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## Orrick's Response to the City of Detroit's Solicitation for Restructuring Counsel

Lorraine S. McGowen  
51 West 52<sup>nd</sup> Street  
New York, NY 10019-6142

(212) 506-5114  
lmcgowen@orrick.com

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The discussion which follows is not intended as and should not be taken as legal advice, and Orrick, Herrington & Sutcliffe LLP cannot be responsible for actions the City of Detroit may take or fail to take in reliance upon the following without seeking further legal advice on the matter from qualified legal counsel. Unless Orrick is engaged by the City of Detroit as its counsel, no attorney-client relationship exists between Orrick and the City of Detroit. There may be additional information the City of Detroit has not shared with Orrick which would cause us to alter any advice we would give you, and there may be more subtle aspects of the questions not discussed below which would, upon further consultation, turn out to be the factors of greatest importance to the City of Detroit.



## **ORRICK'S RESPONSE TO THE CITY OF DETROIT'S SOLICITATION FOR RESTRUCTURING COUNSEL**

### **I. Introduction**

Orrick, Herrington & Sutcliffe LLP ("Orrick") is pleased to submit this proposal (the "Proposal") in response to the request of the City of Detroit ("Detroit" or the "City") for proposals for experienced restructuring legal counsel (the "RFP"). Orrick has the experience, the expertise, skills and proven approaches needed to successfully and expeditiously assist the City in implementing a financial restructuring that will enable the City to continue to provide for the health, safety and welfare of its citizens in a sustainable and predictable manner. We are confident that our expertise, our experience with other municipalities facing similar financial challenges, and our recent representation of the City on a number of financing transactions since 2008, will be invaluable in guiding the City to a successful and efficient resolution of its pressing current financial challenges.

### **II. Why Orrick?**

The City's RFP seeks firms with a broad range of skills in a number of legal areas but requires exceptional skill and expertise in two primary areas of practice: restructuring and/or bankruptcy and public finance. Orrick excels in each of these areas of practice. We have unique experience representing municipal debtors in restructuring their obligations or taking advantage of the provisions of federal and state bankruptcy laws that sets us apart from the competition. Our experience is described in detail in Section III of this Proposal.

Our experience with complex restructurings, involving creditors of multiple debt classes, organized labor and pension and other post-employment benefit (OPEB) obligations demonstrates that we have the ability to advise the City on all legal issues related to the restructuring of its operations, its debt structure, its pension and OPEB and all other transactions involving the City's assets. Our experience extends to all aspects of municipal operations, including revenues, expenditures, contractual agreements and legislative issues and demonstrates an understanding of all areas of municipal management, including tax collection and assessments, revenue collection, debt issuance and management, employment law issues including benefit and compensation plan management and labor contract negotiation, services privatization, asset sales or other monetization processes, procurement, environmental issues and open meeting and freedom of information acts. We also are very familiar with the relevant federal and Michigan state laws.

We would bring to this engagement not only one of the nation's leading bankruptcy and restructuring practices – with a particular focus on representing municipalities in various stages of financial distress – but also a longstanding commitment to the City's success as outlined in Section III.7. Further, our deep understanding of the City's financial situation and capital structure and working relationships with the City Council, the Mayor's senior staff and staff in both the Governor's and State Treasurer's offices will enable Orrick to provide advice of exceptional value and efficiency. An overview of why Orrick should emerge as your clear choice of counsel is set forth below.



## Unmatched Restructuring and Public Finance Expertise

Restructuring municipal debt differs in significant ways from restructuring corporate debt. We have substantial experience with both municipal and corporate restructurings in and out of bankruptcy that is unmatched by any other national firm. Our Bankruptcy & Restructuring team brings to this engagement a demonstrated ability to 1) represent debtors in bankruptcy proceedings, 2) address the unique issues raised in municipal insolvency matters and 3) handle other types of complex bankruptcies and related litigation.

We also have the number one public finance practice in the country and as such are the only law firm that can offer the City the combined expertise in these two most critical areas needed by the City to navigate through its current situation.

**Bankruptcy and Restructuring Expertise.** From our role advising Orange County on the allocation of monies between debt and other obligations, as well as representation of the County on the financings to emerge from bankruptcy in 1994, to counseling two of the three largest municipalities (Vallejo and Stockton, CA) to file for bankruptcy since the recent financial crisis, Orrick is the most experienced firm assisting municipalities restructure their debt and long-term liabilities (including labor, pension, healthcare and other benefits). Orrick has advised other cities that faced similar declining revenues, increasing obligations and liquidity problems, a growing retiree pool, lawsuits, public relations issues, and limited access to capital markets.

a. **Distressed Municipalities.** The City's goal of presenting to a court a pre-negotiated restructuring plan requires a deep understanding of the financial challenges and legal issues the City is experiencing as well as the ability to develop consensus among a variety of parties with conflicting interests. Orrick has demonstrated these skills in a variety of recent restructuring and bankruptcy situations, many of which are particularly relevant to the City's current situation because they involve other distressed municipalities and infrastructure projects.

- **City of Stockton.** As counsel to the City of Stockton, Orrick represented the City in the 90-day state-mandated mediation process involving virtually all the City's major creditors and in its subsequent chapter 9 filing. While this mediation did not allow the City to avoid a chapter 9 filing, it did facilitate negotiated agreements with the City's nine unions on terms very near to the City's original "Ask" and set the stage for defending the City's eligibility against attacks by certain non-settling creditors. Shortly after the commencement of the case, Orrick helped the City win a significant and cutting-edge bankruptcy court ruling upholding the City's pre-bankruptcy unilateral reduction and phased out elimination of retiree health benefit payments over the objection of the association of retired City employees. Orrick recently won another ruling which establishes that the City may enter into settlements with creditors during the pendency of the case without court approval. Set forth in Section III.3.a are further details of our efforts on behalf of the City of Stockton, some or all of which we anticipate we would undertake on behalf of the City if we are selected as its restructuring counsel.



- **City of Vallejo.** Orrick represented the City of Vallejo, California in preparing a pre-bankruptcy plan and negotiating with creditors and then filing its chapter 9 case in 2008. Until the Stockton case was filed, Vallejo was the largest California municipality to seek bankruptcy relief since Orange County in 1994. Its plan of adjustment was confirmed and consummated in 2011. Partner Marc Levinson was named "Dealmaker of the Year" by *American Lawyer* in connection with our work on this matter. Partners Marc Levinson and John Knox also were recently named among the "Attorneys of the Year" by *California Lawyer* in connection with their work on the Stockton and Vallejo matters. Set forth in Section III.3.a are details of our work on behalf of the City of Vallejo, which we anticipate we would undertake on behalf of the City if we are selected as its restructuring counsel.
- **Orange County.** As counsel to Goldman Sachs, Orrick designed debtor-in-possession financings and bankruptcy settlement financings that enabled Orange County to emerge from bankruptcy in less than 18 months in a strong financial position. In the process, we carefully examined every potential source of additional revenue, drafted legislation to enable the county to raise certain additional revenues, and designed strategy for others (for example, opening landfills to out-of-county waste at higher tipping fees), and every asset that could be sold and leveraged, including the airport, landfill, public buildings and even beaches.

b. **Complex bankruptcies.** We have successfully represented clients in some of the largest, most complex bankruptcy and out-of-court restructuring cases involving issues comparable to those the City is encountering, including Chrysler Corporation, General Motors, Lehman Brothers, Enron Corporation, Stone & Webster, Inc., W. R. Grace & Co., United Airlines, American Airlines, Tronox, South Bay Expressway, Quebecor World Finance, Nortel Networks, Abitibi-Bowater and Chemtura Corporation. A few of the representations are highlighted below.

- **Pacific Gas and Electric Company.** Orrick represented Pacific Gas and Electric Company, as borrower, in connection with the restructuring of more than \$2.5 billion of debt. Orrick also served as one of the lead counsels on behalf of PG&E Corp, the holding company of PG&E, in the successful settlement of the then largest utility chapter 11 case in history, playing a key role in the development of the plan for the exit from Chapter 11, including the spin-off of Pacific Gas and Electric Company into separate publicly traded companies, and the post-emergence financing for each of these entities. Additional details regarding this representation are set forth in Section III.3.b.
- **South Bay Expressway, L.P.** Orrick represented the bank syndicate members in connection with the chapter 11 bankruptcy case of South Bay Expressway, L.P. ("SBX"), the toll road operator of the 9-mile express toll road in San Diego. Orrick created a pre-negotiated restructuring plan, restructuring in excess of \$560 million of debt, developed and implemented a litigation strategy and resolved contentious litigation related to the matter (involving disputes among the general contractor, the State of California, and the San Diego Association of Governments ("SANDAG")), all within the course of a year. Orrick further represented syndicate members in connection with the related transaction of swaps and swap participation



arrangements. Orrick also represented SBX in connection with its post-emergence sale of the toll road to SANDAG.

- **The GM restructuring and bankruptcy.** Orrick represented the Unofficial Committee of General Motors Dealers in connection with the bankruptcy proceedings of General Motors Corporation ("GM"). The Dealers Committee advocated for the collective interests of the approximately 6,000 GM dealers in the U.S. and served as the dealer body's primary voice in the bankruptcy case. Orrick also assisted a number of other parties related to this bankruptcy, including Hella KGaA (addressing its long term supply contracts for component parts) and Fisker Automotive (in its acquisition of a shuttered GM plant in a 363 sale).
- **Lehman.** Orrick represents numerous states, municipalities, universities and financial institutions and others in connection with claims asserted by them in the bankruptcy cases of various Lehman entities, including Lehman Brothers Holdings Inc., Lehman Brothers Special Financing Inc. and Lehman Brothers International (Europe), as well as disputes by the estates relating to derivatives transactions and the application of the special treatment of such agreements under the safe-harbor provisions of the Bankruptcy Code. We have represented our clients in the court-ordered mediation proceedings, litigated before the bankruptcy court the applicability of the safe-harbor protections, and resolved various claims on behalf of our clients through out-of-court consensual settlement negotiations.
- **Tronox.** Orrick represented Exxaro Australia Sands Pty Ltd. and certain of its affiliates in the chapter 11 bankruptcy cases of Tronox LLC, its indirect parent Tronox Incorporated and direct and indirect debtor and non-debtor affiliates of Tronox LLC (collectively, "Tronox"). This transaction was nominated as a Finalist – M&A Deal of the Year (over \$2.5 billion) by The M&A Advisor in 2012. Additional details regarding this representation are set forth in Section III.3.b.

**c. Bankruptcy Avoidance.** Consistent with Orrick's position as number one public finance firm in the country, we are frequently called upon by our clients and others to advise them on the use of financing to mitigate or avoid financial distress that could lead to bankruptcy. In addition to one-on-one counseling, Orrick prepared a much used pamphlet on "Budget Relief and Deficit Financing by Local Governments in California" and hosted several workshops and webinars. We also authored a book on chapter 9 municipal bankruptcy.

**Public Finance Expertise.** Orrick has maintained a substantial practice in the area of public finance for more than a century and has a greater amount and diversity of experience and involvement in the municipal bond market and public finance industry than any other law firm. Orrick has more than 80 lawyers in its public finance department in Washington, D.C., New York, San Francisco, Los Angeles, Sacramento, Seattle and Portland. From these offices, Orrick serves as bond, disclosure, underwriters' and borrower's counsel for transactions in more than 40 states, several territories and foreign countries. For most of the past two decades, Orrick has been ranked number one in the country as bond counsel and as disclosure counsel, and in the top three as



underwriters' counsel, by dollar amount of transactions handled, averaging a combined market share of about 15% of all municipal debt obligations issued each year.

Statistics, however, do not adequately convey the extent of our experience and depth of our expertise in public finance. Orrick has served as bond counsel or other counsel for issues in virtually every state and in several territories. This is a testament to the confidence placed in Orrick by municipal issuers and underwriters around the country, not only because of our expertise but also because of who we are as individuals.

### **Demonstrated Commitment to and a Deep Understanding of the City's Financial Situation + Chapter 9 Expertise = Cost Savings for the City**

Orrick has advised the City as Disclosure Counsel on several bond issuances, including the Michigan Finance Authority's State Revolving Fund Revenue Bonds, Series 2013 and its Local Government Loan Program Revenue Bonds, Series 2012A and 2012C, and the City's Sewage Disposal System Revenue and Revenue Refunding Senior Lien Bonds, Series 2012A, as well as in connection with the restructuring of certain swap agreements associated with the Detroit's 2006 Pension Obligation Certificates. In connection with these and other recent engagements, our team has developed an understanding of the City and its finances, and has good working relationships with senior officials in City and state government, as well as the swap counterparties and insurers of the swaps. Orrick also has knowledge of and experience with other agencies or instrumentalities of the City that have issued long-term debt obligations, including the Detroit public schools, having served as underwriters' counsel on two issues of school bonds in 2009 and 2010.

Orrick has a record of and reputation for collaborating effectively with local counsel to the City and on our other public finance and municipal restructuring engagements. We understand that local attorneys are often more familiar with applicable local laws and legislative procedures and can be helpful and sometimes critical to efficiently and effectively providing legal advice. We would look to the City to advise us if it has a preferred local firm with whom we should work.

Throughout our representation of the City, we have sought to bring to the City's attention creative ideas to help the City achieve its goals. For example, in the wake of the financial crisis, drawing on our finance team's work on issues with Troubled Asset Relief Program (TARP), a program of the United States government to purchase assets and equity from financial institutions to strengthen its financial sector, in 2009 we prepared for the City a proposal under which the City might avail itself of financing under TARP. We are committed to partnering with the City and to bringing the same level of proactive problem solving to help navigate the current challenges. Orrick also is proud to be able to field a team of senior attorneys as diverse as the City itself.

Orrick's recent experience advising the City means that we approach this engagement with a head start in understanding its debt issuances, swaps, and related local and Michigan laws, as well as relevant bankruptcy, labor, pension and healthcare issues. We also bring to the engagement a deep familiarity with restructuring municipalities under chapter 9. This adds up to efficiency and effectiveness which will result in significant savings in legal fees for the City. As an example, we have already



prepared a preliminary roadmap for the City's restructuring, which should give us a very good start in meeting your objective of developing a project plan by March 31, 2013. See Section III.7.

### **Labor and Employment Expertise**

Orrick's employment group has extensive experience representing employers on a wide variety of labor issues including organizing drives, negotiations, successorship issues, insolvencies, mass layoffs, restructuring, decertification, strikes, grievances and unfair labor practice proceedings. We also have acted as lead attorney for official committees of retirees, playing a central role in the innovative use of the establishment of a voluntary employee beneficiary association trust, funded by a debtor under its chapter 11 plan, to assure full lifetime retirement benefits for retirees. We are very familiar with labor issues facing distressed municipalities, as evidenced by our recent experience with the Cities of Stockton and Vallejo and know what actions are likely to be successful and approved by a court in a restructuring or bankruptcy. See Section III.3.d.

### **Leadership in the Public Private Partnership Market**

The City expects to consider monetizing some of its assets through public private partnerships ("P3") to help fund its restructuring. Orrick's P3 team is a national leader having advised on many major P3 transactions in the United States. Our team has advised on the \$1.68 billion Denver FasTracks commuter rail network, the first U.S. P3 for passenger rail (Euromoney and The Banker Deal of the Year), as well as on Virginia's \$1.5 billion Midtown Tunnel project, the largest U.S. transport P3 project to close during 2012. Our experience also includes the \$935 million HOV/HOT lanes project on a portion of the I-495 Capital Beltway in Northern Virginia. Orrick recently advised the City of Rialto in the transfer of its municipal water and wastewater systems to private ownership. We also represented Corix in negotiating and closing a 50-year concession agreement to operate the utility systems of the University of Oklahoma. The project includes the operation and management of the university's potable water distribution, wastewater collection and chilled water production and distribution, along with a number of energy utility services. Our team is also advising the State of New York in connection with the privatization of the Long Island Power Authority, including drafting legislation for the State of New York for the securitization of stranded cost and storm recovery costs. For more information on our P3 experience, see Section III.5.d.

