

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

<p>In re: City of Detroit, Michigan, Debtor.</p>	<p>Bankruptcy Case No. 13-53846 Judge Thomas J. Tucker Chapter 9</p>
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**CITY OF DETROIT’S STATUS REPORT ON BANKRUPTCY CASE**

On December 8, 2022, the Court entered its *Order Requiring the City to File a Further Status Report by June 2, 2023* (“Order,” Doc. No. 13669). The Order provided that the City of Detroit (“City”) must file a further status report by June 2, 2023, updating the December 2, 2022, status report (“Previous Status Report,” Doc. No. 13665), and “discussing whether the Chapter 9 bankruptcy case should then be closed, and if not, why not, and if not, when the City contends that the case will be ready to be closed.” Order. On May 30, 2023, the Court entered its *Order Extending Deadline for the City to File Its Next Status Report* (Doc. No. 13696), extending the deadline in the Order from June 2, 2023, to December 1, 2023. The City files this Report in accordance with these directives, respectfully stating as follows.

**I. INTRODUCTION**

The bankruptcy case may be closed when case administration is complete, subject to the retained jurisdiction of the Court over the case for as long as necessary for the successful implementation of the Plan. 11 U.S.C. § 945. Although the City continues to make progress in this case, critical matters remain pending before case



administration can be considered complete. This Report summarizes those known and reasonably foreseeable matters.

**First**, the City must distribute New B Notes<sup>1</sup> to the Holders of Allowed Class 14 Other Unsecured Claims. On May 20, 2022, the Court entered an order approving the first and final distribution to Holders of Allowed Class 14 Other Unsecured Claims (“Distribution Order”) [Doc. No. 13570]. The City is prepared to make this distribution but is first waiting on the denial of a motion by Richard Wershe, Jr. that seeks to file a \$100 million unsecured claim more than eight years after the bar date, and the granting of the City’s motion to enforce the Plan of Adjustment and claims bar date order against Mr. Wershe. There has been additional briefing on the matter of late, but these matters remain pending as of the date of this Report.

**Second**, pending motions to enforce the Plan of Adjustment remain to be resolved. Two hearings on such motions are currently scheduled on December 13 and December 20, 2023, and a third motion is being briefed.

Thus, the City asks this Court not to close this bankruptcy case now or in the near future. The City instead asks that the Court require that the City file a status report in six months so that the Court can evaluate the status of the case at that time.

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<sup>1</sup> Terms that are capitalized but not defined in this Report have the meanings ascribed to them in the City’s *Eighth Amended Plan for the Adjustment of Debts of the City of Detroit* (“Plan of Adjustment”), as filed as Docket Number 8045 and confirmed with minor modifications by this Court’s order filed at Docket Number 8272.

The City provides the below update on the status of the bankruptcy case to assist the Court. The City is available and willing to address any questions the Court may have regarding this Report or the continuing administration of this case.

## II. **BACKGROUND**

### A. **The Distribution Process**

1. On September 17, 2019, the City filed the *City of Detroit's Motion to Implement Distributions of B Notes to Holders of Allowed Class 14 Claims Under the City's Confirmed Plan of Adjustment* [Doc. No. 13126] ("Brokerage Motion") in order to establish procedures for the *pro rata* distribution of New B Notes to Holders of Allowed Class 14 Claims.

2. The Court approved the Brokerage Motion, entering its *Order Granting the City of Detroit's Motion to Implement Distributions of B Notes to Holders of Allowed Class 14 Claims Under the City's Confirmed Plan of Adjustment* [Doc. No. 13173] ("Brokerage Order").

3. The Brokerage Order approved both the form of the notice of the obligations imposed by the Brokerage Order ("Notice") and the forms of the Brokerage Account Form and Tax Form (collectively, the "Distribution Forms") to be served on and used by Holders of Class 14 Claims as described in and attached to the Brokerage Motion. Brokerage Order, ¶ 2.

