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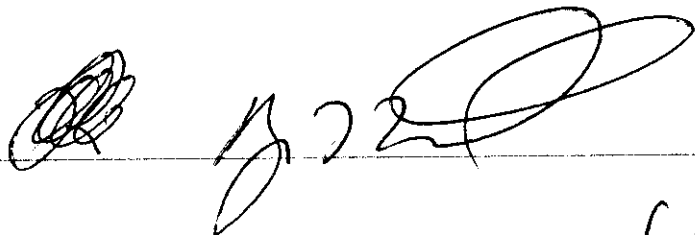
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SINGATURE: Randy Walker

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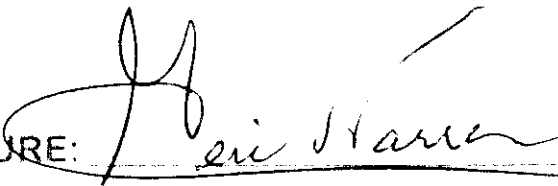
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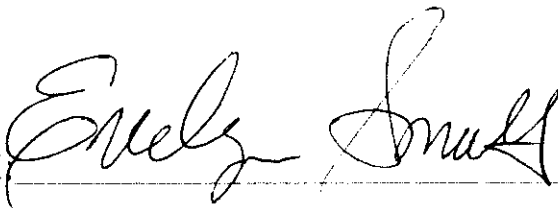
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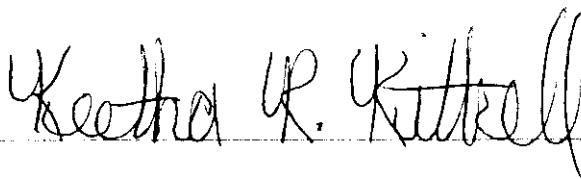
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- 14. Eddie Sandra Ranger**
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- 17. Paul Wells**
- 18. Cora Nelson**
- 19. Chandra McKenzie-Simpson**
- 20. Annie J Kuykendall**

**CERTIFICATE OF SERVICE**

The undersigned certifies that Appellants' Opening Brief was served upon counsel of record via first class mail on January 27, 2015.

*William M. Davis*

## **EXHIBIT 1**



**GENERAL MOTORS ACCEPTANCE CORPORATION, Plaintiff-Appellant, v  
CITIZENS COMMERCIAL & SAVINGS BANK, Defendant-Appellee.**

No. 222080

COURT OF APPEALS OF MICHIGAN

*2001 Mich. App. LEXIS 295*

**December 18, 2001, Decided**

**NOTICE:** [\*1] IN ACCORDANCE WITH THE MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**PRIOR HISTORY:** Genesee Circuit Court. LC No. 97-057734-CK.

**DISPOSITION:** Affirmed.

**JUDGES:** Before: Owens, P.J., and Holbrook, Jr. and Gage, JJ.

**OPINION**

PER CURIAM.

Plaintiff appeals as of right from a trial court order denying its motion for summary disposition against defendant Citizens Commercial & Savings Bank, as well as a judgment of no cause of action against defendant following a bench trial. Plaintiff had sought to recover from defendant under a conversion theory. We affirm.

The underlying facts in this matter are not in dispute. On October 30, 1992, Lafonza and Joan Washington purchased a new 1993 Pontiac Transport Van. As part of the purchase, the Washingtons executed a purchase security agreement with plaintiff ("GMAC loan"), which

required them to make weekly payments of \$ 84.81. A final payment of \$ 8,221.68 was due on November 4, 1996.

On April 1, 1996, the Washingtons executed an installment loan agreement with NBD Bank, which apparently was intended to both pay off the balance of the GMAC loan and provide the Washingtons approximately \$ 1,000. NBD [\*2] Bank issued a cashier's check for \$ 9,126.87, made payable to both plaintiff and the Washingtons, and gave the check to the Washingtons. The title for the vehicle was modified to both reflect NBD Bank's new security interest and delete plaintiff's security interest. The Washingtons endorsed the check and presented it to defendant without plaintiff's endorsement. Defendant erroneously accepted the cashier's check without plaintiff's endorsement, and paid the Washingtons the entire check proceeds. However, in the absence of plaintiff's endorsement, NBD Bank refused to honor the check.