### **Public Policy Expertise**

The City's situation is likely to raise new questions of public policy or to require advocating for policy changes. Orrick is one of the few firms with a public policy practice focused on helping clients work with state legislatures and state attorneys general. Our lawyers and legislative experts have spent their careers at the intersection of law and public policy. We draw on skills and strategies honed in the courtroom and in government to achieve our client's most important political and regulatory objectives.

Orrick attorneys wrote a substantial amount of the public finance related legislation in California and significant amount of public finance related legislation in a number of other states and territories,



including the District of Columbia (the “District”). For example, Orrick was influential in shaping California’s AB 506, which created the pre-bankruptcy mediation requirement that Stockton utilized. Originally it was an unworkable bill sponsored by labor unions to frustrate municipalities’ ability to utilize chapter 9 to effect a workable restructuring. At the request of the League of California Cities, we provided testimony at Legislative hearings and conferred with the Governor’s staff to get material and critical changes in the law that allowed it to function properly in the two places it has been used so far – Stockton and Mammoth Lakes. We currently also are advising another Western state on potential legislation to allow municipalities to access chapter 9 under certain circumstances at the request of that state’s treasurer. In addition, Orrick professionals (including members of the proposed team for the City) also are advising the State of New York on legislative as well as structural issues in connection with the proposed privatization of the Long Island Power Authority and the issuance of stranded cost and storm recovery securitization bonds.

In addition, Rob McKenna, who served as Washington State Attorney General from January 2005 to January 2013, recently joined our firm as co-chair of our Public Policy practice and would be available to help the City. Mr. McKenna is accomplished in all areas of public policy, appellate law and investigation. His experience, stature and expertise add essential capabilities for clients seeking coordinated policy advocacy, regulatory compliance and litigation strategies across the country.

### **Experience with Complex Municipal Governments**

Pauline Schneider, a senior member of the Orrick team, has worked in both the federal and the District of Columbia governments. From 1978 until 1981 she worked in the White House Office of Intergovernmental Affairs/Secretary to the Cabinet under President Jimmy Carter. Subsequently she worked in various agencies of District government from 1981-85, including the Department of Employment Services, the Department on Environmental Services and the Office of the Mayor. She also served in a cabinet level position as Director of the Office of Intergovernmental Relations. Few municipal governments are as complex as that of Washington, D.C., which uniquely must provide services ordinarily provided by counties and states in most jurisdictions, along with its municipal functions. It also has the additional burden of direct Congressional oversight of both its financial and legislative functions, resulting in an inability to adopt or amend an annual budget or enact all but the most limited legislation without review and Congressional action.

In addition, as stated above, Rob McKenna, co-chair of our Public Policy practice, served as Washington State Attorney General from January 2005 until January 2013. As Attorney General, Mr. McKenna directed more than 500 attorneys and more than 600 professional staff. He passed 45 bills in the Washington State legislature – more than any Washington State Attorney General in recent history – on policy issues such as government accountability, data security, human trafficking, domestic violence and prescription drug abuse. In 2011, his fellow attorneys general honored him with the National Association of Attorneys General Kelley-Wyman Award for “Outstanding Attorney General” in America.



## Readiness to Work

An important goal of all Orrick attorneys is to meet the needs of our clients. If that means working more than twelve or fifteen hours a day, seven days a week, we will do that. Our pledge is to do all within our power to assist our clients in resolving their problems. We will commit to the City that we will provide the skilled professionals necessary when and where they are needed to assist the City in resolving its financial problems as expeditiously and professionally as possible. **Specifically, we will do all that we can to meet your objective of developing a project plan by March 31, 2013, and to implement that plan by September 30, 2013.** As set forth in Section III.7 below, we have developed a preliminary action plan to assist the City in achieving its financial restructuring goals.



### III. Required Information

#### 1. Firm Description

Orrick was founded in 1863, and is today among the nation's leading law firms with more than 1,100 attorneys serving domestic and international clients, including major industrial and financial corporations, commercial and investment banks, developers, high-technology companies (both privately and publicly held), universities, cities, states and other governmental entities and numerous charitable and public service organizations.

Our lawyers practice in an integrated network of 25 offices located in Washington, D.C., New York, Los Angeles, Orange County, Portland, Sacramento, San Francisco, Seattle, Silicon Valley, Wheeling, Berlin, Brussels, Düsseldorf, Frankfurt, London, Milan, Moscow, Munich, Paris, Rome, Beijing, Hong Kong, Shanghai, Taipei and Tokyo.

Orrick is the first U.S. law firm to establish a Global Operations Center ("GOC"), located in Wheeling, West Virginia, which allows our attorneys and support staff to obtain 24 hour, 365 day per year technology and client support services. This facility consolidates client services such as new matter openings, billings and receivables processing, technology, network and systems operations and applications, document processing and support, human resources and marketing. In addition, our staff at the GOC prepares our closing transcripts, including CD-ROMs of transcripts – a value added product which Orrick was the first to provide to clients.

Orrick's core practice areas include transactional work in Banking and Finance, Bankruptcy and Debt Restructuring, Capital Markets, Compensation and Benefits, Emerging Companies, Energy and Project Finance, Mergers and Acquisitions, Outsourcing and Technology Transactions, Public Finance, Real Estate, Structured Finance and Tax, and litigation practices such as Commercial Litigation, Employment Law, Intellectual Property, International Dispute Resolution, Product Liability Litigation, Securities Litigation and White Collar Defense. More information about Orrick can be found on Orrick's web site at [www.orrick.com](http://www.orrick.com).

Orrick was among the leading U.S.-origin law firms in 2011, and again in 2012, recognized by the *Financial Times* as one of "Most Innovative US Law Firms" for innovation in both legal advice and the business of law. For our record on diversity and inclusion, the Minority Corporate Counsel Association has honored Orrick with the *Thomas L. Sager Award* three times, including in 2011. *Working Mother & Flex Time Lawyers* has named Orrick among the best firms for women four times, including in 2012. Human Rights Campaign gave Orrick a 100% rating for the seventh year in 2012. And the New York City Bar Association selected Orrick Diversity Chair, Lorraine McGowen, as its 2012 Diversity Champion.

Although Orrick does not have an office in Michigan, we have significant experience with Detroit financings, having advised the City on numerous matters, as provided in further detail in Section III.2.b and we would expect to partner with local firm the City designates to manage costs, handle local filings and act as conflicts counsel in the event a conflict of interest arises.

## 2. Proposed Staffing

### a. Information on Lead Attorneys

Orrick proposes to staff this engagement with a core group of attorneys consisting of five partners and one of counsel identified below, but will call on the full resources of the firm to ensure that all required skills are available to resolve the City's financial challenges. The team will be available as and when needed to provide the required services, whether it involves meetings in Detroit, conference calls, drafting documents, negotiating with various interested parties, appearing in court or helping devise the optimal strategy to get the best results for the City. More detailed resumes of these attorneys are attached in [Appendix C](#).



**Lorraine McGowen, New York.** Ms. McGowen is a partner in the Restructuring Group and a member of the firm's 11-member Board of Directors. She has practiced in the areas of creditors' rights and bankruptcy for more than 20 years, in out-of-court work-outs and bankruptcy proceedings. Ms. McGowen represents municipalities, companies, formal and ad hoc creditors' committees and secured and unsecured creditors and other significant parties in complex bankruptcy cases, corporate restructurings and other insolvency matters. She also has been actively involved in the liquidity crisis advising significant counterparties (including municipalities such as the City of New York and the State of Louisiana, among others) with respect to troubled financial institutions, monoline insurers, and other troubled companies and other troubled companies. Ms. McGowen has advised the City on various bankruptcy and commercial law issues in connection with several financings for the City and for the School District of the City.



**Pauline A. Schneider, Washington, D.C.** Ms. Schneider is a partner and head of the Public Finance Group in the Washington, D.C. office. Ms. Schneider's practice focuses on transactional matters, including the representation of state and local governments and governmental instrumentalities, not for profit borrowers and other eligible beneficiaries, underwriters, investment bankers and credit enhancement providers on general obligation and revenue bond financings for airports, mass transit, water and sewers, housing, hospitals, educational facilities, convention centers, sports arenas and general government projects. Specifically, Ms. Schneider has advised the City of Detroit as Disclosure Counsel on several bond issuances, as detailed further throughout this document. She has worked with municipal and territorial governments in financial crisis, including the District of Columbia and the U.S. Virgin Islands. Ms. Schneider has been in private practice since 1985. She also served for four years in the Carter White House in the Office of Intergovernmental Affairs/Secretary to the Cabinet, and four years in District of Columbia government, where she was the Director of the Office of

Intergovernmental Relations. Ms. Schneider has received numerous awards for her contributions to the legal profession, including the 1999 Margaret Brent Women of Achievement Award from the American Bar Association Commission on Women.



**Marc A. Levinson, Sacramento.** Mr. Levinson is a partner in the Restructuring Group. He is nationally recognized for his capabilities in complex reorganizations and restructurings, out-of-court workouts and other insolvency matters. Mr. Levinson is the lead insolvency lawyer on the Orrick team that filed the chapter 9 case for the City of Stockton, California — the largest California city to seek bankruptcy relief. In 2008, he led the Orrick team in the City of Vallejo, California, chapter 9 case. Both cases have generated cutting edge legal issues, as well as litigation over a number of hotly-contested factual issues, including those relating to insolvency and the two cities' eligibility for chapter 9 relief and to labor and pension issues. Marc

is a conferee of the National Bankruptcy Conference and an officer and member of the Executive Committee of the American College of Bankruptcy. He is a frequent speaker on bankruptcy topics, particularly those relating to municipality insolvency. He and John Knox co-authored *Municipal Bankruptcy: Avoiding and Using Chapter 9 in Times of Financial Stress* (2009), and he is one of six co-authors of *Municipalities in Peril: The ABI Guide to Chapter 9* (2010, 2d ed. 2013). Due to his work for the City of Vallejo, Mr. Levinson was named one of *The American Lawyer's* "Dealmakers of the Year" for 2008. He was also named to the *Daily Journal's* Top 25 Municipal Lawyers list for two consecutive years for his work for Vallejo and Stockton. On February 15, 2013, California Lawyer Magazine (a publication of the State Bar of California) announced that Mr. Levinson and Mr. Knox were among the winners of the CLAY Award (California Lawyer Attorneys of the Year) in recognition of their representation of the City of Vallejo.



**John H. Knox, San Francisco.** Mr. Knox, a partner in the San Francisco office, is a member of the firm's Public Finance Department. His practice focuses on local governmental infrastructure financing, primarily for cities and counties, including general fund financings, pension bonds, special assessment and other land-secured financings, redevelopment tax increment financings, enterprise revenue bands, municipal lease transactions and general obligation bonds. He has also been involved in creating various statewide financing programs, including financings for governmental receivables, infrastructure and development impact fees. He often assists nonprofit institutions, including colleges, universities and private

K-12 schools with tax-exempt financings. Mr. Knox has been involved in several municipal workout situations, representing the City of Stockton and the City of Vallejo, California in their chapter 9 bankruptcy cases, the City of Richmond, California in a successful financial restructuring that allowed the City to emerge from a near bankruptcy situation to become a solid "A" rated credit, and the City of Half Moon Bay, California in connection with a very large judgment against the City that threatened to bankrupt the City. Mr. Knox was named to the *Daily Journal's* Top 25 Municipal Lawyers list for two consecutive years in acknowledgement of his work for the Cities of Vallejo and



Stockton. On February 15, 2013, California Lawyer Magazine (a publication of the State Bar of California) announced that Mr. Knox and Mr. Levinson were among the winners of the CLAY Award (California Lawyer Attorneys of the Year) in recognition of their representation of the City of Vallejo.



**Darrin L. Glymph, Washington, D.C.** Mr. Glymph, a partner in the Washington, D.C. office, is a member of the Public Finance Department. Mr. Glymph has almost 20 years of public finance experience and his practice focuses primarily on transactional matters, such as general obligation and revenue financings, economic development incentives, financings for charter schools and other non-profit organizations, securities law matters and legal issues relevant to state and local governments. Mr. Glymph also has participated in a variety of pooled financings, tax securitizations, revolving loan fund transactions, revenue bond issuances for parking facilities and water and sewer systems, and has served as underwriter's and bank's counsel to several financial institutions. Since 2008, Mr. Glymph has served as disclosure counsel on several financings for the City and has also worked on several bond issuances for the School District of the City.



**Nikiforos Mathews, New York.** Mr. Mathews, a partner in the New York office, is a member of the Structured Finance, Banking and Finance, and Energy and Infrastructure Groups. His practice focuses on representing financial institutions, governmental and regulated entities, hedge funds and corporate end-users in structuring and negotiating a broad range of fixed income, foreign exchange and credit derivative products. He has successfully negotiated numerous cross-border transactions involving both developed and emerging market jurisdictions in North America, Latin America and Europe. Mr. Mathews also has significant experience in foreign exchange and fixed income prime brokerage issues, as well as various structured products. He also advises clients on derivatives regulations, including those relating to the Dodd-Frank legislation. Before joining Orrick, Mr. Mathews was director and counsel at UBS AG. Prior to that, he was a vice president and assistant general counsel at Goldman, Sachs & Co. He also served as a law clerk to the Honorable Nicholas Tsoucalas in the United States Court of International Trade.



**Tatjana Misulic, Washington, D.C.** Ms. Misulic, of counsel in the Washington, D.C. office, is a member of the Public Finance Department. Ms. Misulic has more than 10 years of public finance experience. Ms. Misulic has participated in financings for municipalities, airports, mass transit facilities, housing agencies, convention centers, educational facilities and water and power authorities and has served as underwriter's counsel to numerous financial institutions. In 2012, Ms. Misulic served as disclosure counsel for the City of Detroit Water and Sewerage Department \$659,780,000 Sewage Disposal System Revenue and Revenue Refunding



Senior Lien Bonds, Series 2012A, and as part of that engagement drafted the disclosure for the City, reviewed all prior continuing disclosure filings and continuing disclosure agreements of the City and the Water and Sewerage Department and worked with the City and the Department staff to bring their disclosure up to date. Ms. Misulic's practice also includes international commercial arbitration matters and she has participated in a privatization of an Eastern European state electrical utility.

## **b. Connection to/Involvement with Michigan and Detroit Communities**

As noted previously, Orrick has a significant relationship with Detroit, having advised the City as Disclosure Counsel on several bond issuances and in connection with the restructuring of certain swap agreements associated with the Detroit's 2006 Pension Obligation Certificates over the past four years. These matters are detailed more specifically below.

- Served as Disclosure Counsel to the City in connection with the February 2013 issuance by the Michigan Finance Authority of its State Revolving Revenue Bonds consisting of \$137,745,000 Clean Water Revolving Fund Subordinate Refunding Bonds, Series 2013, and \$31,110,000 Drinking Water Revolving Fund Subordinate Refunding Bonds, Series 2013, including drafting the Appendix II disclosure for the City's Water and Sewerage Department and the Continuing Disclosure Agreement, reviewing and providing comments on all documents prepared by other professionals involved in the transaction, and providing our opinion as Disclosure Counsel.
- Served as Disclosure Counsel to the City in connection with the issuance by the Michigan Finance Authority of its \$129,520,000 Local Government Loan Program Revenue Bonds, Series 2012C (City of Detroit Limited Tax General Obligation Local Project Bonds Third Lien), including drafting the Appendix II disclosure for the City and the Continuing Disclosure Agreement, reviewing and providing comments on all documents prepared by other professionals involved in the transaction, and providing our opinion as Disclosure Counsel.
- Served as Disclosure Counsel to the City in connection with the issuance by the Michigan Finance Authority of its \$80 million Local Government Loan Program Revenue Bonds, Series 2012A (City of Detroit Limited Tax General Obligation Local Project Bonds Third Lien) including drafting the Appendix II disclosure for the City and the Continuing Disclosure Agreement, reviewing and providing comments on all documents prepared by other professionals involved in the transaction.
- Represented the City in connection with the restructuring of certain swap agreements associated with the City of Detroit's 2006 Pension Obligation Certificates (the "Certificates"), of which \$800 million were variable rate taxable certificates. The scheduled payments of principal and interest were guaranteed under insurance policies on specifically designated 2006 Certificates by Financial Guaranty Insurance Company ("FGIC") and XL Capital Assurance Inc., now Syncora ("XL" and, together with FGIC, the "Insurers"). Additionally, to hedge against its variable rate exposure on certain of the 2006 Certificates, the City entered into interest rate swap agreements with UBS AG and SBS Financial Products Company, LLC. When the ratings of the Insurers were downgraded and, as a result of the Insurers downgrade, the Certificates, fell below investment grade, the swap counterparties had the



right to declare an early termination event in respect of the swap agreements which, based on the timing of the termination event, could have required the City to make a termination payment to the counterparties of between \$300 and \$400 million. Orrick represented the City in negotiating a restructuring of the potential termination with the counterparties and the Insurers.