4. Under the Brokerage Order, if a Class 14 Claimant failed to return properly filled out Distribution Forms within 180 days of being initially served with the Distribution Forms, the Class 14 Claimant released any right to distributions that otherwise would be due to the Class 14 Claimant and the claimant's claim was disallowed and expunged from the claims register. Brokerage Order, ¶ 6.

5. On November 24, 2021, the City filed its *Motion to Establish Procedures for Distribution of New B Notes to Holders of Allowed Class 14 Claims Under the City's Plan of Adjustment* [Doc. No. 13476] ("Procedures Motion"). The Procedures Motion was filed to establish procedures if a distribution to a Claimholder failed. On December 22, 2021, this Court entered an order granting the Procedures Motion. [Doc. No. 13488.]

6. On March 16, 2022, the City filed its *Motion for an Order (A) Approving First and Final Distribution of New B Notes to Holders of Allowed Class 14 Claims Under the City's Plan of Adjustment and (B) Granting Other Related Relief* [Doc. No. 13521] ("Distribution Motion"). The Distribution Motion provided "interested parties the opportunity to review the planned Distribution and to timely raise any concerns they may have or be permanently and forever barred, estopped, and enjoined from raising any objection to the proposed first and final Distribution or asserting any Class 14 Claim against the City or any of its property." Distribution Motion, p. 3.

7. The Distribution Motion included, as Exhibit 6-B, a list of all Holders of Allowed Class 14 Claims whom the City believed were entitled to receive a distribution under the Plan.<sup>2</sup>

8. The City received informal objections to the Distribution Motion, which resulted in a few Claims being added to Exhibit 6-B. A revised Exhibit 6-B, reflecting these changes, was attached to the City's certification to the Court that no timely formal objections were received to the Distribution Motion and that all informal objections had been resolved. [Doc. No. 13568.]

9. The Court approved the Distribution Motion by entering the Distribution Order. In the Distribution Order, the Court found that the revised Exhibit 6-B contains a complete and exhaustive list of Allowed Class 14 Claims and that only claims on the revised Exhibit 6-B will receive Distributions under Class 14 of the Plan. Distribution Order, ¶ 2. The Distribution Order further states that “no other alleged Holder of a Class 14 Claim will be entitled to a Distribution under the Plan, and each such other alleged Holder of a Class 14 Claim will be permanently estopped, barred, and enjoined from seeking a Distribution or any other relief from the City or any of its property.” *Id.*, ¶ 8.

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<sup>2</sup> For informational purposes, the Distribution Motion also included Exhibit 6-C, a list of all Holders of Allowed Class 14 Claims who had not provided the City with tax and brokerage account information and thus had waived their Claims.

10. The City has entered into additional stipulations, each approved by order of this Court, with each effecting minor adjustments to the planned distribution. [Doc. Nos. 13621, 13622, 13650, 13654.]

11. The City has also responded to questions from a few Holders who have asserted that the brokerage account initially indicated on their Brokerage Account Form had closed due to inactivity.

12. The City is prepared to make its first and final distribution to Holders of Allowed Class 14 Claims upon full and final resolution of the Wershe Filings (defined below).

## **B. Outstanding Motions and Issues**

### **1. Motion to Enforce Against Richard Wershe and Richard Wershe's Motion to File a Late Claim**

13. On July 20, 2021, more than seven years after the Bar Date, Richard Wershe Jr. filed case number 4:21-cv-11686-FKB-KGA (“City Wershe Case”) against the City in the District Court for the Eastern District of Michigan (“District Court”), seeking monetary damages on account of events that he alleged had occurred a decade or more before the City filed for bankruptcy. Wershe also later filed case number 4:22-cv-12596-FKB-KGA against the United States (“US Wershe Case,” and with the City Wershe Case, the “Wershe Cases”) in the District Court.

14. Because of the filing of the City Wershe Case, on January 4, 2022, the City filed its *Motion for the Entry of an Order Enforcing the Bar Date Order and*

*Confirmation Order Against Richard Wershe Jr.* [Doc. No. 13491] (“Wershe Motion to Enforce”).

