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July 31, 2014

By E-mail (Deborah_Hunt@ca6.uscourts.gov)

Deborah S. Hunt
Clerk
United States Court of Appeals For the Sixth Circuit
501 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202-3988

Re: In re City of Detroit, Case No. 14-1213

Dear Ms. Hunt:

I am counsel to Appellant UAW International Union (“UAW”) in the above-referenced case. I write in response to the July 29, 2014 letter of the Hon. Judge Julia Smith Gibbons.

The UAW continues to seek a settlement as to its active and retired members with the City of Detroit (“City”) and with the Detroit Library Commission. We continue to work with the mediators to achieve this goal. To date, however, that goal has not been achieved, either as to the two UAW-represented City Law Department paralegal/attorney bargaining units or the three UAW-represented Detroit Library Commission bargaining units. (Together there are several hundred UAW active and retired members who are or, before their retirement, were employed in these bargaining units.)

The UAW has no objection to the Court holding this appeal in abeyance while the UAW continues its settlement efforts. Indeed, in its submission to the Court last week, the UAW indicated that it had no objection to a postponement of oral argument. We thus urge the Court to continue to hold this appeal in abeyance.

However, the UAW is not at this time prepared to withdraw its appeal from the bankruptcy court’s December 5, 2013 eligibility decision and order.



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If the Court decides that it must resolve the UAW's appeal now, we propose an alternative, set out below, which we believe would maintain the status quo as much as possible so that settlement discussions can continue unimpeded by a resolution of important constitutional issues by this Court, which resolution could affect the settlement posture of the parties.

The UAW proposes that the Court simply remand this case back to the bankruptcy court, with instructions to the bankruptcy court to decide, in the context of the confirmation trial, the principle constitutional issue raised by the UAW on appeal: whether Michigan Governor Snyder had the power to authorize the federal judiciary to set aside the protections afforded by Article 9, Section 24 of the Michigan Constitution, when neither the Governor nor the Michigan Legislature have the authority to amend, modify or waive the continued applicability of Michigan constitutional provisions, since in Michigan the authority to amend the state's constitution rests solely with the people of the State of Michigan.¹ The UAW raised this issue in last year's eligibility trial, but the bankruptcy court never directly addressed it. The UAW has also raised this issue in our appeal. The UAW believes that it is appropriate to require the bankruptcy court to address this issue in the first instance, and that the bankruptcy court can do so in the context of the confirmation trial, in which the bankruptcy court will be required to pass on the legitimacy of the cuts to pension benefits proposed in the City's July 25, 2014 Fifth Amended Plan of Adjustment. With such a remand, which the Sixth Circuit could grant with or without oral argument, the UAW would be willing to dismiss those arguments in its opening brief in its pending appeal that are unrelated to the question described above.

¹ The issue of a state's grant of authority, through actions of its legislature, to authorize a Chapter 9 filing in which state statutory protections may be set aside is distinct from the issue of how a state can authorize the federal judiciary to set aside state constitutional provisions. In Michigan, while the Legislature and the Governor may amend, modify and set aside statutory protections, the state constitution reserves to the people the authority to set aside protections of the constitution itself, such as Article 9, Section 24. Thus, we have argued and continue to argue that neither the Michigan Legislature nor Governor can authorize the federal judiciary to set aside state constitutional provisions. A remand to the bankruptcy court to require that court to address this issue in the first instance is appropriate here, and it would have the added benefit of leaving the legal playing field as level as possible while settlement negotiations continue.



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I am authorized by counsel for the *Flowers* Plaintiffs, who are the other appellants in this appeal, to inform the Court that the *Flowers* Plaintiffs join in the position and proposal set forth by the UAW in this letter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Peter D. DeChiara", is written below the text "Respectfully submitted,".

Peter D. DeChiara

PDD:amd
cc: Counsel of Record