to consider your views on the Motion, within **17 days**¹ you or your attorney must:

1. File a written objection or response to the Motion explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court’s electronic case filing system in accordance with the Local Rules of the Bankruptcy Court or by mailing any objection or response to:²

United States Bankruptcy Court
Theodore Levin Courthouse
231 West Lafayette Street
Detroit, MI 48226

You must also serve a copy of any objection or response upon:

Jones Day
51 Louisiana Ave. NW
Washington, D.C. 20001-2113
Attention: Geoffrey Stewart

-and-

¹ Concurrently herewith, the City has filed an *ex parte* motion to shorten notice of and expedite the hearing on the Motion (the “Motion to Expedite”). If the Court grants the Motion to Expedite, an order will be entered setting forth the shortened deadline to respond to the Motion.

² A response must comply with F. R. Civ. P. 8(b), (c) and (e).

Pepper Hamilton LLP
Suite 1800, 4000 Town Center
Southfield, Michigan 48075
Attn: Robert Hertzberg and Deborah Kovsky-Apap

2. If an objection or response is timely filed and served, the clerk will schedule a hearing on the Motion and you will be served with a notice of the date, time and location of the hearing.

PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion and may enter an order granting such relief.

[signature page follows]

Dated: July 21, 2014

Respectfully submitted,

/s/ Deborah Kovsky-Apap
Robert S. Hertzberg (P30261)
Deborah Kovsky-Apap (P68258)
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ATTORNEYS FOR THE CITY OF DETROIT

EXHIBIT 3

Brief – Not Applicable

EXHIBIT 4

Certificate of Service

**UNITED STATES BANKRUPTCY COURT
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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2014, I caused to be electronically filed the *City of Detroit's Motion to Take Expedited Discovery of the Service*

Corporations with the Clerk of the Court which sends notice by operation of the Court's electronic filing service to all ECF participants registered to receive notice in this adversary proceeding.

Dated: July 21, 2014

/s/ Deborah Kovsky-Apap
Deborah Kovsky-Apap (P68258)

EXHIBIT 5

Affidavits – Not Applicable

EXHIBIT 6

Proposed Rule 30(b)(6) Deposition Notices

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**NOTICE OF RULE 30(b)(6) DEPOSITION
OF THE DETROIT GENERAL RETIREMENT SYSTEM
SERVICE CORPORATION**

PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure 26 and 30(b)(6), made applicable to this proceeding by Federal Rules of Bankruptcy Procedure 7026 and 7030, the City of Detroit will take the oral deposition of the Detroit General Retirement System Service Corporation (the “GRS Service Corporation”), commencing on August 1, 2014, at 10:00 a.m. ET, and continuing thereafter until completed. Said deposition will be stenographically and videographically recorded. The deposition will be taken for the purposes of discovery, for use at court hearings or trial, or for such other purposes as are permitted under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure. The deposition will take place at Pepper Hamilton LLP, Suite 1800, 4000 Town Center, Southfield MI 48075.

The GRS Service Corporation is required to designate, pursuant to Rule 30(b)(6), person(s) to testify on its behalf regarding the subject matters listed in the attached Schedule A. The GRS Service Corporation is requested to provide the City’s counsel, as soon as reasonably possible, with a written designation of the name(s) and position(s) of the persons who will testify on behalf of the GRS Service Corporation.

Dated: July 21, 2014

Respectfully submitted,

/s/ Deborah Kovsky-Apap
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Deborah Kovsky-Apap (P68258)
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ATTORNEYS FOR THE CITY OF DETROIT

SCHEDULE A

Deposition Topics

1. The Articles of Incorporation of the Detroit General Retirement System Service Corporation (the “Service Corporation”).
2. The incorporation of the Service Corporation.
3. The Certification of Amendment to the Articles of Incorporation of the Service Corporation filed on May 11, 2005, including the reasons for the deletion of Art. VI, Sec. 7.
4. The Service Corporation’s organizational meeting.
5. The Board of Directors of the Service Corporation for each year from 2005-2014.
6. Meetings of the Board of Directors, including the minutes from such meetings.
7. The Service Corporation’s books and records.
8. The Service Corporation’s resident agent for each year from 2005-2014.
9. The creation of the position of Vice President of the Service Corporation.
10. The election of officers of the Service Corporation.
11. The duties and activities of each officer of the Service Corporation.
12. The Service Corporation’s annual reports filed with the State of Michigan.
13. The reason that no annual report has been filed with the State of Michigan for 2013.
14. Norman White’s current or former relationship to or position with the Service Corporation.
15. David Baker Lewis’ current or former relationship to or position with the Service Corporation.
16. The Service Corporation’s assets, including without limitation any bank accounts.
17. The Service Corporation’s rights and obligations under, and actions taken with respect to, either of or both of the May 25, 2005 and June 7, 2006 contracts entered into by the City of Detroit and the Service Corporation, in which the City promised to make a series of periodic payments to the Service Corporation.
18. All activities of the Service Corporation since the issuance of the Pension Obligation Certificates of Participation by the Detroit Retirement Systems Funding Trust 2005.

19. All services rendered to the City of Detroit since the formation of the Service Corporation.

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Dated: July 21, 2014

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