15. The Court conducted a hearing on the Wershe Motion to Enforce on April 20, 2022.

16. On May 9, 2022, Wershe filed *Richard Wershe, Jr’s Motion for Entry of Notice of Claim After Bar Date* [Doc. No. 13560] (“Motion to File Late Claim,” and with the Wershe Motion to Enforce, the “Wershe Filings”), seeking leave to file a \$100 million unsecured claim against the City more than eight years after the Bar Date.

17. The City filed an objection to the Motion to File Late Claim on May 23, 2022. [Doc. No. 13572.] As the City explained in its objection, out of an abundance of caution, the City currently does not intend to make a Distribution to Holders of Allowed Class 14 Claims until the Wershe Filings are fully and finally resolved. The City reserves the right to make a final Distribution under the authority provided to it in the Distribution Order prior to full and final resolution of the Wershe Filings, however.

18. On October 14, 2022, Mr. Wershe filed a reply brief by the Court-ordered deadline. [Doc. Nos. 13643, 13655.]

19. On September 18, 2023, the District Court entered orders dismissing both of the Wershe Cases. Three days later, this Court entered an order permitting

the City and Wershe to file briefs discussing what effect dismissal of the Wershe Cases should have on the Wershe Filings. [Doc. No. 13742.]

20. On October 5 and 19, 2023, the City and Werhse filed the permitted briefs. [Doc. Nos. 13756, 13791.<sup>3</sup>]

21. Each of the Wershe Filings remains pending before this Court.

## **2. Motion to Enforce Against Cadoura**

22. On August 4, 2023, the City filed its *City of Detroit's Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Richard Cadoura* ["Cadoura Motion to Enforce," Doc. No. 13713]. The City asserted that a lawsuit filed by Cadoura on November 5, 2020, violated the bar date order and discharge injunction entered in this bankruptcy case.

23. On October 13, 2023, Cadoura filed a response to the Cadoura Motion to Enforce.<sup>4</sup> [Doc. No. 13773.] The City filed a reply. [Doc. No. 13815.]

24. The Court has scheduled a hearing for December 20, 2023, to hear argument on the Cadoura Motion to Enforce. [Doc. No. 13825.]

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<sup>3</sup> The Court found Wershe's initial filings deficient. [Doc. Nos. 13757, 13768-69.]

<sup>4</sup> Cadoura previously responded, but his response was stricken as deficient. [Doc. Nos. 13718, 13719.] The Court thus entered an order granting the Cadoura Motion to Enforce. [Doc. No. 13730.] The parties agreed by stipulation, however, to vacate this order and allow Cadoura to file a response. [Doc. Nos. 13750, 13753.]



### **3. Motion to Enforce Against Nixon**

25. On August 24, 2023, the City filed its *City of Detroit's Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Kenneth Nixon* ["Nixon Motion to Enforce," Doc. No. 13722]. The City asserted that a lawsuit filed by Nixon on June 18, 2023, violated the Plan of Adjustment and Bar Date Order.

26. On September 26, 2023, Nixon filed his corrected response to the Nixon Motion to Enforce. [Doc. No. 13745.] The City filed a reply. [Doc. No. 13804.]

27. The Court has scheduled a hearing for December 13, 2023, to hear argument on the Nixon Motion to Enforce. [Doc. No. 13827.]

### **4. Motion to Enforce Against Craighead**

28. On October 27, 2023, the City filed its *City of Detroit's Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Mark Craighead* ["Craighead Motion to Enforce," Doc. No. 13803]. The City asserted that a lawsuit filed by Craighead on August 31, 2023, violated the Plan of Adjustment and Bar Date Order.

29. On November 20, 2023, Craighead filed his response to the Craighead Motion to Enforce. [Doc. No. 13824.] The Court has set December 11, 2023, as the deadline for the City to file a reply. [Doc. No. 13836.]

30. The Craighead Motion to Enforce remains pending.

## **C. Matters Resolved Since Last Report**

### **1. Motion to Enforce Against Metris**

31. On April 6, 2022, the City filed its *City of Detroit's Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Debra Metris-Shamoon, Mukhlis Shamoon, Carl Veres, Paul Metris and Julia Metris* ("Metris Motion to Enforce," Doc. No. 13532). The City asserted that the lawsuit filed by the Metris parties violated the Plan of Adjustment and Bar Date Order.