- Served as Disclosure Counsel for the City of Detroit Water and Sewerage Department \$659,780,000 Sewage Disposal System Revenue and Revenue Refunding Senior Lien Bonds, Series 2012A, including drafting the Preliminary and Official Statements for the City and the Continuing Disclosure Agreement, reviewing and providing comments on all documents prepared by other professionals involved in the transaction.
- Provided bankruptcy advice to the School District in connection with its issuance of \$337,735,000 School District of the City of Detroit (Wayne County, Michigan) School Building and Site Improvement Refunding Bonds (Unlimited Tax General Obligation), Series 2012.
- Served as Underwriter's Counsel to Seibert Brandford Shank & Co., LLC in connection with its issuance of \$160,910,000 School District of the City of Detroit (County of Wayne, State of Michigan) School Building and Site Bonds (Unlimited Tax General Obligation), Series 2010A Qualified School Construction Bonds (Taxable – Direct Payment Bonds) and \$49,630,000 School District of the City of Detroit (County of Wayne, State of Michigan) School Building and Site Bonds (Unlimited Tax General Obligation), Series 2010B Build America Bonds (Taxable – Direct Payment Bonds)), including drafting the Preliminary Official Statement and Official Statement, Bond Purchase Agreement and the Continuing Disclosure Agreement, reviewing and providing comments on all documents prepared by other professionals involved in the transaction, and providing our opinion as Underwriter's Counsel.
- Served as Underwriter's Counsel to J.P. Morgan Securities, Inc. in connection with the issuance of \$90 million School District of the City of Detroit (County of Wayne, State of Michigan) School Building and Site Bonds (Unlimited Tax General Obligation), Series 2009A Qualified School Construction Bonds (Taxable – Tax Credit Bonds) and \$200 million School District of the City of Detroit (County of Wayne, State of Michigan) School Building and Site Bonds (Unlimited Tax General Obligation), Series 2009B Build America Bonds (Taxable – Tax Credit Bonds), including drafting the Preliminary Official Statement and Official Statement, Bond Purchase Agreement and the Continuing Disclosure Agreement, reviewing and providing comments on all documents prepared by other professionals involved in the transaction, and providing our opinion as Underwriter's Counsel.

### **3. Experience in Large and Complex Restructuring**

Orrick's restructuring lawyers deliver winning results, client-focused service and efficient strategies to clients involved in restructurings and insolvencies. We routinely work on complex restructurings and financing transactions and offer clients value-added legal advice, from negotiation and mediation to litigation and counseling. We have successfully represented many different constituencies in virtually every aspect of corporate reorganizations, out-of-court restructurings, insolvency and liquidation matters.



Our lawyers—who have a track record of leadership and creativity—draw on the experience of other Orrick practitioners, including those in the corporate, finance, securities, litigation, tax, pension and real estate groups, to deliver a full range of restructuring-related legal services to major financial, commercial and industrial institutions worldwide. Our primary areas of focus include the following:

- **Court Proceedings.** Represent debtors, creditors, committees, fiduciaries and lender groups in formal bankruptcy and insolvency proceedings in courts worldwide.
- **Debtor Representations.** Represented several of the largest Chapter 11 debtors and several private companies in restructuring of debt. Routinely advise private equity and fund clients regarding portfolio companies, including acquisitions, dispositions and debt/capital restructurings.
- **Out-of-Court Restructurings.** Represent secured lenders, lender groups, other senior creditors and issuers in complex financial restructurings, recapitalizations and rescue financings.
- **Committees.** Represent unsecured creditors committees, retiree committees and other committees and court-appointed fiduciaries in restructuring and insolvency matters.
- **Distressed Assets and Alternative Investments.** Represent buyers and sellers of distressed loans and claims, and in distressed merger and acquisition mandates.
- **Financial and Structured Products.** Represent secured lenders, financial institutions and other sophisticated investors in the restructuring of financial products and complex corporate, capital markets and derivative products to limit bankruptcy and commercial risks.

#### **a. Examples of Projects of Similar Size, Scope and Complexity**

A chapter 9 restructuring of Detroit would be extremely complex, involving a wide variety of parties with conflicting interests. The only other municipal restructuring to date that was more complex was that of New York City. Orrick has both broad and deep experience in numerous complex restructuring and bankruptcy matters, which is described in the sections below. The following three case studies demonstrate our direct, applicable experience related to the City's current situation.

**City of Stockton, California.** On June 28, 2012, Stockton (population approximately 295,000) became the largest U.S. city to seek chapter 9 protection. The filing followed an exhaustive 90-day statutorily-mandated mediation process involving virtually all the city's major creditors in which a team of Orrick attorneys worked with Stockton and its advisors to prepare a detailed proposal to restructure the material claims against the city, including certificates of participation (COPs), variable rate demand obligations (VRDOs) and pension bonds, long-term liabilities (including pension, healthcare and labor), large judgments, injunctions, and leases. The comprehensive 790-page "Ask", presented to creditors and the mediator in early May 2012, exhaustively detailed Stockton's financial condition and the reasons for its economic distress, and also provided a detailed analysis and proposed restructuring alternative for every major creditor,



including capital markets creditors, labor unions, retirees, judgment creditors, two sports teams, and other miscellaneous creditors. A copy of this document may be obtained at [http://stocktongov.com/files/07\\_20\\_2012\\_Chapter9\\_Doc\\_454\\_DaveMillican\\_StatementQualifications.pdf](http://stocktongov.com/files/07_20_2012_Chapter9_Doc_454_DaveMillican_StatementQualifications.pdf). The mediation was conducted by a former bankruptcy judge, and involved 19 separate creditors. The mediation commenced with an initial two-day session attended by over 50 business representatives, financial advisors and attorneys during which the city made a lengthy and comprehensive presentation of its finances and answered questions. During the next two months, the parties engaged in 25 days of shuttle diplomacy mediation sessions.

Although the 90-day mediation commenced in early March 2012, Orrick had worked with the city for almost a year prior to the commencement of mediation, assisting the city's elected and appointed officials in understanding the many complex financial and restructuring issues, deciphering and clarifying years of creative and confusing accounting practices, addressing the impact of the new state law that required dissolution of the city's redevelopment agency, analyzing a multitude of bond issues and accounting for unspent proceeds, reconciling legal issues regarding interfund loans and transfers of various restricted funds and fee accounts, and, in general, trying to assist the city to "put its fiscal house in order." At the conclusion of that work, and after bringing in an outside management consulting firm to provide an independent analysis of Stockton's finances, the City determined that it needed to take immediate steps to preserve cash solvency and start the state-required mediation process.

Drawing on our experience in the City of Vallejo case, while preparing the Ask and negotiating with creditors, we also simultaneously prepared Stockton's chapter 9 bankruptcy petition and related pleadings. Given the compressed time for negotiation, the fact that the city literally had only a few months of breathing room in which to negotiate before it would be forced to seek bankruptcy protection, and the severe haircuts required in order to put the city back on a sound financial footing, the mediation process was not completely successful in avoiding a bankruptcy. However, it did result in the city reaching agreements with all nine of its unions on new contracts that were very close to the terms of the Ask, and set the stage for further negotiations with other creditors. Such agreements made it unnecessary for Stockton to incur the economic and disruptive costs attendant to rejecting collective bargaining agreements and negotiating new agreements.

During the mediation process, the city formulated a "Pendency Plan," which is the budget under which it would operate while in bankruptcy. Orrick developed the Pendency Plan concept in the Vallejo case and the concept was upheld by the courts despite challenges by the unions and by retirees. Stockton's Pendency Plan unilaterally reduced and phase-out the retiree health benefit payments (which the city estimates at in excess of \$600 million). Shortly after the filing of the chapter 9 case, an organization of retirees challenged the health benefits reduction/phase out, seeking a temporary restraining order. The city opposed the motion arguing that due to Tenth Amendment and Bankruptcy Code considerations, the court lacked the authority to direct the city's expenditure of funds. Following a hotly-contested hearing, the request for a TRO was denied and the complaint dismissed. *Association of Retired Employees of the City of Stockton v. City of Stockton*, 478 B.R. 8 (Bankr. E.D.Cal. 2012).



Throughout this process, the so-called capital markets creditors (Assured Guaranty, National Public Finance Guaranty and Franklin Funds) have opposed relentlessly Stockton's eligibility to be a debtor, litigating virtually every issue, pursuing extensive discovery, and doing everything in their power to make chapter 9 as expensive and as painful for Stockton as is possible. More recently, over the objection of such creditors, the bankruptcy court granted the city's motion and held that absent the city's consent, it did not have the power to approve or reject settlements entered into with creditors during the pendency of the case. *In re City of Stockton*, 2013 WL 611060 (Bankr. E.D.Cal. 2013). Together, these two rulings establish important parameters governing a court's power under chapter 9 and the Tenth Amendment to the United States Constitution.

The Stockton case is ongoing. The court will conduct a four-day evidentiary hearing on the city's eligibility to be a chapter 9 debtor at the end of March and has promised a prompt ruling. The city is confident that it will be found eligible, and currently is working on crafting a plan of adjustment. To that end, it has reached agreement with a fourth capital markets creditor, Ambac Assurance Corporation. The agreement will be included in the plan of adjustment, which will be before the bankruptcy court on April 2 for its review.

**City of Vallejo, California.** When it retained Orrick in early 2008, the City of Vallejo, California (120,000 residents), was on the brink of insolvency, and would have been insolvent in the fiscal year that began on July 1, 2008. The city had exhausted virtually all of its General Fund reserves, it had ceased funding or reduced funding for community based organizations, it was not replacing outworn vehicles, including police cars, it was patching rather than repairing streets, and its General Fund budget for the impending fiscal year was in excess of \$10 million out of balance. The negative budget meant that the General Fund was prohibited by California law from borrowing from its restricted funds and that the city therefore could not pay the first payroll of the fiscal year, which was due on July 11. The looming insolvency was in large part due to cost of living and other increases mandated by its collective bargaining agreements and by its very generous retiree health benefits obligations.

At the outset of its engagement, Orrick worked with city staff and with Vallejo's outside labor counsel to understand the debt structure and the labor issues and costs, and then to plan a workout strategy, with chapter 9 as the fallback should the workout fail. Although AB 506 – the state-mandated mediation statute – was not in effect at the time, Orrick nevertheless advised the city that it should undertake substantial good-faith negotiations with creditors prior to filing a bankruptcy, with the hopes of avoiding the filing if at all possible. Accordingly, Orrick met with Union Bank, the provider of the letters of credit that backed almost all of the approximately \$50 million of certificates of participation for which the General Fund was responsible. But while the Bank was receptive, it refused to engage until the city could solve its labor and retiree health issues. Meetings with labor followed. Vallejo, like Detroit, is largely a blue collar, pro-labor city, and its unions had been empowered by years of successful negotiations, by victories over the city in both arbitrations and court cases. The initial meetings were hostile and unproductive, so the parties attempted mediation before an experienced labor mediator. Eleven mediation sessions failed to achieve any modifications of the labor agreements. Orrick was heavily involved in the mediation process, explaining why the bankruptcy alternative was not the preferred option for any party.



During the labor mediation, Orrick worked with city staff to prepare for chapter 9 in the event that bankruptcy became the only option. Orrick organized one final meeting with the unions after the City of Vallejo Council authorized the bankruptcy filing. That meeting resulted only in a threat by the unions to fight the bankruptcy with all their energy and resources. So in late May 2008, Vallejo became the largest California municipality to seek bankruptcy relief since Orange County did so in 1994. It had no other option.

We worked with Vallejo to prepare a detailed proposal to restructure each creditor claim, including the city's obligations to Union Bank under the COPs, as well as its long term liabilities for its underfunded pension plan at CalPERS and its retiree health care obligations

Shortly after filing its chapter 9 case, Orrick filed a motion on behalf of the city to reject the city's onerous labor contracts, which then accounted for about three-fourths of its general fund budget. After filing its motion, Vallejo reached agreements to modify the collective bargaining agreements with two of its four employee unions. We believe that such agreements, particularly with the police union, were greatly expedited by Orrick's performance in the eligibility trial described below.

The labor issues were put on hold while Orrick and counsel for the unions briefed and then tried the issue of whether Vallejo was eligible for chapter 9 relief. The eligibility dispute raised a number of cutting-edge bankruptcy issues, and the evidentiary hearing took approximately seven court days. The bankruptcy court found Vallejo eligible, and that ruling was affirmed on appeal. *In re City of Vallejo*, 2008 WL 4180008 (Bankr. E.D. Cal. Sept. 5, 2008); *aff'd*, 408 B.R. 280 (9th Cir. B.A.P. 2009). The eligibility rulings upheld the important principles of fund accounting, making it clear that legal restrictions on funds must be maintained, and that municipal debtors cannot invade legally restricted funds (other than for intra year cash management purposes) even under bankruptcy protection. This was an important ruling for the City and for creditors holding obligations payable from restricted funds.

The city then turned back to its burdensome labor contracts and its motion to reject them. The bankruptcy court heard oral argument and conducted an evidentiary hearing. The court then ruled that collective bargaining agreements could be rejected in a chapter 9 case, and concluded that the test for rejection was the one suggested by us on behalf of the city. But rather than ruling that Vallejo had or had not satisfied that standard, the judge ordered the parties to mediation before another bankruptcy judge. The mediation resulted in one of the two remaining unions stipulating to the rejection of its collective bargaining agreement. The other union did not agree, forcing the judge to rule on the motion. He ruled in favor of the city, which ruling was affirmed on appeal. *In re City of Vallejo*, 403 B.R. 72 (Bankr. E.D. Cal. 2009), *aff'd*, *International Brotherhood of Electrical Workers, Local 2376 v. City of Vallejo*, 432 B.R. 262 (E.D. Cal. 2010). Thereafter, the city entered into a new agreement with that union.

Union Bank was eager to talk about a plan of adjustment once the labor issues had been settled and new collective bargaining agreements reached. After difficult negotiations with Union Bank, with our assistance the city was able to reach an agreement that would pay it the full amount of its principal, but would provide the city with a three-year debt payment honeymoon, would slightly extend the term of the COPs and would dramatically reduce the interest rate. In its disclosure



statement, the city estimated that the agreement resulted in a net present day reduction of its obligation to Union Bank by 40%.

Orrick prepared the city's plan of adjustment and disclosure statement. The plan assumed the newly-negotiated labor agreements, the Union Bank agreement and the restructured COPs (and related agreements) and paid general unsecured creditors from a fund established by the city. The disclosure statement estimated that the payment would approximate 20 to 25%, and the ultimate payout was 23.0793%. The plan also provided that tort and other claimants whose claims were subject to payment from the relevant insurance pool in which the city participated would receive the same 20—25% payout on the first \$500,000 of any allowed claim (i.e., the self insured retention) and would receive 100% (paid by the insurance pool) on any amount over \$500,000. This provision has saved the city millions of dollars. Due in large part to the litigations and negotiations during the course of the case, the plan was approved by every impaired class, so cramdown was not necessary.