The Washingtons continued making payments on the GMAC loan, but eventually defaulted. The vehicle was involved in an accident on October 24, 1996, resulting in NBD Bank--the party holding a security interest according to the title--receiving insurance proceeds for the van's salvage value. Plaintiff filed an action against the Washingtons and NBD Bank, and subsequently amended its complaint to add defendant as a party under a conversion theory. NBD Bank eventually transferred the insurance proceeds to plaintiff, and was voluntarily



2001 Mich. App. LEXIS 295, \*2

dismissed from the lawsuit. The trial court, however, denied plaintiff's [\*3] motion for summary disposition against defendant on the conversion claim. In addition, following a bench trial, the trial court ruled that plaintiff could not recover for conversion against defendant because NBD Bank never honored the cashier's check.

On appeal, plaintiff argues that the trial court erred as a matter of law by ruling that defendant was not liable for conversion of the cashier's check. Plaintiff contends that defendant, as the depository bank, converted the cashier's check when it paid funds to the Washingtons without plaintiff's endorsement. However, defendant contends that it did not convert the check because NBD Bank (the drawee bank) dishonored the check, thereby prevented it from receiving any check proceeds. The parties' arguments concern the application of 440.3420(1), which provides in pertinent part:

The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. [\*4]

We must decide whether a depository bank that improperly pays on a presented check to one of multiple intended payees is liable to the other intended payees for conversion under *MCL 440.3420(1)* if the drawee bank dishonors the check (i.e., the depository bank does not receive proceeds on the check).

We review de novo conclusions of law. *Walters v Snyder*, 239 Mich. App. 453, 456; 608 N.W.2d 97 (2000). Issues of statutory construction are also reviewed de novo. *Hinkle v Wayne Co Clerk*, 245 Mich. App. 405, 413-414; 631 N.W.2d 27 (2001). In regard to statutory construction, we have opined:

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. This determination is accomplished by reviewing the plain language of the statute itself. If the statutory language is unambiguous, it is presumed that the Legislature intended the

clearly expressed meaning, and judicial construction is neither required nor permitted. If the statutory language is ambiguous, only then may we look outside the statute to ascertain the Legislature's intent. [*Hinkle, supra at 414* [\*5] (citations omitted).]

Generally, statutes that "relate to the same subject or share a common purpose are in pari materia and must be read together as one law." *Ypsilanti Housing Comm'n v O'Day*, 240 Mich. App. 621, 625; 618 N.W.2d 18 (2000). Reviewing courts should also avoid any statutory construction that would render a statute, or merely part of it, surplusage or nugatory. *Id. at 624*.

Here, defendant contends that *MCL 440.3420(1)* should be read to impose conversion liability on a depository bank when it obtains payment on a check and a drawee bank when it makes payment on a check. In contrast, plaintiff contends that the statutory language should be read to allow both a drawee bank and a depository bank to be liable for either making or obtaining payment. At first glance, plaintiff's construction seems consistent with the term "a bank," rather than the more specific breakdown suggested by defendant. However, a drawee is a party ordered to *make* payment on a check, and, by definition, does not ever *obtain* payment on a check. See *MCL 440.3103(1)(b)*.<sup>1</sup> As such, plaintiff's interpretation [\*6] of *MCL 440.3420(1)* conflicts with another pertinent statute. At the very least, therefore, we find an ambiguity in *MCL 440.3420(1)* that mandates statutory construction. *Hinkle, supra at 414*.

<sup>1</sup> This definition occurs within the negotiable instruments section of the Uniform Commercial Code, as codified in Michigan. Sharing a common subject and purpose, we believe that these statutes-- *MCL 440.3420(1)* and *MCL 440.3103(1)(b)*--are in pari material and must be read together. *Ypsilanti, supra at 625*.

Generally, the remedies allowed by the various UCC provisions "shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed . . . ." "A conversion is any distinct act of dominion wrongfully exerted over another person's personal property." *Pamar Enterprises, Inc v Huntington Banks of Michigan*, 228 Mich. App. 727, 734; [\*7] 580 N.W.2d 11 (1998). A check is the

2001 Mich. App. LEXIS 295, \*7

personal property of the designated payee or payees. *Id.*: *MCL 440.3420(1)*. An intended payee may bring a conversion action against either the drawee bank or the depository bank. *Pamar, supra at 734*. For example, where a depository bank improperly allows one of multiple intended payees to cash a check, and the drawee bank honors the check and pays the depository bank, it follows that either the depository bank or the drawee bank should bear the responsibility of making the other intended payees whole.