32. On August 26, 2022, the Court issued an Opinion and an Order granting the Metris Motion to Enforce. [Doc. Nos. 13617, 13618.]

33. The Metris parties filed an appeal. [See Doc. No. 13624]

34. The Metris parties and the City subsequently agreed to settle the appeal, which settlement was approved by the City Council. However, one of the Metris parties passed away before the settlement could be fully implemented. There was a short delay while the Metris parties set up a probate case and obtained authority to implement the settlement. After this occurred, the appeal was dismissed by the District Court. [Doc. No. 13726.]

### **2. Motion to Enforce Against GRS**

35. On December 6, 2022, the City filed its *Corrected City of Detroit's Motion for Authority to Modify the Confirmed Plan of Adjustment to Address Credited Service Shortfall Sustained by Certain Members of the General Retirement System of the City of Detroit* [Doc. No. 13667] ("GRS Motion"). The GRS Motion

sought permission to modify the Combined Plan for the General Retirement System of the City of Detroit, Michigan (“GRS Plan”) to correct an issue that occurred as a result of the COVID-19 pandemic and the resulting stay at home orders issued by the state of Michigan.

36. In response to the pandemic, in April 2020, the City started a Work Share/Furlough program (the “Work Share Program”) that allowed eligible employees to work a reduced number of hours per work week and receive a portion of weekly unemployment benefits rather than be laid off. Although successful at reducing layoffs, the structure of the GRS Plan at the time meant that Work Share Program participants did not accrue credited service under the GRS Plan for any month in which they worked less than 140 hours. This could have produced an unfair windfall gain for the pension system and an unfair loss for employees who were placed on the Work Share Program through no fault of their own.

37. The City and the General Retirement System (“GRS”) Board of Trustees agreed that granting pro rata credited service to employees who participated in the Work Share Program during the COVID pandemic based upon their actual service was fair and appropriate. The City thus filed the GRS Motion.

38. On January 3, 2023, the City filed a certificate of no response with respect to the GRS Motion. [Doc. No. 13672.] The Court entered an order granting the GRS Motion the same day. [Doc. No. 13673.]

### **3. Motion to Enforce Against the PFRS**

39. In November 2021, the PFRS officially adopted a drastic acceleration of the amortization of the unfunded actuarial accrued liability (“UAAL”) of the PFRS Component II (legacy) plan. This action violated the Plan of Adjustment and threatened the City’s full and successful implementation of the Plan of Adjustment.

40. The City filed a motion with this Court to enforce the Plan of Adjustment against the PFRS [“UAAL Motion,” Doc. No. 13602]. A response and a reply were filed [Doc. Nos. 13634, 13663] along with additional related filings [Doc. Nos. 13677, 13678, 13681.] A hearing was held on March 15, 2023.

41. On June 26, 2023, the Court granted the City’s UAAL Motion. [Doc. Nos. 13704-06.] The PFRS moved this Court for reconsideration on July 10, 2023. [Doc. No. 13707.] The Court ordered the City to file a response, which the City did. [Doc. Nos. 13709, 13715.] The PFRS moved for leave to reply. [Doc. No. 13723.]

42. On November 22, 2023, the Court entered an order granting the PFRS’s motion for leave to reply and denying its motion for reconsideration, along with an opinion explaining its reasoning. [Doc. No. 13831, 13832.]

### **4. Motion to Enforce Against Chancellor**

43. On April 8, 2023, the City filed its *City of Detroit’s Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Darell Chancellor* [“Chancellor Motion to Enforce,” Doc. No. 13691]. The City asserted

that lawsuits filed by Chancellor violated the Plan of Adjustment and Bar Date Order.

44. The Court held a hearing and entered an order granting the Chancellor Motion to Enforce on October 4, 2023. [Doc. No. 13751.]

45. Chancellor has filed an amended notice of appeal of this order. [Doc. No. 13777.] The appeal has been docketed in the District Court.