**Financial Control Board, Washington, D.C.** In the early 1990s, the District of Columbia was experiencing severe financial problems and had an accumulated deficit in excess of half a billion dollars. In 1992, Pauline Schneider, while at her prior firm, drafted legislation which was adopted by the U.S. Congress that amended the District's Home Rule Act to permit the District to issue long term general obligation debt to finance its accumulated deficit. This was just the first in a series of measures taken by or on behalf of the District to address its financial crisis.

In April 1995, in response to the District's ongoing fiscal and operational problems, Congress enacted the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104-8, as amended (the "Authority Act"), which established the District of Columbia Financial Responsibility and Management Assistance Authority (the "Authority"). Without repealing the District's Mayor/Council government structure, the Authority Act granted the Authority substantial powers over the financial activities and management operations of the District government during any "Control Period" as defined in the Authority Act. The powers of the Authority were expanded by Congress in August 1997 by the National Capital Revitalization and Self-Government – Improvement Act of 1997, Public Law 105-33. During the Control Period, which ran from 1995 – 2001, the Authority was authorized to exercise governmental control powers for the purpose of eliminating budget deficits and cash shortages of the District, ensuring efficient and effective delivery of services in the District, enhancing the District's access to the capital markets, approving all bond issuances, ensuring the long-term financial, fiscal and economic vitality and operational efficiency of the District, examining the structural relationship between the District government and the Federal government, and reviewing the financial impact of activities of the District before the activities are implemented or submitted for Congressional review.

The Control Board also assisted the District in pursuing certain financings that generated revenues for the District such as a real property tax lien securitization program. Ms. Schneider, while at her former firm, was hired in 1996 as counsel to the Control Board to draft legislation authorizing the sale and securitization of such tax liens. The District successfully completed its first transaction later that year. Beginning in 1997, attorneys now with Orrick were hired as bond counsel to the District, and thereafter assisted the District in obtaining all necessary approvals from the Authority for



its bond issuances during the Control Period. Attorneys now with Orrick have continually served as bond counsel to the District since then.

**b. In Court (Chapter 9 and 11)**

Orrick has successfully represented a number of clients in complex bankruptcy proceedings, raising issues comparable to those confronting the City, several examples of which are noted below.

**South Bay Expressway.** Orrick represented the bank syndicate members in connection with the chapter 11 bankruptcy case of South Bay Expressway, L.P. or SBX, the toll road operator of the 9-mile express toll road in San Diego. The case involved the restructuring of \$560 million in loans that had been extended. The first P3 toll road project to seek bankruptcy relief, the case involved contested litigation regarding the validity, priority and amount of alleged mechanics liens asserted by the principal general contractors who constructed the toll road and provided the tolling equipment. The general contractors had asserted claims prior to the bankruptcy case against SBX, the State of California Department of Transportation, and SANDAG in excess of \$700 million. Orrick created a pre-negotiated restructuring plan, developed and implemented a litigation plan that provided for the general contractors' lien priority dispute to be tried by the bankruptcy court within three months, and resolved contentious litigation related to the matter, all within the course of a year. Orrick further represented syndicate members in connection with the related transaction of swaps and swap participation arrangements.

**The GM restructuring and bankruptcy.** Orrick represented the Unofficial Committee of General Motors Dealers in connection with the bankruptcy proceedings of General Motors Corporation ("GM"). The Dealers Committee advocated for the collective interests of the approximately 6,000 GM dealers in the U.S. and served as the dealer body's primary voice in the bankruptcy case. The dealers' relationships with GM were restructured in a complex arrangement which provided dealers with a fair process to address individual concerns, and facilitated the overall restructuring of GM. Orrick also assisted a number of other parties related to this bankruptcy, including Hella KGaA (addressing its long term supply contracts for component parts) and Fisker Automotive (in its acquisition of a shuttered GM plant in a 363 sale).

**Lehman.** Orrick represents corporate, government entities and financial counterparties with swaps, forward contracts, repurchase agreements and other derivative products in various aspects of the Lehman Brothers proceedings pending in the United States and the United Kingdom. Claims include breach of representations and warranties, early payment defaults, termination payments, and indemnity claims.

**California Franchise Tax Board.** Orrick serves as national bankruptcy counsel for the California Franchise Tax Board (FTB). Orrick's representation includes: Buffets Holdings Inc.'s chapter 11 case and involves litigation concerning FTB's multi-million dollar tax claims against various Buffets entities; Tribune Company's chapter 11 case in connection with plan objections; and General Growth Properties, Inc.'s chapter 11 case, also in connection with plan objections.

**The Court-Appointed Future Claimants Representative (David T. Austern) for W.R. Grace and its Affiliates.** Orrick represents David T. Austern, the court-appointed future claimants'



representative (FCR) in the ongoing chapter 11 case of W.R. Grace & Co. As counsel to the FCR, Orrick was heavily involved in negotiating the plan of reorganization, which the FCR ultimately joined as a co-proponent, and in the hotly-contested litigation which led to the Bankruptcy Court's confirmation of that plan in January 2011. The Bankruptcy Court's confirmation order was appealed to the District Court and was affirmed in January 2012. The matter is now on appeal to the Third Circuit. The case involves the reorganization of a major global specialty chemical company, resolving significant asbestos, environmental and financial issues, and will result in, among other things, the resolution of the company's asbestos litigation by the creation of a \$3 billion trust for the benefit of present and future asbestos victims. We accomplished a major achievement with confirmation of the plan by the Bankruptcy Court and affirmance of the plan by the District Court. The Orrick team represents the FCR in all aspects of the case, including negotiation and confirmation of the plan and briefing and argument in the pending appeals, insurance coverage disputes and related bankruptcy litigation.

**The Court-Appointed Future Claimants Representative (R. Scott Williams) for the Congoleum Asbestos Settlement Trust.** Orrick represents R. Scott Williams, the court-appointed FCR in connection with the Asbestos Settlement Trust established in the chapter 11 cases of Congoleum Corporation, a flooring manufacturer. As counsel to the FCR, Orrick was heavily involved in negotiating the plan of reorganization and the accompanying \$100 million+ global insurance settlement. Orrick continues to represent the FCR in the establishment and operation of the Asbestos Settlement Trust established under the confirmed plan.

**The Court-Appointed Future Claimants' Representative (Joseph W. Grier, III) for Garlock Sealing Technologies and its Affiliates.** Orrick represents Joseph W. Grier, III, the court-appointed FCR in the chapter 11 cases of Garlock Sealing Technologies, a manufacturer of industrial sealing products. As counsel to the FCR, Orrick has a lead role in the discovery process and expert analysis relating to the estimation of Garlock's present and future aggregate asbestos bodily injury liability and in the valuation of Garlock's assets. As Garlock's bankruptcy cases progress, Orrick will work closely with numerous other parties in order to establish a trust to resolve all of Garlock's present and future asbestos bodily injury claims.

**Stone & Webster, Inc.** Orrick represented the Official Committee of Unsecured Creditors in the chapter 11 cases of Stone & Webster, an international engineering and construction enterprise with 72 subsidiaries. (Creditor claims initially totaled in excess of \$6 billion.) Orrick continues to represent the SWE&C Liquidating Trust, which was formed upon the confirmation of the Stone & Webster Inc. joint plan of liquidation to, among other matters, resolve claims against Stone & Webster Engineers & Constructors, Inc. and its direct and indirect subsidiaries totaling in excess of \$1 billion. Working with the trustee for the SWE&C Liquidating Trust, distributions to unsecured creditors have exceeded \$.50/dollar of claim. In connection with this engagement, several other positive outcomes were achieved, including:

- Obtained the first reported decision to find that bankruptcy courts may continue to substantively consolidate debtors after the United States Supreme Court's decision in *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.* in re Stone & Webster, Inc., 286 B.R. 532 (Bankr. D. Del. 2002).



- Participated in the negotiations for the sale of Stone & Webster's assets (including those located outside the United States), and the allocation of the sale proceeds of the Stone & Webster entities among its various international direct and indirect subsidiaries.
- Prosecuted insurance coverage actions against insurers for environmental and professional liability losses.
- Prosecuted claims recovery actions against the Saudi Arabian Oil Company which resulted in a multi-million dollar recovery for the trust.

**MF Global, Inc.** Orrick represented the Tennessee Valley Authority and Koch Industries, Inc., among others, in the bankruptcy and Securities Investor Protection Act (SIPA) proceedings of MF Global, Inc., in connection with claims asserted by them in the bankruptcy and SIPA cases of MF Global and its affiliates under forward power purchase agreements both in the United States and in the United Kingdom.

**Tronox.** Orrick represented Exxaro Australia Sands Pty Ltd. and certain of its affiliates in the chapter 11 bankruptcy cases of Tronox LLC, its indirect parent Tronox Incorporated and direct and indirect debtor and non-debtor affiliates of Tronox LLC (collectively, "Tronox"). Exxaro is a joint venture participant in an Australian mining operation with Tronox that holds, among other contractual rights, the right of first refusal and other preemption rights that could be triggered upon a sale of the assets or a change in control of Tronox. Orrick represented Exxaro in preserving its preemption rights, which were triggered by Tronox's attempted sale of substantially all of its assets under Bankruptcy Code section 363, which sale motion was withdrawn by Tronox. Tronox filed the bankruptcy petitions in order to be relieved from historical legacy environmental liability it had inherited from Kerr-McGee. Orrick advised Exxaro with respect to the restructuring of Tronox, including the resolution of the legacy environmental liabilities. Orrick continues to represent Exxaro Resources Ltd. in the combination of part of its mining business with Oklahoma City-based pigment producer, Tronox Incorporated. Tronox emerged from bankruptcy with a net equity value of approximately \$1.1 billion. The deal seeks to combine Tronox's proprietary pigment-making technology with Exxaro's mining, mineral separation and smelting mineral sands operations. Exxaro will have a 38.5 percent stake in a newly formed Australian company, "New Tronox," into which Exxaro and Tronox will contribute their respective businesses. This transaction was nominated as a Finalist – M&A Deal of the Year (over \$2.5 billion) by The M&A Advisor in 2012.

**Wells Fargo Bank.** Orrick represents Wells Fargo, as the agent for the secured creditors of Claim Jumper Restaurants in Claim Jumper's chapter 11 case in Delaware. We also represented the secured lenders and the debtor-in-possession lenders. This matter is unique because the secured lenders exercised stock proxy rights to successfully wrest control from subordinated debt holders who had purchased equity to thwart the reorganization. The creditors have received about twice as much as was anticipated when the chapter 11 case was filed.

**Philippine Airlines.** Orrick represented Philippine Airlines in proceedings under the U.S. Bankruptcy Code involving US\$2.5 billion of debt.

**David Sambol, former President and COO, Countrywide Financial Corp. -- Securities and Exchange Commission v. Angelo Mozilo et al.** Orrick is representing David Sambol, former



President and Chief Operating Officer of Countrywide Financial Corporation, in connection with multiple investigations and litigation involving the Department of Justice, the U.S. Securities and Exchange Commission (the “SEC”), California Attorney General, class action and derivative plaintiffs, hedge funds and insurers, arising out of the collapse of Countrywide, at the time the nation’s largest mortgage lender. To date, the litigation team has obtained dismissals of several cases, and has achieved settlement in certain matters, including a recent landmark settlement in the case brought by the SEC.

**Credit Suisse Securities (USA) LLC.** Orrick represents Credit Suisse Securities (USA) LLC, and its affiliate, DLJ Mortgage Capital, Inc., in lawsuits filed by MBIA Insurance Corporation and Ambac Assurance Corporation in connection with financial guaranty insurance policies that the monoline insurers issued to insure two securitizations of second-lien mortgages in 2007. MBIA and Ambac each allege that Credit Suisse fraudulently induced it to issue the financial guaranty and breached certain contractual obligations by failing to disclose the nature of the underlying closed-end seconds and home equity lines of credit. Now that the housing market has collapsed and the insurers have had to make payments under their policies, MBIA and Ambac have filed lawsuits in an attempt to avoid their insurance obligations.

**Pacific Gas and Electric Company.** Orrick represented Pacific Gas and Electric Company, as borrower, in connection with the restructuring of more than \$2.5 billion of debt. Orrick also served as one of the lead counsels on behalf of PG&E Corp, the holding company of PG&E, in the successful settlement of the then largest utility chapter 11 case in history, playing a key role in the development of the plan for the exit from chapter 11, including the spin-off of Pacific Gas and Electric Company into separate publicly traded companies, and the post-emergence financing for each of these entities. These financings included the public offering of \$6.7 billion in unique “fall-away” mortgage bonds, a \$850 million revolving working capital facility, a \$620 million credit facility to provide support for pollution control bonds, a \$650 million accounts receivable facility, and two bridge financing facilities. Orrick subsequently represented PG&E Corporation in the refunding of the two bridge facilities with tax-exempt debt. Orrick attorneys also worked with the company and the Public Utilities Commission to implement and securitize a newly created regulatory asset (“stranded cost”), and thereafter represented PG&E in its offering of \$1.9 billion of energy recovery bonds.

**Pueblo of Pojoaque.** Orrick represents the Pueblo of Pojoaque Tribe, as borrower, on its out of court efforts to restructure \$265 million in bonds issued by the tribe to fund construction of its Buffalo Thunder Resort & Casino.

**One of the nation’s largest public private partnerships (P3).** Orrick is currently representing the borrowers and sponsors of one of the nation’s largest P3 projects in the transportation sector. Orrick is providing pre-bankruptcy and bankruptcy counseling in connection with this multi-billion dollar workout.

**One of the nation’s leading clean technology automotive companies.** Orrick is currently providing pre-bankruptcy and bankruptcy counseling to one of the nation’s leading clean technology automotive companies.

**One of the largest individual real estate developer chapter 11 cases in the country.** Orrick lawyers served as debtor’s counsel in one of the largest individual real estate developer chapter



11 cases in the country, with interests in more than 150 real estate owning partnerships with over \$1 billion in guaranteed debt addressed through both individual and related entity chapter 11 filings.

**A nationwide clothing retailer.** Orrick lawyers represented a nationwide clothing retailer with more than 1,450 stores in a bankruptcy involving three parent entity debtors and more than 400 cases filed for entities operating individual locations.

**A privately owned manufacturer for the do-it-yourself (DIY) industry.** Orrick lawyers represented a privately owned manufacturer for the DIY industry in a prepackaged chapter 11 restructuring of \$300 million of bonds and substantial trade debt, in one of the quickest prepackaged cases filed in Delaware (43 days from filing to exit).

### c. Out of Court

In addition to representing clients in court proceedings, Orrick also has represented many clients in out of court restructurings, some of which have been ratified subsequently by court action. Some relevant examples are set forth below.

**Indiana Toll Road.** Orrick currently is advising the Bank Steering Committee (consisting of the Royal Bank of Scotland as administrative agent, BBVA, Banco Santander, Bankia, Bayern, Depfa and Unicredit) in connection with the \$6 billion restructuring of the Indiana Toll Road and related concessions, which was acquired by Cintra and Macquarie, which is expected to include the restructuring of \$2 billion of “sculpted” interest rate swap agreements.

The Indiana Toll Road runs for 156.28 miles east–west across northern Indiana from the Illinois state line to Ohio state and has been advertised as the “Main Street of the Midwest”. Orrick’s initial involvement in the project began as mandated lender’s counsel when the deal was originated in 2006. Because of a looming liquidity crisis and no viable refinancing options, however, a steering committee of lenders was created to lead the restructuring, including the selection of counsel to act as steering committee counsel.

Through the concerted efforts of Orrick attorneys, Orrick was able to identify and respond to the issues related to the project, and demonstrate the value and experience Orrick would provide. The teamwork and synergy of three different firm practices, including restructuring, infrastructure, and derivatives, provided the steering committee with the confidence that by retaining Orrick the issues involved in the project could be handled by a single firm with unparalleled experience, service and professionalism, and Orrick was selected to act as counsel to the steering committee.

**Federal-Mogul Corporation.** Orrick represented Cooper Industries, Ltd., a principal creditor and holder of an indemnity claim of over \$450 million in connection with the restructuring proceedings of Federal-Mogul Corporation, a worldwide manufacturer and distributor of automotive and other products.