However, plaintiff seeks to make defendant liable even though the drawee bank did not honor the check. In other words, defendant would have to pay plaintiff the face value of the cashier's check. If so, this remedy would essentially "punish" defendant twice for one error because both the Washingtons and plaintiff would have received the full face value of the cashier's check. Plaintiff's risk in financing the Washington's automobile would be eliminated. Similarly, NBD Bank, who assumed the risk of loaning money to the Washingtons, would not have to pay anything. In other words, the two parties [\*8] who knowingly assumed the risk of dealing with the Washingtons would have their risk obviated by one error. Even though defendant erroneously accepted the cashier's check from the Washingtons, we do not believe that such a "double punishment" is consistent with the UCC goal of leaving the parties in as good a position as they would have been in but for the error.

Again, had defendant received money from NBD Bank, defendant would have commensurate liability to plaintiff for conversion. Indeed, under this scenario, the drawee bank (NBD Bank) would have "made payment" and the depository bank (defendant) would have "obtained payment"--the circumstances suggested by defendant's interpretation of *MCL 440.3420(1)*.

Moreover, in *Alumax Aluminum Corp v Norstar Bank, NA, 168 A.D.2d 163, 572 N.Y.S.2d 133, 135 (NY App., 1991)*, a case involving similar facts, the court reached the same conclusion: "In order to be liable for conversion under the statute, the depository [sic] bank must, at some point, have received the proceeds of the wrongfully accepted check." We agree. Therefore, we hold that a depository bank is liable for conversion under *MCL 440.3420(1)* [\*9] only if the drawee bank honors the improperly accepted check. Because NBD Bank did not honor the cashier's check in the instant matter, we conclude that the trial court did not err as a matter of law by dismissing plaintiff's conversion claim.

Affirmed.

/s/ Donald S. Owens

/s/ Donald E. Holbrook, Jr.

/s/ Hilda R. Gage

## **EXHIBIT 2**

# Primer on Municipal Debt Adjustment

## CHAPTER 9: THE LAST RESORT FOR FINANCIALLY DISTRESSED MUNICIPALITIES

**Chapman and Cutler LLP**

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Attorneys at Law • Focused on Finance®

### States with Blanket Authorization

1. Alabama (AL Code §11-81-3)
2. Arizona (AZ Code §35-603)
3. Arkansas (AK Code §14-74-103)
4. California (CA Code §53760)
5. Colorado (32-1-1403)
6. Florida (FL Stat §218.01)
7. Minnesota (§471.831)
8. Missouri (MO §427.100)
9. Nebraska (NE §13-402)
10. Oklahoma (OK Code §62-283)
11. South Carolina (SC Code §6-1-10)
12. Texas (TX Code §140.001)

### States with conditions for Municipal Bankruptcy

1. Connecticut: A municipality must receive express written consent from the Governor to file for chapter 9 bankruptcy. If the Governor approves a bankruptcy he/she must submit a report to the Treasurer and the joint standing committee of the General Assembly explaining the reasons for consent. (CT Gen Stat. §7-566)
2. Idaho: A taxing district in the state is authorized to file petition for chapter 9 bankruptcy provided that the taxing district adopts a resolution to authorize the filing.
3. Illinois: Illinois law provides for the establishment of a financial planning and supervision commission to oversee the finances of an entity that has been declared to be in a fiscal emergency by the Governor. The Governor may establish a commission when the city is 180 days in default of debt; it has not made payment on 20% of its payroll, or the insolvency of the unit of local government. The unit of local government that has been declared to have a fiscal emergency is required to file a financial plan with the commission and the commission's financial advisor. The commission is authorized to make a written recommendation that the unit of local government file for chapter 9 bankruptcy code (§50 ILCA 320/1-14)