### **5. DFFA Motion to Enforce**

46. On August 30, 2021, the DFFA filed its *Motion of Detroit Fire Fighters Association (DFFA) for the Entry of an Order Enforcing the Plan of Adjustment Against: Christopher McGhee, Norman Brown, Craig Brown, James Washington, Shannon Ferguson, Junius Perry, and Orlando Potts* [Doc. No. 13430] (“DFFA Firefighters Motion”). The City concurred in the DFFA Firefighters Motion. [Doc. No. 13438.]

47. The Court conducted oral argument on the DFFA Firefighters Motion on January 12, 2021, and scheduled a bench opinion. *See* Doc. Nos. 13477, 13493, and 13508.

48. On February 22, 2022, this Court entered an Order cancelling the bench opinion because the Court decided to enter a written opinion. [Doc. No. 13515.]

49. On September 18, 2023, the Court filed its opinion and its order granting (in part) the DFFA Firefighter Motion. [Doc. Nos. 13738, 13739.]

**D. The Remaining Class 15 Claim to Be Liquidated**

50. As of the filing of the Previous Status Report, only one claim remained to be liquidated, claim number 799 of Daryl Cain (“Cain Claim”).

51. The Cain Claim is being liquidated in the District Court, Case Number 13-10525 (“Cain Case”) under this Court’s *Order, Pursuant to Sections 105 and 502 of the Bankruptcy Code, Approving Alternative Dispute Resolution Procedures to Promote the Liquidation of Certain Prepetition Claims* (Doc. No. 2302) and this Court’s order at docket number 13269. (Doc. No. 13269, ¶ 2.).

52. The Cain Claim is a Class 15 Claim. (Doc. Nos. 13246, 13249, 13258, 13269, 13278, 13281, 13285, 13286.)

53. The District Court originally granted the City summary judgment in the Cain Case in September of 2016. Cain Case, Doc. Nos. 44, 45. However, in October of 2017, the Sixth Circuit reversed the District Court, directing the District Court to hold further proceedings. *Id.*, Doc. Nos. 52, 53. Afterward, the District Court granted Cain’s motion for trial by jury and reopened discovery. *Id.*, Doc. No. 70.

54. Cain was assigned counsel in 2018. *Id.*, Doc. No. 55. Counsel later moved to withdraw, and the District Court granted the request.<sup>5</sup> *Id.*, Doc. Nos. 62,

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<sup>5</sup> Cain apparently approved of counsel’s withdrawal. The District Court referred to a letter from Cain where he accused counsel of violating his constitutional rights and made other complaints. “Clearly, there has been a breakdown in the attorney-client relationship.” Cain Case, Doc. No. 64.

64. In 2019, Cain moved for counsel to be appointed again, but his request was denied at the time. *Id.*, Doc. Nos. 71, 73, 74.

55. In November of 2021, Magistrate Judge Patricia T. Morris conducted a status and settlement conference, but no settlement was reached. *See id.*, Doc. No. 87 and Minute Entries for virtual proceedings on Nov. 22, 2021.

56. On May 17, 2023, the District Court entered an order referring the Cain Case to its pro bono program, and a week later, Ronnie E. Cromer, Jr. of The Cromer Law Group, PLLC was appointed as counsel for Cain. *Id.*, Doc. Nos. 99 and 100.

57. The Cain Claim continues to be liquidated in the District Court. A proposed final pretrial order is due in the District Court by November 30, 2023.

58. Cain was served with the Distribution Motion but did not object. Doc. Nos. 13522 (pp. 13 and 21 of 22), 13534.

59. The Cain Claim is not included on the list of claims to receive a distribution of New B Notes as a Class 14 Claim. (Doc. No. 13568, Ex. 6-B.)

60. Paragraph 8 of the Distribution Order bars Cain from asserting again that the Cain Claim should be treated as a Class 14 Claim.

61. As a claim subject to treatment under Class 15 of the Plan of Adjustment, any distribution on the Cain Claim will be paid by the City directly in cash (albeit with the cash payout capped at \$6,250). This amount can be reserved for and later resolved without keeping the City's bankruptcy case open.