**Indian tribal gaming enterprise.** Orrick is currently providing restructuring advice to an Indian tribal gaming enterprise, as borrower, in connection with a potential restructuring of outstanding bonded indebtedness.



**A major northeast utility.** Orrick lawyers represented a major northeast utility, as borrower, in planning for a potential chapter 11 to address its substantially below market long-term power sales contract portfolio. The filing was averted late in the planning process through legislative relief.

**50 individual real estate owning entities.** Orrick lawyers have represented over 50 individual real estate owning entities (commercial, industrial and multi-family), as borrowers, in out-of-court work-outs and chapter 11 restructurings.

#### **d. Experience with Employment Issues/Pension and OPEB Obligations**

We are very familiar with labor issues facing distressed municipalities and have assisted in the successful negotiation of new agreements in the context of municipalities in distress. As an example, the City of Vallejo chapter 9 case was filed after Vallejo was unable to reach agreement with its four unions to restructure the collective bargaining agreements that rendered that city insolvent. Shortly after filing the case, Vallejo filed a motion to reject the agreements. After the trial in which Vallejo proved itself eligible for chapter 9 relief, two unions agreed to new contracts. The rejection motion was then litigated, resulting in a groundbreaking opinion establishing the right of a chapter 9 debtor to reject collective bargaining agreements without reference to state law. *In re City of Vallejo*, 403 B.R. 72 (Bankr. E.D. Cal. 2009). The court did not rule on whether Vallejo had proved its case, instead ordering mediation by a visiting bankruptcy judge. Thereafter, the city reached agreement with one of the remaining two unions. After impasse, the bankruptcy court ruled that Vallejo could reject the remaining collective bargaining agreement. The ruling was upheld on appeal. *International Brotherhood of Electrical Workers, Local 2376 v. City of Vallejo*, 432 B.R. 262 (E.D. Cal. 2010). After the affirmance, Vallejo and that union reached agreement on a new contract. The net result was the savings of millions of dollars under the terms of the new agreements, and in excess of one hundred million dollars due to the consensual reduction of health benefits by the actives that, under California law, became binding on the retirees of those unions.

With the Vallejo precedent on the books and fresh in the minds of Stockton's unions, that city, with active participation by Orrick and Stockton's outside labor counsel, reached agreement with eight of its nine unions in connection with the state-mandated pre-bankruptcy mediation process, and reached agreement with its final union several months after the filing of the chapter 9 case. The agreements are not only favorable to Stockton, but they have brought labor peace to a city that experienced distracting labor unrest for the last decade. Our experience with the cities of Vallejo and Stockton are described in more detail in Section 3.a. above.

Orrick also acted as lead attorney for official committees of retirees of Kaiser Aluminum and Kaiser Engineering, playing a central role in the innovation of using a VEBA trust (a voluntary employee beneficiary association trust), funded by a debtor under its chapter 11 plan, to assure full lifetime retirement benefits for retirees.

In addition, Orrick is one of the few full-service firms to have a globally renowned employment law practice. Orrick's global employment lawyers counsel clients on human resources policies, all aspects of employment disputes, severance agreements, discrimination and harassment issues and union and collective bargaining matters. Orrick's lawyers are privileged to serve as



strategic employment counsel to many of the most established multinational corporations and emerging new businesses. Our employment law practice is described in more detail in Subsection 5.a below.

#### **e. Additional Municipal Bankruptcy and Workout Experience**

Orrick has additional, extensive municipal bankruptcy and workout experience, which includes the following matters.

**Palm Drive Health Care District.** Orrick worked with Palm Drive Healthcare District in designing the financing that allowed the District to exit chapter 9 bankruptcy.

**City of Half Moon Bay.** Orrick worked with the City of Half Moon Bay to identify financing methods that would help the city pay a \$41 million judgment stemming from a lawsuit with a developer over the failed Beachwood development. Orrick helped negotiate a settlement reducing the city's exposure to \$18 million and assisted the city in the issuance of Judgment Obligation Bonds to pay a portion of the settlement cost (net of payments in cash from the city and possibly State level assistance). Orrick was asked to advise the city on the possibility of filing a chapter 9 bankruptcy case but advised that the city would not likely be eligible to file due to its financial standing. The city's bonds were rated "AA-" by Standard and Poor's.

**City of Richmond, California.** The City of Richmond, California experienced significant financial difficulties from 2000-2004. In early 2004, Richmond projected a deficit in the general fund equal to approximately 30 percent of the general fund budget for fiscal year 2003-04. Richmond's audited financial statements were late, and its accounting system was unable to produce reliable reports on the state of the city's finances. Orrick worked closely with Richmond and its financial advisors to develop a Fiscal Recovery Plan for the city. The plan included one-time emergency measures to plug the 2003-04 budget gap as well as assistance in reviewing the city's plans to create structural balance. We helped to restructure some of the city's outstanding bonds as "long term working capital" bonds so as to free up certain unspent proceeds to help fill the one-time deficit experienced by the city due to certain faulty accounting practices in the past. We also worked with Richmond's auditing firms to get its audited financial statements caught up. As counsel to Richmond, Orrick assisted in resolving the city's cash flow problems, enabling the city to resume access to the capital markets. We also identified innovative methods for Richmond to borrow money to resolve its cash flow problems. Richmond successfully emerged from its fiscal crisis and now has a solid "A" category rating and has been able to access the bond market for needed public programs and projects.

**Aquarium of the Pacific.** Orrick represented the Long Beach Bond Finance Authority in connection with the issuance of \$117.565 million of its lease revenue bonds in 1995 to provide capital financing for the Aquarium of the Pacific in Long Beach, California. After completion, the Aquarium of the Pacific found its revenues lagging behind initial expectations after its start-up years.

Orrick worked with the Aquarium and the City of Long Beach to refinance the 1995 bonds that included restructuring the corporate governance of the Aquarium of the Pacific nonprofit corporation and of the security package for the bonds.



When revenues continued to lag after the restructuring, the Aquarium engaged outside consultants to make recommendations with the goal and expectation of improving the Aquarium's financial strength and increasing revenue-generating opportunities. The consultants' recommendations included the periodic implementation of capital improvements to reinvigorate interest in the Aquarium. In order to provide funds for these improvements, the security for the financing again needed to be shifted to depend more on the City's revenue sources. Orrick worked with the Aquarium and the City of Long Beach to implement the consultants' recommendations within the bounds of the bond documents, state law and federal tax law.

**Bentley School.** Orrick acted as borrower's counsel to Bentley School on a restructuring of over \$25 million of tax-exempt bonds issued by the California Statewide Communities Development Authority (CSCDA). The transaction started with direct negotiations, lead by Orrick attorneys, between Bentley and its then existing bond holders. Ultimately, refunding bonds were issued by the CSCDA and purchased by the group of existing bond holders. The refunding bonds restructured debt service, provided some new working capital financing and added significant new financial covenants.

**Oregon Coast Aquarium.** Orrick represented the Oregon Coast Aquarium in connection with the restructuring of approximately \$14 million in revenue bonds issued by the State of Oregon through the Oregon Facilities Authority. The restructuring required an exchange offer, tender and consent solicitation pursuant to which all bondholders were required to consent to the exchange of their existing bonds and then tender those bonds for new bonds with extended maturity dates and various other term and covenant modifications. Orrick worked closely with the State Treasurer, the Bond Trustee, the Bondholders' Committee and Bondholder Communications Group in negotiating the terms of the new bonds, preparing disclosure materials with respect to the solicitation and addressing the myriad of issues that arose during the course of executing the transaction. The Aquarium's bond restructuring is one of a very few municipal bond restructurings in which a borrower has been able to secure unanimous bondholder consent where the issue has been sold pursuant to a public offering to retail investors.

**Sterling Health Care, Inc.** Orrick represented Sterling Healthcare, Inc. in complex litigation concerning its 2004 purchase of a multi-state emergency room services business from the debtor, Baltimore Emergency Services, LLC. The litigation, which involved a litigation trust, a committee of tort plaintiffs, the equity owner of Sterling, and certain objecting hospitals, eventually settled. Under the settlement, Sterling's \$27 million purchase note was cancelled and Sterling received \$1 million from the litigation trust, resolving claims in excess of \$30 million.

**Enertech.** Orrick worked with a conduit waste-to-energy project borrower and majority bondholders advising on a potential restructuring of revenue bonds issued for the benefit of the conduit borrower. The conduit borrower obtained additional capital to get the bond financed project up and running, some of which funds were derived from restructuring the existing bonds to release certain reserves established in connection with the issuance of the bonds. Orrick also advised the conduit borrower of alternatives if the bondholders were not to consent to the proposed restructuring, including the possibility of commencing a chapter 11 bankruptcy case to refinance the outstanding bonds with new tax exempt bonds or taxable debt.



#### f. Awards and Accolades

Orrick and certain of its partners have been recognized by a number of organizations and publications for outstanding legal service in the bankruptcy and restructuring areas. Some examples of such recognition are noted below.

**Chambers USA 2013.** Orrick is ranked as a leading firm Nationwide, as well as in California and Washington, D.C., for Bankruptcy and Restructuring; Marc Levinson is also ranked as a leading lawyer for Bankruptcy and Restructuring in California.

**Legal 500 2013.** Orrick is a leading firm in Municipal Bankruptcy, and Marc Levinson is a leading lawyer in this category.

**California Lawyer Magazine's (a publication of the State Bar of California) "CLAY Award (California Lawyer Attorneys of the Year)," 2012.** Marc Levinson and John Knox were given this award in recognition of their representation of the Cities of Vallejo and Stockton. This is John's second such award, as he was also honored by *California Lawyer* in 2005 for his pioneering work on a statewide receivables securitization providing much needed cash flow relief to California cities as a result of certain state budget reductions.

**Daily Journal's "Top 25 Municipal Lawyers," 2012 and 2013.** Marc Levinson and John Knox were included as one of the "Top 25 Municipal Lawyers" for their work representing the Cities of Vallejo and Stockton.

**The American Lawyer's "Dealmakers of the Year," 2008.** Marc Levinson was named "Dealmaker of the Year" for his work for the City of Vallejo.

**The American Lawyer's "Dealmakers of the Year," 2006.** Roger Davis was named "Dealmaker of the Year" for his work refinancing the Orange County's bankruptcy debt 10 years after his work on issuing the debt.

#### 4. Public Finance and Government/Authority Advisory Experience

##### a. Municipal Financings

Orrick's history in public finance stretches back well over 100 years. Orrick has more than 80 lawyers in its public finance department. For most of the past two decades, Orrick has been ranked number one in the country as bond counsel and as disclosure counsel, and in the top three as underwriters' counsel, by dollar amount of transactions handled, averaging a combined market share of about 15% of all municipal debt obligations issued each year. During 2012, we again ranked number one in the country as bond counsel, serving on 366 long-term issues aggregating more than \$31 billion with a market share of 8.7% and number one as disclosure counsel serving on 107 issues aggregating more than \$20 billion with a market share of 5.6%. Orrick was ranked as the number three underwriter's counsel, serving on 132 transactions aggregating more than \$13 billion with a market share of 3.6%.



What is important is not the numbers but that enough clients hire us to represent them and do so repeatedly that we consistently achieve these kinds of results, not as a goal in itself, but as a product of service to clients. As a result, we bring to this engagement deep understanding of the unique issues raised by public bondholders, insured public debt and federal, state and local tax considerations.

Our reputation for safety and reliability has enabled us to create innovative public finance techniques that have been widely adopted in the U.S. and have served as models in other countries, including tax increment financing, lease COPs, pension obligation bonds and OPEB bonds, pre-paid natural gas financing, tobacco settlement revenue and other municipal asset securitizations, earthquake, worker's compensation and other insurance financing, various public-private partnership models and derivative repackaging of municipal securities. Our creativity has been particularly evident in developing options to deal with recent market dislocations.

Orrick also acts as issuer counsel, disclosure counsel, special tax counsel, company counsel, credit provider counsel, lender counsel, trustee counsel, and swap/derivative provider counsel in connection with the issuance of tax-exempt and taxable bonds. We also provide post-issuance services on arbitrage rebate compliance, continuing disclosure, bankruptcy, Internal Revenue Service ("IRS") audits, SEC investigations, defaults and other workouts.

**Public Finance Tax.** Nationally recognized for its expertise in tax matters related to public finance, Orrick's Public Finance Tax Group is involved in every aspect of the firm's public finance practice. The group, composed of seven partners, two of counsel, and four associates, has broad experience acting as bond counsel, disclosure counsel, underwriter's counsel, derivatives counsel, and special tax counsel. The diversity of experience, together with emphasis on sophisticated tax-driven transactions, gives Orrick unmatched strength and breadth in analyzing and opining on public finance tax matters, as well as creating innovative solutions to tax-related problems.

Our Public Finance Tax Group includes a current board member and a past Chair of the National Association of Bond Lawyers and a past Chair of the American Bar Association's Committee on Tax-Exempt Finance - the two most influential professional groups in the U.S. for tax aspects of public finance. Orrick attorneys have obtained numerous IRS private letter rulings on the exemption from federal income tax of both interest on bonds and income of quasi-public entities and nonprofit corporations that issue or borrow the proceeds of bonds. Several of these rulings have established important substantive principles on which a number of financing techniques and devices are based. This expertise likely may come in handy in connection with any necessary restructuring of the City's outstanding debt. Orrick tax attorneys have substantial experience representing issuers whose bonds were audited or investigated by the IRS. This experience includes litigating and negotiating settlements with the IRS where the tax-exempt status of the bonds is called into question. In an era of increased technical complexity and federal scrutiny, Orrick's Public Finance Tax Group offers an innovative, solution-oriented approach to public finance issues, combining thorough analysis, breadth of experience, and unparalleled reputation, as well as the ability to defend the issuer's position in the event of an IRS audit or other inquiry.

**Securities Law/Disclosure.** No other firm matches Orrick's experience in public finance securities law issues, and never has such experience with securities laws and disclosure matters



been so important. Applicable laws continue to grow more lengthy and complex, and the SEC and other regulatory bodies, including the Federal Bureau of Investigation and the Department of Justice, are pursuing investigations, prosecutions, enforcement actions and audits against municipal market participants across the country on an unprecedented scale.

Orrick has diverse expertise in federal and state securities laws relating to the sale and disclosure of virtually all types of securities, both in the initial and secondary markets. As a leading firm both in volume and complexity of issues, and as a top-ranked disclosure counsel and underwriters' counsel, Orrick has dealt with a wide range of disclosure issues in public finance and is known as the firm of choice when difficult disclosure issues are involved. We also were at the forefront in assisting issuers in complying with the continuing disclosure requirements imposed by SEC Rule 15c2-12. Orrick is known and respected by rating agencies, bond insurers, banks, regulators and others in the municipal markets and our credibility with these participants contributes to our ability to serve our clients well.

#### **b. Municipal Infrastructure Privatization/Asset Sales**

As mentioned previously, Orrick has experience in the privatization of a number of municipal assets. As an example, last year we counseled the City of Rialto in California in the transfer of its municipal water and wastewater system to private ownership. Orrick represented the Sacramento Municipal Utility District in its sale of an under-construction 128 MW wind farm in Northern California to a subsidiary of Citigroup Global Markets. Orrick also represented Corix in negotiating and closing a 50-year concession agreement to operate the utility systems of the University of Oklahoma. The project includes the operation and management of the university's potable water distribution, wastewater collection and chilled water production and distribution, along with a number of energy utility services.

Orrick also represented the lead arrangers and swap providers in the \$4.9 billion financing of the 75-year concession for the Indiana Toll Road purchased by a Macquarie Infrastructure Group/Cintra consortium. This project is the largest U.S. toll road privatization transaction to date (closed 2006). This transaction was named *2006 Americas' Overall Project Finance Deal of the Year* and *North American Transport Deal of the Year* by *Project Finance Magazine*. We also represented the mandated lead arrangers, in connection with the US \$1.1 billion PPP financing for the privatization and operation of the Chicago Skyway (closed 2006), named by *Project Finance Magazine* as *North American Transport Deal of the Year* for 2004.