4. Iowa: A city, county, or other political subdivisions is authorized to file for chapter 9 bankruptcy if they are insolvent and the debt is involuntarily incurred. The statute specifically states that a valid and binding collective bargaining agreement or previously authorized bond issues are not eligible debts. (IA §76.16, IA §76.16A)
5. Kentucky: Taxing agencies in Kentucky are authorized to utilize the Federal Bankruptcy Act. However, Counties must have their plan approved by the state local debt officer and the state local finance officer in order to file for bankruptcy. (KY §66.400)
6. Louisiana: The Governor and the Attorney General must provide consent, approval, and authority in order for a taxing entity to file a plan of readjustment of its debts in a United States court. (LA §13:4741)
7. Michigan: The governor may appoint a “review team” to make an assessment and, if needed, negotiate a consent agreement with local government concerning long-range plans for financial recovery. (§141.1213)
8. Montana: The local entity must adopt an ordinance or resolution declaring that it meets the requirements for chapter 9 bankruptcy. The state or any department or agency holding securities for the local entity must consent to the plan of adjustment. (MT §7-7-132, §7-7-133, §7-7-134)
9. Nevada: Nevada has no specific provisions authorizing municipal bankruptcy. They do however have provisions that allow for the Nevada Tax Commission to provide Technical Financial Assistance. The authorities of the Nevada Tax Commission include taking control over the local government or possible dissolution of local government in certain circumstances. (354.675, 354.685, 354.686, 354.695, 354.701, 354.705, 354.715, 354.721, 354.723, 354.7235, 354.725)

10. New Jersey: The Municipal Finance Commission must approve both the filing of the bankruptcy petition as well as any plan of adjustment. Once the Municipality has been in financial default to bondholders or noteholders for more than 60 days, the commission may intervene to manage the financial affairs of the municipality.

NJ Gen Stat (§52:27-40)

11. New York: New York authorizes a municipality, emergency financial control board to file for adjustment of municipal indebtedness (NY CLS Loc. Fin §85.80 & 85.80). New York City must get authorization from the New York State Financial Control Board to file for bankruptcy.

12. North Carolina: Requires pre-approval by the Local Government Commission (State Treasurer, State Auditor, Secretary of State, Secretary of Revenue, and five appointees).

(NC Gen Stat §23-48)

13. Ohio: A taxing authority must file a petition with the tax commissioner stating that they are insolvent and unable to meet their debts and that they would like to file a plan for readjustment of debts. The tax commissioner must approve the request to file for bankruptcy. (OH Code §133.36) Ohio Code also has statutes requiring fiscal integrity of municipal corporations and establishes a system of fiscal watch for financially distressed municipalities. (OH Code §118.02, §118.021, §118.022, §118.023)

14. Oregon: Oregon law allows irrigation or drainage districts to file for bankruptcy. There is no specific authorization for other public entities to file for chapter 9 bankruptcy.

15. Pennsylvania: An authority that has outstanding *bond debt* is not eligible to file for relief under Federal Bankruptcy law. Additionally, cities of the first class are required to get written authorization from the Governor in order to file for chapter 9 bankruptcy. (53 PA Stat.

§12720.211) Pennsylvania has also established the Pennsylvania Intergovernmental Cooperation Authority to provide financial oversight to the city of Philadelphia. (53 PA Stat 12720.101)

16. Washington: A taxing district in the state is authorized to file petition for chapter 9 bankruptcy provided that the taxing district adopts a resolution to authorize the filing. (39.64.040 & 39.64.050).

### 22 States do not allow access to Chapter 9 bankruptcy

-Georgia explicitly denies access to municipal bankruptcy. (GA Code 36—80-5)

#### **States with No Statutes:**

Alaska  
Delaware  
Hawaii  
Indiana  
Maine  
Maryland  
Mississippi  
Nevada  
New Hampshire  
New Mexico  
North Dakota  
Rhode Island  
South Dakota  
Tennessee  
Utah  
Vermont  
Virginia  
West Virginia  
Wisconsin  
Wyoming



*General Analysis of State Specific Authorization for  
Municipalities to File a Chapter 9 Case*

The following are statutory provisions in which states have authorized Chapter 9 filings for certain governmental entities.