62. Consequently, the City does not believe it is required to wait for final liquidation of the Cain Claim before making a Distribution of New B Notes or closing this bankruptcy case.

### **III. THIS CASE HAS NOT BEEN “FULLY ADMINISTERED”**

63. In the City’s confirmed Plan of Adjustment, the Court retained jurisdiction to “[e]nter a final decree closing the Chapter 9 Case pursuant to section 945(b) of the Bankruptcy Code[.]” Plan, Art. VII.P (Doc. No. 8045, p. 78 of 82; Doc. No 8272, p. 211 of 225).

64. Section 945(b) states that “Except as provided in subsection (a) of this section, the court shall close the case when administration of the case has been completed.” 11 U.S.C. § 945(b). Subsection (a) states that a bankruptcy court may retain jurisdiction for whatever time is necessary for successful plan implementation. 11 U.S.C. § 945(a).

65. The Bankruptcy Code does not explain when administration of a chapter 9 case is complete and, to the City’s knowledge, only one reported decision has addressed the question. *In re Lake Lotawana Cmty. Improvement Dist.*, Case No. 10-44629-can9; 2017 WL 1968282 (Bankr. W.D. Mo. May 11, 2017).

66. The *Lake Lotawana Community Improvement District* court noted that neither the Bankruptcy Code nor the Bankruptcy Rules offer guidance as to when a chapter 9 case has been administered. *Id.* at \*2. The court then observed



Returning to § 945(b) then, cannons of statutory construction require that when Congress does not define a term, courts must give it its ordinary meaning. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). Black’s Law Dictionary defines “administration” as the “judicial action in which a court undertakes the management and distribution of property.” Black’s Law Dictionary 49 (9th ed. 2009).

*Id.* at \*3.

67. Thus, the court determined that a case is administered when there is no longer anything for the court to manage in the case. *Id.*

68. In this case, there are several matters that must be addressed prior to the closing the case. First, the Wershe Filings need to be finally resolved. Once that is done, New B Notes must be distributed to Class 14 Claim Holders in accordance with the Distribution Order. The motions to enforce against Nixon, Cadoura, and Craighead must also be finally resolved. These issues prevent the City’s bankruptcy case from being closed at this time.

#### **IV. CONCLUSION**

69. For the reasons described above, the City respectfully asks that the Court not close this bankruptcy case now or in the near future. Instead, the City requests that the Court require the City to file another status report in six months so that the City and this Court can reevaluate the status of the case then. The City is available and willing to address any questions the Court may have regarding this Report or the continuing administration of this case.

Dated: November 30, 2023

CITY OF DETROIT LAW DEPARTMENT

By: /s/ Charles N. Raimi  
Charles N. Raimi (P29746)  
Attorneys for the City of Detroit  
2 Woodward Avenue, Suite 500  
Detroit, Michigan 48226  
Phone - (313) 237-5037/(313)  
Email - raimic@detroitmi.gov

MILLER, CANFIELD, PADDOCK AND  
STONE, P.L.C.

By: /s/ Marc N. Swanson  
Marc N. Swanson (P71149)  
Ronald A. Spinner (P73198)  
150 West Jefferson, Suite 2500  
Detroit, Michigan 48226  
Telephone: (313) 496-7591  
Facsimile: (313) 496-8451  
swansonm@millercanfield.com

Counsel for the City of Detroit,  
Michigan

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

In re:

City of Detroit, Michigan,  
Debtor.

Bankruptcy Case No. 13-53846

Judge Thomas J. Tucker

Chapter 9

**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2023, I electronically filed the *City of Detroit's Status Report on Bankruptcy Case* with the Clerk of the Court via the Court's ECF electronic filing system which will serve notice to all ECF participants.

By: /s/ Marc N. Swanson

Marc N. Swanson (P71149)

150 West Jefferson, Suite 2500

Detroit, Michigan 48226

Telephone: (313) 496-7591

Facsimile: (313) 496-8451

swansonm@millercanfield.com

Counsel for the City of Detroit,  
Michigan

Dated: November 30, 2023