Orrick also represented lead arrangers providing or submitting bids for financing of the privatization of the Chicago Metered Parking System, the proposed privatization of the Jose de Diego Highway in Puerto Rico, Alligator Alley in Florida, Pennsylvania Turnpike, California Lottery, a wastewater treatment facility in Mexico and airports in Mexico, Panama, Peru and Chile.

#### **c. Swaps and Other Hedges**

Derivative products are a mixture of municipal and corporate finance devices and concepts and require expertise in securities laws and related tax laws, including the Investment Company Act



of 1940, and tax laws, such as the rules governing contingent payment debt instruments, notional principal contracts, regulated investment companies, partnerships and grantor trusts (including the so-called "Sears Regulations"), not normally encountered in tax-exempt bond practice. As one of the few major bond counsel firms with a substantial asset securitization practice (generally ranked number one or number two by *The American Lawyer*) and related tax expertise, Orrick is uniquely suited to provide the specialized legal services required by this area. As a result, the firm has played an important part in its development. We have had extensive experience with the IRS, the SEC, and other government agencies that regulate this area, trade groups such as the Investment Company Institute, and the major buyers of derivative products and their counsel.

Orrick is also one of the few firms with significant experience with municipal interest rate swaps, partly as a by-product of our work in derivative products and of our assistance to the Public Securities Association and the International Swaps and Derivatives Association, Inc. and also as a result of representing issuers and underwriters in nonderivative original bond issues that involve swaps: for example, swaps to a fixed rate used in combination with variable rate bonds to produce lower interest rates than those available for fixed rate bonds, swaps to variable rates during construction to maximize investment income, and forward swaps in combination with variable rate bonds to approximate the economic effect of advance refundings, as well as other hedge instruments such as interest rate caps, floors, collars, "swaptions" and currency swaps. We have also represented swap counterparties and other providers of swap and other hedge instruments. The legislation granting California public entities the power to enter into swaps and other similar devices (which was the basis for the ISDA model swaps legislation) was drafted and lobbied by our firm, and we have participated in such legislation in other states (e.g., New York and Washington). We also have authored a book on swaps titled [Interest Rate Swaps: Application to Tax-Exempt Financing](#).

We have participated in a greater number and diversity of derivative product transactions than any other firm, since the beginning of 1990, have secured as principal counsel in well over 450 secondary market derivative transactions aggregating approximately \$15 billion in face amount of securities offered. Examples include:

- partnership structures creating synthetic floating rate and inverse floating rate obligations from fixed rate bonds
- tender option bond programs, utilizing third-party, non-issuer puts to turn fixed rate bonds into synthetic variable rate put bonds
- detachable call options
- various kinds of embedded swaps, caps and forwards
- municipal receivables financings
- municipal strips, which separate interest from principal payments to produce zero coupon instruments and several variations. Orrick drafted the federal tax legislation in 1986 that gave rise to the use of municipal strips.
- Synthetic advance refundings



- Anticipatory hedging programs for issuers

In addition, Orrick's unique wholly-owned ancillary corporation, Bond Logistix, LLC, ("BLX") an investment advisory firm registered with the SEC, provides investment product and swap advisory/monitoring, as well as cost-effective arbitrage rebate compliance services, post-issuance tax compliance and continuing disclosure services.

#### **d. Other**

Orrick represents over 250 local governmental issuers in New York State including counties, cities, towns, villages and school districts. Over the almost 30 years of such representation, lawyers at Orrick (we were elsewhere 1985-2000), have regularly represented such clients in general obligation note and bond transactions as well as, when the context has arisen, privatization of infrastructure and other facilities, creation of public authorities and sale or lease of infrastructure to a public authority and lease back by the municipality, advance refundings, and special legislation to permit deficit financing including authority to issue "double barrel" general obligation bonds.

Orrick has worked with a number of distressed municipalities in New York, including Nassau County, Rockland County, and various towns, villages and cities, including in particular the City of Long Beach which had devised a plan for fiscal recovery only to be derailed by Superstorm Sandy. Our work includes negotiations with state oversight entities, other state and federal agencies, rating agencies, insurers, and underwriters. We have been involved with debt restructurings, deficit financings, cash flow borrowings and asset sales including nursing homes, landfills, buildings and utilities. For example, we have worked with Nassau County for more than 10 years as it struggles to manage excessive tax refunds and revenue shortfalls all while under a state oversight entity. We have drafted and negotiated various state legislation to accommodate fiscal recovery for such distressed governments all while maintaining market access for capital and cash flow needs.

Orrick also has substantial experience in dealing with a wide range of structures involving the leveraging of taxes assessments and similar exactions, both at the state and municipal level. We have designed and drafted legislation to implement financing structures involving general taxes, special taxes, special assessments, subventions, allocations of taxes, and the sale of tax receivables. As such we are familiar with the issues concerning remedies on delinquency of the payment of taxes, assignability of those remedies to trustees or other financing parties, structures for reserves and reimbursement mechanisms to cover delinquencies and mechanisms to create security interest, including statutory liens on specific tax revenues which can survive post petition under the bankruptcy code.

Examples of Orrick's work in this regard include the following:

- Creation of the so-called "Teeter Notes" financing structure, which involved legislation allowing California counties to sell property tax receivables into a trust in order to "factor" those receivables through the issuance of bonds;
- Development of various "intercept" programs allowing state tax subventions to local governments to be sent directly to bond trustees to secure municipal obligations under certain circumstances;



- Special legislation creating a statutory lien on certain parcel tax revenues for a hospital district that had emerged from a chapter 9 proceeding and needed a way to create a bankruptcy remote structure to raise working capital as a part of its workout strategy
- Creation of legislation and a financing structure allowing the sale and securitization of receivables of local governments owed to them by the state, and allowing a pooled receivables financing in order to obtain immediate funds for the municipalities (this project involved what we believe is the largest ever statewide municipal pool transaction, consisting of over 1200 municipalities)
- Participation in several workouts of assessment backed financings involving tender of bonds purchased at a discount by private parties in payment of the assessment liens, resulting in “upside down” development projects being restructured and able to proceed with development.
- Development of assessment and special tax refunding structures that allow some of the refunding savings to be used for new money municipal purposes without increasing the underlying assessments or special taxes.
- A wide variety of revenue bond structures involving municipal utilities, ports and airports, hotels and convention centers, cultural facilities, toll roads and bridges, parking facilities, transit systems, housing, health care facilities, and sports facilities, among others

## 5. Other Relevant Practice Areas

### a. Labor and Employment Relations

Orrick is one of the few full-service firms to have a globally renowned employment law practice. With more than 70 lawyers worldwide, our focus is on representing employers on their most important and complex employment law issues where the quality of advice and the representation we provide makes a difference in outcome.

Orrick’s global employment lawyers counsel clients on human resources policies, all aspects of employment disputes, severance agreements, discrimination and harassment issues and union and collective bargaining matters. Orrick’s lawyers are privileged to serve as strategic employment counsel to many of the most established multinational corporations and emerging new businesses.

In addition to seeking advice on various employment law issues, our clients regularly turn to us because of our extensive experience with high-profile litigation matters, such as major EEOC pattern-and-practice litigations, private class actions, wage-and-hour class and collective actions and injunction proceedings. Orrick’s lawyers work with clients’ in-house legal, management and human resources departments to develop a tailored and business-focused approach to meet objectives. We share our clients’ emphasis on preventive measures to minimize the risk of litigation and on resolving matters cost-effectively through alternatives such as mediation and early settlement conferences.

Orrick employment lawyers partner with our clients’ in-house legal, management and human resources departments in order to ensure our advice is tailored to the considerations that are unique



to each client's industry and each client's internal culture. We take the extra time to provide counsel that meets both the business and legal objectives of our clients.

Orrick lawyers share our clients' emphasis on preventive measures to minimize the risk of litigation and on resolving matters cost-effectively through alternatives such as arbitration and mediation. However, when civil litigation is unavoidable, Orrick's Employment Law and Litigation Group has an unprecedented record of courtroom success. The following is a list of the types of services we offer.

- Appellate actions
- Class action defense and avoidance
- Employment discrimination
- High-exposure individual claims
- Internal investigations
- Sexual harassment
- Employee benefits
- ERISA Litigation
- Wrongful termination
- NASD arbitration and litigation
- Wage-and-hour claims
- SOX Whistleblower claims
- Traditional labor law
- Trade secret litigation
- Global workforce strategies
- Law firm counseling and disputes
- Multijurisdiction compliance
- Expatriate and secondment arrangements
- Works councils/employee representation
- Workplace safety
- EEO and OFCCP audits
- Employment law counseling, particularly associated with local and cross-border mergers and acquisitions, downsizings and restructurings

Our recent experience with labor issues facing distressed municipalities is described in detail in Subsections 3.a and 3.d above.

## **b. Employee Benefits with Emphasis on Healthcare**

Orrick has a stand-alone Compensation and Benefits Group with extensive experience in tax-qualified retirement plan matters, health and welfare plan matters, benefit plan investment and benefit plan litigation. Our clients include public plan sponsors (both retirement plans and health/welfare plans) as well as a wide range of large and medium-sized corporations.

Tax-qualified plans (defined benefit and defined contribution) are the core retirement vehicle for most of our clients. Our Compensation and Benefits lawyers help clients establish and maintain their qualified plans. We draft and amend the plans for our larger clients, and prepare applications and submit plans to the IRS for determination letters.

We also have substantial experience with the restructuring of defined benefit pension plans (both public and private) and we have represented several municipalities with respect to the tax treatment of employer and employee contributions to union-based retirement plans. Our special relationships with leading compensation and actuarial consulting firms permit us to add unique value when governance, accounting, actuarial, valuation or reasonable compensation issues are implicated.



We represent several public retirement plans in connection with their plan investments and fiduciary responsibilities. As a result, we are very familiar with the application of the “exclusive benefit”, “prudent investor” and similar standards to the investment of public plan monies, and the fiduciary duties of public plan administrators with respect to participants and beneficiaries.

In addition, we partner with our clients to develop best practices for health and welfare benefit plan compliance. We assist our clients with understanding their statutory fiduciary obligations and responsibilities under with respect to health and welfare benefit plan participants and vis-à-vis insurance companies acting as insurers or third-party administrators. We work with our clients to negotiate agreements, such as pharmacy benefit management agreements and benefits administration agreements, with their service providers.

With the recent enactment of health care reform legislation, the compliance challenges affecting health and welfare plans have become increasingly urgent and complex. We help our clients anticipate and navigate the shifting landscape of health and welfare benefit plan regulation, including health care reform guidance and regulations.

Professionals in our Compensation and Benefits Group will be available to advise the City as it seeks to modify, reform or cancel its current benefits packages so that the City's actions are consistent with current laws and regulations.

### **c. Retiree Pension and OPEB**

Our bankruptcy and restructuring lawyers work closely with lawyers in our benefits and compensation group to ensure that we provide our clients with the best possible results. We have assisted clients in working through the rights of plan beneficiaries when corporate or municipal clients face financial challenges. We understand the rights of the parties and the way these rights can be modified in a restructuring or bankruptcy as is evident in both the Stockton and Vallejo matters. For more details, see the description of our work in Subsections 3.a, 3b and 5.a above.

### **d. Environmental Law**

Orrick’s environmental law specialists advise clients on the environmental law and permitting aspects of a variety of transactions, including public and private bond offerings. Over the past five years, the team has advised on hundreds of transactions, providing environmental diligence and analysis, working with consultants and regulators, negotiating environmental and permitting provisions and pollution liability insurance policies, and advising on post-acquisition compliance, integration and remediation issues. Orrick offers broad experience with a diverse set of complex, sophisticated financing transactions and an ability to quickly analyze environmental and permitting issues and assess their severity in the context of each individual transaction. Orrick maintains a distinct, broad-based transaction focus to “get the deal done” and resolve potentially material issues, while managing local counsel relationships to ensure seamless coordination of environmental diligence reviews and negotiations in large-scale transactions.



The likelihood that environmental issues may become significant in the City's restructuring or bankruptcy are somewhat limited, but may arise should the City decide to pursue certain asset sales and find that the asset to be sold has environmental issues. Environmental issues that require remediation also may occur in connection with an asset that is becoming or developing a problem that is costly to remediate. While both the federal and state governments have established and will enforce environmental standards and procedures that are required to be followed to remediate any hazard, the City's ability to negotiate reasonable terms and timetables for remediation could pose additional financial challenges for the City. We have the experienced attorneys who can assist the City under either of these, or other, scenarios that may arise.

### **e. Procurement Law**

Orrick's public procurement practice constantly ranks among the leading practices in this area. The public procurement practice group regularly advises private companies and banks, as well as public authorities, on complex international and national public procurement matters. In addition, our public finance lawyers often are called upon by their clients to assist in developing requests for proposals for various professionals, such as financial advisors, trustees, underwriters, verification agents and others.

Orrick offers a complete range of services in the government procurement and contracting arena, serving corporate clients contracting with governmental entities, as well as assisting governmental entities in the fulfillment of their public contracting roles. Apart from conventional procurement arrangements, we have extensive expertise regarding grants, cooperative agreements and other government-industry partnership arrangements, including for R&D initiatives. We provide day-to-day counsel and representation to clients on public procurement matters in the following areas:

- Structuring the procurement process
- Compliance with bid specification and related regulatory requirements
- Prime and subcontractor relationships
- Formation of joint venture arrangements and teaming agreements for government contracts
- Internal investigations of alleged or suspected violations of procurement rules
- Defense against government enforcement actions for alleged procurement violations
- Confidentiality counseling and arrangements
- Public records and FOIA issues
- Defending intellectual property rights in government contracts
- Pre-bid protests
- Protests after notice of intent to award
- Administrative and judicial proceedings concerning contract awards and disputes
- Corporate programs for compliance with procurement requirements
- Contract disputes and sanctions.

Our public procurement practice group has extensive litigation experience in procurement disputes before national and international courts, including the European Court of Justice. We also



assist clients in establishing procurement compliance programs and in negotiations with public authorities in debarment proceedings.

In the domestic and international government contracting arena, we assist clients with corporate compliance investigations, False Claims Act matters, and have extensive experience in advising clients with respect to the Foreign Corrupt Practices Act. International government contracting disputes are often resolved through arbitration and we have an extensive international arbitration practice with an impressive track record in nearly all parts of the globe. In addition, Orrick's Global Corporate Solutions practice assists our international government contracting work by providing multi-jurisdictional compliance activities vital to government contracting including data privacy, codes of corporate and employee conduct, and regulatory and legal compliance in dozens of international jurisdictions.

We are confident that Orrick attorneys can assist the City with all of its procurement needs.

#### **f. Public Private Partnerships**

The City may be interested in monetizing some of its assets to avoid insolvency and entering into a P3 may be a viable option. Orrick's unmatched experience, combined with our unique dual strengths in public and project finance, have enabled the firm to play a key role representing private developers, financial institutions and public agencies on P3 transactions. Our experience encompasses the full range of public-private collaborations, from early development and construction planning phases to the later stages involving the arrangement of permanent financing, including securitizations and privatizations.

We also help public and private sector issuers, investors and financiers establish innovative contractual and financing programs for infrastructure and services. We have an excellent understanding of the full range of political, practical, financial and legal issues connected to P3s and of the challenges that may arise for investors, lenders and public entities, in addition to serving as leading legal counsel involved in the recent rise in the privatization of infrastructure in the United States.

**Carlsbad Desalination Facility.** Orrick was finance counsel for California Pollution Control Financing Authority in connection with a financing of a desalination facility to be owned by Poseidon Resources and a pipeline for San Diego County Water Authority. This transaction was honored as the Water Deal of 2012 by Project Finance Magazine.