12 States that specifically authorize municipal bankruptcies:

Ala. Code 1975 § 11-81-3  
 Ariz. Rev. Stat. Ann. § 35-603  
 Ark. Code Ann. § 14-74-103  
 Idaho Code Ann. § 67-3903  
 Minn. Stat. Ann. § 471.831  
 Mo. Ann. Stat. § 427.100  
 Mont. Code Ann. § 7-7-132  
 Neb. Rev. St. § 13-402  
 Okla. Stat. Ann. tit. 62 §§ 281, 283  
 S.C. Code Ann. § 6-1-10  
 Tex. Loc. Gov't Code § 140.001  
 Wash. Rev. Code § 39.64.040

12 States that conditionally authorize municipal bankruptcies:

Cal. Gov't Code § 53760  
 Conn. Gen. Stat. Ann. § 7-566  
 Fla. Stat. Ann. § 218.01 and §218.503  
 Ky. Rev. Stat Ann. § 66.400  
 La. Rev. Stat. Ann. § 39-619  
 Mich. Comp. Laws § 141.1222  
 N.J. Stat. Ann. § 52:27-40  
 N.C. Gen. Stat. Ann. § 23-48  
 N.Y. Local Finance Law § 85.80  
 Ohio Rev. Code Ann. § 133.36  
 53 Pa. Cons. Stat. Ann. § 11701.261  
 R.I. Gen. Laws §45-9-7

3 States with limited authorization

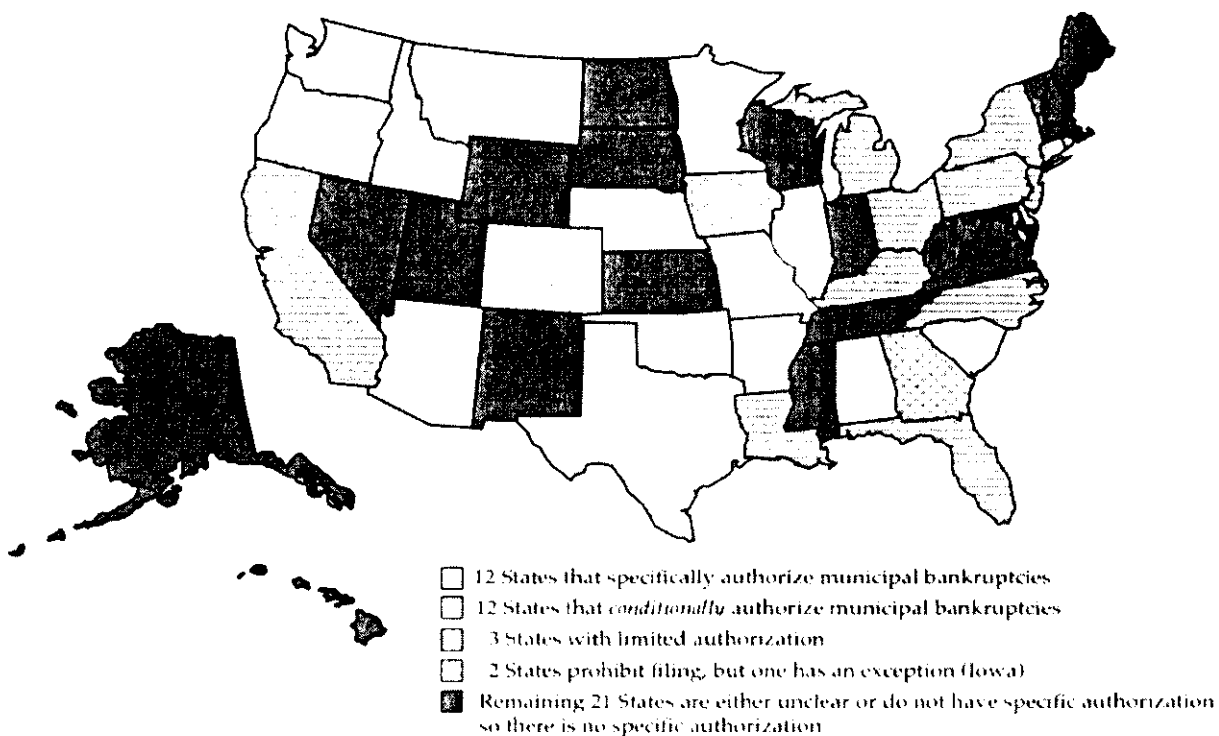
- Colorado has enacted legislation specifically authorizing its beleaguered special taxing districts to file a petition under Chapter 9. Section 32-1-1403 of the Colorado revised statutes states that "any insolvent taxing district is hereby authorized to file a petition authorized by federal bankruptcy law and to take any and all action necessary or proper to carry out the plan filed with said petition..." (CRS § 37-32-102 (Drainage & Irrigation District))
- Oregon permits Irrigation and Drainage Districts to file (Or. Rev. Stat. § 548.705)
- Illinois – specific authorization solely for the Illinois Power Agency (20 Ill Comp. Stat. Ann. 3855/1-20(b)(15)). The Local Government Financing and Supervision Act permits that commission to recommend that the Legislature authorize a filing but it is not specific authorization (20 Ill. Comp. Stat. Ann. 320/9(b)(4))

2 States prohibit filing but one has an Exception

The 21 Remaining States are either unclear or do not have specific authorization. AK, DE, HI, IN, KS, ME, MD, MA, MS, NE, NH, NM, ND, SD, TN, UT, VA, VT, WV, WI, WY.

- Iowa generally prohibits filing Chapter 9 (Ia. Code Ann. § 76.16) but allows filing for insolvency caused by debt involuntarily incurred not covered by insurance proceeds (Ia. Code Ann. § 76.16A)
- Georgia prohibits the filing of Chapter 9 Bankruptcy (Ga. Code Ann. § 36-80-5)

General Analysis of State Specific Authorization for  
Municipalities to File a Chapter 9 Case



## **EXHIBIT 3**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

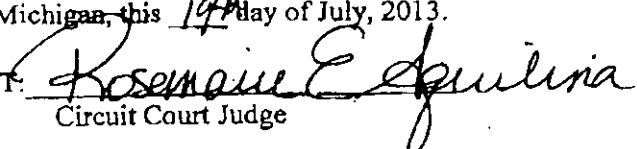
Defendants.

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ORDER OF DECLARATORY JUDGMENT

At a session of said Court held in Ingham County Circuit Court,  
State of Michigan, this ~~19<sup>th</sup>~~ day of July, 2013.

PRESENT:

  
Circuit Court Judge

Plaintiffs request declaratory relief pursuant to MCR 2.605 concerning (1) the constitutionality under Article IX Section 24 of the Michigan Constitution of the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541, *et seq.* ("PA 436"), insofar as PA 436 permits the Governor to authorize an emergency manager to proceed under chapter 9 of the bankruptcy code, chapter 9 of title 11 of the United States Code, 29 USC 901 to 946 ("Chapter 9") in a manner which threatens to diminish or impair accrued pension benefits; and (2) the

authority of the Governor and/or State Treasurer to authorize an emergency manager to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits.

Plaintiffs have requested, and Defendants have agreed in their Response, that the hearing in this matter may be advanced pursuant to MCR 2.605(D) and the court finds that expedited treatment is appropriate and that final declaratory relief is proper at this time.

The Court having reviewed the parties filings and submissions, and having heard oral argument by counsel for the parties, and being otherwise fully advised in the premises, and for the reasons stated on the record,

IT IS HEREBY ORDERED:

PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect;

The Governor is prohibited by Article IX Section 24 of the Michigan Constitution from authorizing an emergency manager under PA 436 to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits, and any such action by the Governor is without authority and in violation of Article IX Section 24 of the Michigan Constitution.

On July 16, 2013, City of Detroit Emergency Manager Kevyn Orr submitted a recommendation to Defendant Governor Snyder and Defendant Treasurer Dillon pursuant to Section 18(1) of PA 436 to proceed under Chapter 9, which together with the facts presented in Plaintiffs' filings, reflect that Emergency Manager Orr intended to diminish or impair accrued pension benefits if he were authorized to proceed under Chapter 9. On July 18, 2013, Defendant

Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair accrued pension benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX Section 24 of the Michigan Constitution.

In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18, and (2) not authorize any further Chapter 9 filing which threatens to diminish or impair accrued pension benefits.

*A copy of this Order shall be transmitted to President Obama.*

*It is so Ordered.*

*Rosemarie E. Aquilina*  
Circuit Court Judge *P37670*