**Presidio Parkway (California).** Orrick represented the lenders in connection with the \$166.6 million financing that closed in June 2012, for the construction, operation and maintenance of the elevated roadway from the southern end of the Golden Gate Bridge into San Francisco, California. Funding for the project includes a combination of equity, bank debt (Orrick represented the banks in connection with the bank debt portion of the financing) and TIFIA loans. Hochtief and Meridiam (as the winning bidder for the concession) were the sponsors. The \$1.1 billion deal is the first transportation P3 project in California under the recently enacted P3 statute, Streets and Highways Code section 143, and only the third highway project developed through an availability payment structure. The project successfully overcame litigation challenges at the Alameda County



Superior Court, 1st District Court of Appeal and California Supreme Court, where opponents tried to stop the project as a P3. The litigation ended on Nov. 16, 2011, after almost a year, and enabled the P3 to reach financial close.

**North Tarrant Expressway.** Orrick represented JPMorgan Securities, Inc., as the underwriter, in connection with a contemplated \$400 million principal amount Private Activity Bond issuance representing the senior financing for the public-private partnership concession by the Texas Department of Transportation of the North Tarrant Express Project near Fort Worth, Texas, to a consortium composed of Cintra, Meridiam and the Dallas Police and Fire Pension System. The concession is for the construction, operations and maintenance of Managed Lanes along the North Tarrant Express for a 52-year term. The total financing for this Project is estimated at \$1.5 billion. *Infrastructure Journal* named the North Tarrant Express Project their 2009 "Global Transport Deal of the Year."

**Pocahontas Parkway.** Orrick represented Transurban Ltd. in the \$608 million acquisition of a 99-year concession for the operation and maintenance of the Pocahontas Parkway, a Virginia toll road constructed in 1998 with tax-exempt bonds. *International Finance Law Review* named this transaction "Americas' Project Finance Deal of the Year" in 2007.

**Capital Beltway HOT Lanes** – Represented the sponsors (Transurban Limited and Fluor Corp.) in connection with the \$1.9 billion Capital Beltway HOT Lanes Project in Virginia (closed June 2008). Capital Beltway was the first project involving the use of tax-exempt private activity bond financing for a transportation facility in the U.S. and is the first managed tolling system in the U.S. that employs a dynamic pricing system. It is the largest-ever greenfield toll road project in the U.S. to include a private equity component.

**Chicago Skyway.** Orrick represented Banco Santander Central Hispano, S.A., Calyon Corporate and Investment Bank, BBVA and DEPFA Bank plc, as mandated lead arrangers, in the financing of the \$1.8 billion purchase by a private consortium of a 99-year concession for the Chicago Skyway. This transaction was named "North American Transport Deal of the Year" for 2004 by *Project Finance*. In 2005, Orrick represented the mandated lead arrangers in additional bank loans structurally subordinate to the project bonds, and this deal was recognized by *International Financial Law Review* as "Deal of the Year" for 2005.

**City of Pittsburgh Parking.** Orrick served as lead counsel to JP Morgan Asset Management and Laz Parking consortium in winning \$452 million bid for long-term lease of City of Pittsburgh, PA public parking facilities.

**A Large New York City-based Owner and Operator of Parking Centers.** Orrick is representing BBVA as agent in a \$350 million senior secured financing to a large New York City-based owner and operator of hundreds of parking centers throughout New York City. Orrick also assisted with the restructuring, which involved extending the maturity providing for new financial covenants, modifying covenants for the debt service reserve account, modifying obligations for the hedging of risk permitting a letter of credit transaction that would rank *pari passu* with the secured debt under the credit agreement, and modifying the amortization schedules.



**LIPA.** Orrick is advising the State of New York in connection with the privatization of the Long Island Power Authority, including drafting legislation for the State of New York for the securitization of stranded cost and storm recovery costs.

## **6. Conflicts of Interest**

We have performed the necessary conflict checks and have found that there are no current conflicts of interest related to advising the City on this matter based on the information that is available to us right now. If engaged, we will need to perform additional conflicts checks as we identify new parties who may be adverse to the City and with whom we must negotiate to represent the City's interest. While we are not aware of any potential conflicts, should one arise we will handle the matter consistent with our ethical responsibilities.

## 7. Proposed Approach and Timetable

Development and execution of a comprehensive restructuring strategy has to be guided by (1) the particular circumstances the City faces and its current fiscal situation and (2) the goals the City wants to accomplish.

### Where the City is Today

- The City has suffered from rising, sustained unemployment rates, depressed personal incomes, massive loss in population (losing a quarter of its citizens in the period from 2000 to 2010), record levels of mortgage delinquencies, and persistent softness in the regional housing market. As a result of the recessionary economic environment and unprecedented unemployment levels, the City has witnessed significant reductions in personal income tax revenues, high residential foreclosures and very high property tax delinquencies.
- The City has \$15 billion in outstanding debt and unfunded liabilities, including unfunded actuarial liabilities for pensions and other OPEB of \$616 million and \$5 billion, respectively (as of June 30, 2011), and an approximate \$480 million (as of January 1, 2013) mark-to-market liability relating to the interest rate swap agreements entered into in connection with the City's 2006 pension obligation certificates of participation.
  - The City has \$1 billion of limited and unlimited general obligation bonds outstanding, of which more than \$250 million are non-callable, potentially making an out-of-court restructuring more difficult.
  - All bonds are insured and some insurers have themselves restructured or disappeared.
  - Retirees receiving pensions and/or health benefits make an out-of-court workout extremely difficult.
- The City has an accumulated unassigned deficit in the General Fund of \$326.6 million as of June 30, 2012, resulting from operating deficits over the last several years.
- As of September 2012, the City projected a cash deficit of \$122 million for fiscal year ending June 30, 2013, which some suggested could grow to \$150 million. February 2013 projections are for a modest \$6 million surplus, but there is concern that historical projections have often been inaccurate.
- Bond insurers and counterparties have had high profile, experienced restructuring professionals focused on Detroit's debt and swap obligations for many months.
- The standstill agreement between the City and the swap counterparties has expired, permitting swap counterparties to declare an Early Termination Event with respect to the swaps.
- Pursuant to a consent agreement entered into on April 4, 2012 (the "Financial Stability Agreement"), the City and the State, acting through the State Treasurer, have agreed to jointly exercise powers relating to the financial affairs of the City, including, but not limited to, public finance, budgeting and certain administrative matters as is permitted under the Local

Government Fiscal Responsibility Act, Act 72, Public Acts of Michigan, 1990 ("Act 72"). Under the Financial Stability Agreement, a nine-member financial advisory board (the "Financial Advisory Board") was appointed to oversee the City's finances. However, over the past three months, in spite of the Financial Stability Agreement and the work of the Financial Advisory Board, several actions have transpired in the City that are expected to lead to the appointment of an EFM in the City.

- On December 14, 2012, the Treasurer informed the Governor that he had completed a preliminary review of the City's finances and had determined that there was a "serious financial problem" with the City's finances. To comply with Act 72, and based on the finding of a "serious financial problem" in the City, the Governor appointed a financial review team (the "Detroit Review Team") on December 18, 2012, to undertake a more extensive financial management review of the City. On February 19, 2013, the Detroit Review Team issued its report to the Governor, concluding that a local government financial emergency currently exists within the City. On March 1, 2013, in response to the report of the Detroit Review Team, the Governor declared the City to be in a "financial emergency," which allows the Governor, acting through the Local Emergency Financial Assistance Loan Board, to appoint an Emergency Financial Manager ("EFM") in the City. Although the City has a 10 day appeal period to dissuade the Governor from appointing an EFM, in light of the recent developments and actions by the Governor, it seems more likely than not that an EFM will be appointed for the City within the next week to 10 days.
- On December 27, 2012, the Governor signed a new bill, the Local Financial Stability and Choice Act, Public Act 436 of 2012 ("Act 436"), which will replace Act 72 as the act governing the operation of local government units experiencing financial stress and which becomes effective on March 28, 2013. If an EFM is appointed in the City before Act 436 becomes effective, under Act 436, such person will automatically become an Emergency Manager as of March 28, 2013. Act 436 retains many of the provisions of Act 4 and provides that the Emergency Manager shall act for and in the place and stead of the City Council and the Mayor and shall exercise all of the powers prescribed by law to the City Council and the Mayor. In addition, Act 436 empowers the Emergency Manager to, among others things, (1) amend, revise, approve or disapprove the budget of the City and limit the total amount of funds appropriated or expended; (2) receive and disburse on behalf of the City all federal, state and local funds earmarked for the City (these funds may include, but are not limited to, funds for specific programs and the retirement of debt); (3) reject, modify or terminate one or more terms and conditions of an existing contract; and (4) act as the sole agent of the City in collective bargaining with employees or representatives and approve any contract or collective bargaining agreement.

### Where the City Wants to Be

Based on our experience assisting other municipalities in restructuring efforts, we assume the City wants to accomplish the following goals. Our recommendations heavily depend on the City's actual goals and will need to be modified accordingly.



- Implement a long term solution to restructure the City's contractual and debt obligations and to stabilize City's financial condition, in the shortest reasonable time frame with the fewest roadblocks.
  - The restructuring plan must enable the City to be a sustainable local government providing for the health, safety and welfare of the City and its citizens in a predictable manner.
  - The restructuring plan must enable the City to be solvent from both a budgetary and service delivery standpoint.
  - The restructuring plan must be founded on principles of fairness and equity.
  - Optimally, the restructuring plan will maintain the tax-exempt status of all outstanding tax-exempt bonds.
  - Legislation will need to be enacted by the state permitting the City to (1) issue long term working capital bonds to shore up City operating revenues and (2) fund its accumulated deficit.
- Implement a current operational restructuring with the resources on hand.
- Establish a plan to rebuild reserves and restore service levels over time.
- Restore the City's access to the capital markets and return the City to an investment grade credit rating as expeditiously as possible.

## Roadmap to Achieving the City's Goals

We understand that the restructuring counsel selected by the City is expected to develop a detailed project plan by March 31, 2013, which is intended to be implemented by September 30, 2013. Outlined below are our thoughts on such a plan and a proposed timetable for implementation. In developing the plan outlined, we have assumed that we will have access to any analysis of existing contracts undertaken by the City or its advisors, that we will receive copies on any summaries that exist of any contracts and that there will be a consensus among relevant parties as to which are the critical agreements to be addressed and what the optimal strategy will be for resolution. We have further assumed that the City will not encounter undue resistance to implementation of the plan from interested third parties such as creditors, unions, pension plan trustees, and similar interest groups. We have assumed, as well, that there will be cooperation and expeditious action among all of the parties who may have an essential role in resolution of Detroit's financial crisis such as the elected and appointed leadership of the City, the elected leaders of the State of Michigan, the EFM, if appointed, the Financial Advisory Board, and others.

Finally, we note, based on our experience in other municipalities, that the City's goal to implement a plan of restructuring is very aggressive. We will do all within our power to provide the legal analysis and advice to get to your goal, but in the final analysis much will depend on the response of interested third parties to the City's plan and cooperation and collaboration between and



among the City and all of the interested parties who must agree on strategies and tactics and approve the actions that are taken on behalf of the City by its retained advisors and counsel.

The plan has three phases. Phase I would involve consultation with all relevant parties to determine what significant agreements or contracts of the City should be reviewed with an eye toward reformation, rejection or confirmation. Drawing upon our knowledge of the City's capital structure and financial obligations, we anticipate that we could complete our due diligence of the City's material contracts relating to its bond obligations, labor agreements, vendor agreements and other agreements, as identified by the City, its advisers and other relevant participants, within two-three weeks. We estimate that Phase II, developing strategy to restructure the contractual obligations, would take approximately three to four weeks. Phase III is the implementation of the restructuring plan.

## **Phase I: Analyze Contracts, Labor Agreements, Financial Obligations and Other Claims**

### **Analyze Possible Restructure of Bond/Debt Obligations**

- Conduct a holistic, interdisciplinary review of bond documents, swap documents, collateral packages and perfection with “fresh eyes.”
  - Identify rights, claims, obligations, liabilities, setoffs and defenses of the City for possible leverage points in favor of the City.
  - Work with the City's financial advisers, determine value of collateral, if any, securing the City's bond and swap obligations and analyze the validity and priority of creditor security claims.
- Review outstanding debt with goal to refund as much as possible for interest rate savings, extend maturities and reduce current debt service obligations. Note that the existing creditors may be the logical purchasers of any refunding obligations as they already have the credit exposure.
- Review bond insurance policies for possible advantages for negotiating a discounted repayment of bonds in restructuring.
- Identify any unspent bond proceeds and determine if they can be used as a part of the restructuring.
- Analyze overlapping and differing interests of bondholders, swap counterparties, and bond insurers and the possibility of achieving 100% consensus on an out-of-court restructuring.
- Evaluate modifications, if any, which should be made to covenants, events of defaults, coverage requirements, maturities or other provisions as part of the restructuring. We understand that while the City has nearly \$3 billion in bond obligations outstanding, such debt relates to five types of bonds, and some is revenue debt of the City instrumentalities. We have provided a summary of each type of bond debt as **Appendix A**.

- Consider whether and to what extent a permanent “haircut” is needed from bond creditors to make the City’s overall restructuring work.
- Examine all ways in which debt could be used to restructure, extend, reshape, reduce or refinance outstanding debt.
- Consider whether any general obligation bonds can be moved to special revenue bonds (e.g. if used to finance revenue producing enterprises).
- Review City’s 2006 Pension Obligation Certificates and related service contracts. Based on our representation of the City, we already have a deep understanding of the swap obligations owed by the City relating to the 2006 Pension Certificates of Participation. We have provided a summary of the City’s swap obligations as **Appendix B**.
- Re-analyze swap agreements to consider the possibility of restructuring the swaps, the main objectives being:
  - Avoid declaration of an acceleration by the swap counterparties.
  - Renegotiate various financial terms of the swaps (including collateral, coverage ratio defaults, interest rates) to ensure an efficient and comprehensive debt restructuring.
  - Engage with insurers/swap counterparties, as appropriate, regarding amendments to swap agreements.
- Evaluate possible causes of action against certain third parties.
- Identify other political sensitivities or hot buttons.

### Analyze Labor Agreements

- Working with the City’s managers, financial advisors, counsel, pension experts and other advisors, analyze each of the City’s labor agreements to determine which labor and pension agreements, if any, are burdensome and should be rejected by the City as part of a “pre-negotiated” chapter 9 case.

### Analyze Other Material Contracts

- Working with the City’s managers and outside professionals and financial outside professionals, analyze the City’s other material agreements (i.e. in excess of \$2.5 million) to determine which agreements are burdensome to the City and should be rejected as part of a “pre-negotiated” chapter 9 bankruptcy case.
- Analyze all potential sources of new revenues, all assets for potential sale or leveraging.
- Consider potential ways to improve cash flow management.

### Address Potential Issues Relating to Other City Debt Obligations

- Analyze debt issued by other City agencies and instrumentalities for (a) potential restructuring for cost savings and (b) cross-defaults with the City’s GO debt, (c) being adversely affected by the City’s fiscal problems.

- School District of the City of Detroit (dba "Detroit Public Schools")
- City of Detroit Building Authority
- City of Detroit Department of Environmental Affairs
- City of Detroit Downtown Development Authority
- Detroit CTFS Partners
- Detroit New Public Health Authority
- Detroit Water and Sewerage Department
- Detroit Wayne County Stadium Authority
- Review the enterprise funds to determine which have operating losses or are heavily dependent on general fund transfers and capital contributions and recommend changes.

## Phase II: Develop Strategy to Restructure Obligations

- In conjunction with the City's financial advisor, analyze and determine an appropriate level of sustainable debt and operating budget for the City to provide adequate services.
- Working with the City's financial advisor, formulate a restructuring plan that focuses on the City's bond, COPs and swap liabilities, labor contracts and unfunded pension and other post-employment benefits.
  - Develop terms of restructuring of obligations: interest rate, maturity date, moratorium on payments, amortization schedule, source for payment, pledge of collateral, issuance of new bonds, special tax assessment payable over a number of years, securitization proceeds, proceeds from sale of assets.
  - Work with the City's financial advisor to classify claims in a manner that facilitates having a plan approved by the requisite number and amount of each class of interested parties.
- Working with the City's managers, financial advisors, counsel, pension experts and other advisors, develop a negotiation strategy that will enable the City to avoid rejecting labor agreements, but will allow the City to prove that it bargained in good faith in the event that rejection is necessary.
- In consultation with the City officials, the EFM, the Governor's office, State Treasurer and/or legislature, as appropriate, develop consensus to do long-term borrowing, if necessary, to enable the City to pay working capital expenses and finance its accumulated deficit, seek legislation if necessary, identify security for the debt that makes the debt marketable.
- May need special legislation to provide high level of security through statutory lien/intercept of revenues to secure new debt. Recognize that borrowing is a reasonable alternative to fund a one time deficit but does not work without a long term structurally balanced budget.
- Working with the City's managers, financial advisors, counsel, and other advisors, make recommendations for modifications, if any, that should be made to key terms of existing debt

such as covenants, events of defaults, coverage requirements, maturities or other provisions as part of the restructuring, and prepare a term sheet identifying the terms for restructuring each of the long-term debt obligations. For example, eliminating or modifying the prepayment restrictions. A summary of some of the material terms of the different types of bonds issued by the City is attached as **Appendix A**.

- Working with the City's managers and outside professionals, review lawsuits in which the City is the defendant and develop a strategy for dealing with each suit. Our experience with Vallejo and Stockton cases is that tort and excessive force lawsuits can be settled favorably before and during the bankruptcy case, as plaintiffs are willing to trade dollars for certainty and speed. On February 5, 2013, we obtained a ruling in the Stockton case that bankruptcy court approval of such settlements is not required due to the statutory and constitutional limitations on the ability of the bankruptcy court over chapter 9 debtors.
- Enter into settlements of suits satisfactory to the City.
- Prepare a notice of stay to be filed in each pending lawsuit in which the City is a defendant.

### Phase III: Implement Plan for Expedient Restructuring

#### **Recommendation: Dual Track – Out-of-court negotiation with creditors while preparing documents for a voluntary chapter 9 petition**

While the City's primary focus should be on achieving a consensual resolution with all parties to essential contracts, if a resolution cannot be reached, the City may have little choice but to consider seeking chapter 9 bankruptcy relief. Since the requirements to obtain authority to file a chapter 9 petition under Michigan and federal laws are time-consuming and have significant political ramifications, the City should seek a consensual resolution while simultaneously preparing for a chapter 9 filing.

- Refund as much of the outstanding debt as possible for interest rate savings, extend maturities, reduce current debt service obligations.
- Commence negotiations for debt restructuring by engaging with the insurers and their advisors; offer complete resolution of all outstanding debt.
  - Consider commencing negotiations with FGIC, Syncora and MBIA because of their exposure on general obligation bonds, COPs and swaps. These insurers may have a greater incentive to participate in a restructuring. Assured Guaranty is a major player in the Stockton case, having insured \$125 million of unsecured pension obligation bonds and \$40 million of certificates of participation secured by lease revenues from an office building that does not generate anywhere near the revenue to satisfy the payment obligation. Together, Assured (represented by Sidley Austin), National Public Finance Guaranty (Winston & Strawn) and Franklin Funds (Jones Day) are referred to in the case as the capital markets creditors. They have pursued a scorched earth strategy, litigating virtually every issue, pursuing extensive discovery, and doing everything in their power to make chapter 9 as expensive and as painful for Stockton as is possible. In one pleading, Assured actually asserted in response Stockton's fear that it would lose veteran police

officers if the draconian compensation and benefits cuts suggested by the capital markets creditors were instituted, that the city should fill police ranks by hiring some of the 20% of its population that is unemployed.

- Commence negotiations with swap counterparties and their advisors, perhaps initially focusing on those counterparties that are still in the municipal finance market who might be interested in participating in the City's exit financing (namely, Bank of America/Merrill Lynch, Morgan Stanley and Seibert).
- Approach financial institutions about using their balance sheet to assist the City to avoid need to undertake public transactions at time of significant uncertainty.
- Develop and draft a pre-negotiated plan of adjustment and plan support agreement.
- Determine how the City will finance a bankruptcy case, including amounts, structure, controls and benefits for lenders providing funds.
- Prepare defenses for potential challenges to pre-negotiated plan (including plan valuation and feasibility).
- Identify and plan for a chapter 9 alternative if 100% creditor approval is not attainable out-of-court,: working with the City's financial and other advisors, prepare a chapter 9 petition, creditor lists and other necessary pleadings, including pleadings demonstrating the City's eligibility for chapter 9 relief.
  - Prepare a motion to establish a bar date for filing of claims.
  - Reject labor, burdensome leases and other agreements.

### **Prepare Defenses to Any Potential Challenge to City's Eligibility to Be a Chapter 9 Debtor<sup>1</sup>**

- The City must be insolvent (either generally not paying its debts currently as they become due, or unable to pay its debts as they become due in the next fiscal year):
  - Working with the City's advisors, gather evidence that the City's insolvency is imminent and certain.
    - Analyze multi-year cash flows, legally available cash and reserves, the ability to reduce expenditures or borrow, and opportunities to lawfully postpone debt payments.
    - Determine amounts necessary for the City to continue to operate and provide at least a minimal level of services.

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<sup>1</sup> The filing of the chapter 9 petition does not mean that the municipality is eligible for bankruptcy relief (although the City will enjoy the benefit of the automatic stay enjoining, among other actions, creditors from commencing or continuing collection actions against the City). The bankruptcy court must first consider and rule on any objections to the bankruptcy petition challenging the City's eligibility to be a debtor. We believe the City can easily establish that it satisfies three of the five eligibility requirements: it is a municipality, it is authorized by the State of Michigan to file a chapter 9 case, and it desires to effect a plan to adjust its debts. The City, though, must be prepared to establish at the commencement of its bankruptcy case, if there is one, that it is insolvent, that it has endeavored to negotiate with its creditors before filing its petition, and that it has acted in good faith.



- Determine which City fund balances or reserves are subject to legal limitations or restriction on use and hence not legally available for cash flow purposes; determine if there are any unrestricted reserves available for cash flow purposes.
- Determine whether the City can sell any assets in order to avoid insolvency or do sale/lease back to get immediate cash but still have access to asset.
- The City must demonstrate that it tried and failed to negotiate a debt readjustment for its major obligations (including pension and health care and financial debt obligations, or that such negotiations are impracticable). It must be able to determine at least one of the following:
  - Obtained agreement of creditors holding at least a majority interest in each class of debt that the municipality intends to impair under a plan,
  - Negotiated in good faith with creditors but failed to reach an agreement,
- Unable to negotiate with creditors because negotiations are impracticable, or reasonably believes that a creditor may attempt to obtain an avoidable preference.



## 8. Proposed Fee Structure

As we have demonstrated in the past engagements with the City, we believe that the best approach to delivering both quality and efficiency is to build upon a core team with deep substantive expertise and experience in the specific legal issues faced by the City related to the restructuring of its operations. Our goal is to deploy the right lawyer or professional for the right task at the right cost. Such determinations will be made based on the level of experience and expertise required, as well as the cost of such individual, with the goal of optimizing quality and value. Orrick’s industry-differentiated “Talent Model,” which replaced “lockstep” advancement with a merit-based promotion model and introduced a variety of full-time career associate and other legal team professional roles to shift process-driven tasks to highly qualified specialists at billing rates significantly lower than those of “partner-track” associates, uniquely positions the firm to deliver the right talent for the right task at the right cost. We also are able to reduce costs (and provide 24/7 coverage) by utilizing our global operations center in Wheeling, West Virginia for many administrative tasks.

Orrick is committed to providing the City with the highest quality legal services for a cost that is fair and reasonable to the City and the Firm. For this engagement, we would propose to provide the City with the following not to exceed hourly rates, resulting in significant savings to the City: partners – \$795; counsel – \$695; associates – \$595; paralegals – \$250. These rates reflect a discount off of our standard hourly rates. We are also open to discussing an additional, incremental discount after reaching a mutually-agreed upon volume threshold. We are, of course, happy to discuss any other billing arrangement that the City would like us to consider. The following are the proposed discounted rates for the anticipated lead attorneys on this matter:

Name	Title	Rate
Lorraine McGowen	Partner	\$765
Marc Levinson	Partner	\$755
Pauline Schneider	Partner	\$665
Darrin Glymph	Partner	\$655
Nik Mathews	Partner	\$635
Tatjana Misulic	Of Counsel	\$555

As you are well aware, hourly rates are just one factor in the overall cost of legal services. At the end of the day, we believe that Orrick is best positioned to provide the City with the most cost effective representation due to the unique combination of (i) recent representations of other municipalities that have undergone or currently are in bankruptcy or restructuring proceedings and (ii) recent representations of the City, including assisting the City in connection with reaching



standstill agreements with the counterparties on certain outstanding swaps, serving as disclosure counsel to the City and instrumentalities or departments of the City on recent bond offerings and preparing disclosure for certain underwriters of the City's debt. These recent engagements have enabled us to become familiar with Michigan laws that provide the framework for Michigan municipalities to take advantage of the state and federal bankruptcy laws and to draft the detailed disclosure that potential investors needed to understand prior to purchasing such debt issued by the City. We have reviewed the disclosure documents relating to all outstanding debt of the City and, as set forth in **Appendix A**, have summarized essential provisions of the debt in anticipation of the possibility of restructuring that debt to relieve the City's current unmanageable debt burden. We are thoroughly familiar with the existing swap agreements relating to the 2006 Pension Obligation Certificates of Participation issued to help finance the City's unfunded pension obligations and can immediately step into negotiations with the counterparties to address the termination events that currently permit the counterparties to declare those obligations in default.

Our work over the past three years successfully shepherding two other municipalities through restructuring proceedings not only provides us with unmatched experience to advise the City with respect to what it can do outside of chapter 9 as well as what it must do in chapter 9, but it also enables us to do so in a more cost effective manner than any other firm. Stated simply, we will not be learning on the job. Although we are not members of the Michigan bar and will need to work with local counsel, we do understand Michigan law and the steps that the state can and must take to permit or force a municipality to restructure or file bankruptcy. Unlike other firms, we are not beginning at ground zero, either with respect to chapter 9 or with respect to working with the City. We are ready to begin work immediately, with a mature understanding of (i) the challenges the City faces, (ii) what state and federal laws provide as options for resolution, (iii) what has been successful in other municipalities, (iv) how bondholders, insurers, underwriters, counterparties and other market participants are likely to react and (v) what needs to be done to get to successful resolution of the fiscal and other obstacles the City faces. We believe we are your most cost effective choice to get the job done quickly, effectively and economically.

## **9. Model Contract Review**

We have reviewed the model service contract provided by the City and have a limited number of observations, which are attached as **Appendix D**.



#### IV. Conclusion

Thank you for the opportunity to submit this Proposal. We look forward to the possibility of representing the City on this important task. We hope the information included in this Proposal is responsive to your RFP and provides all of the information sought as succinctly as possible. If you would like any additional information, please contact me at (212) 506-5114. I look forward to hearing from you.

Sincerely,

Orrick, Herrington & Sutcliffe LLP

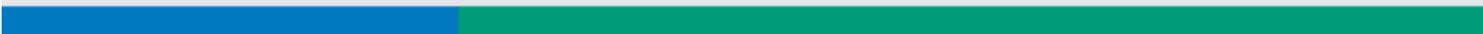
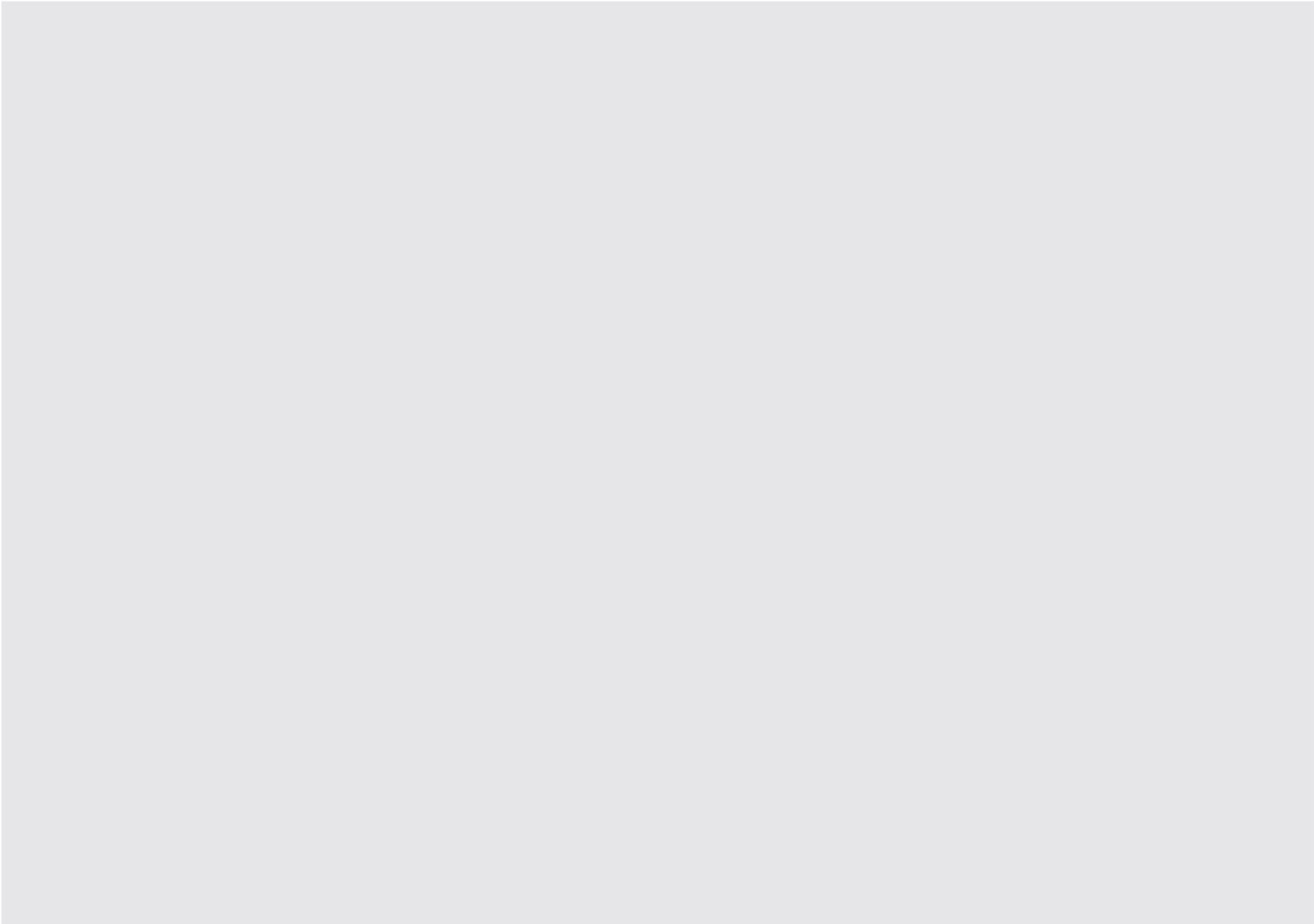
Lorraine S. McGowen

Partner

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## Appendix A – Summary Analysis of Sample City of Detroit Bond Obligations





<b>City of Detroit</b> <b>Michigan Distributable State Aid General Obligation (Limited Tax) Bonds</b> <b>Series 2010</b> <b>Revenue and Revenue Refunding Senior Lien Bonds</b> <b>Series 2012A (LTGO)</b>	
<b>Security</b>	Distributable State Aid*
<b>Collateral</b>	Any funds legally available to the City, as a first budget obligation, including, the proceeds of ad valorem property tax
<b>Events of Default</b>	<p>If the City:</p> <ul style="list-style-type: none"> <li>• fails to pay on any interest on any or all of the Distributable Aid Obligations on any date when such interest is due and payable</li> <li>• fails to pay on any principal or premium, if any, on any or all of the Distributable Aid Obligations, whether at the stated maturity or redemption thereof</li> <li>• fails to perform or observe any of its covenants in the Master Indenture unless: 1) default is cured within 30 days following receipt of written notice by the City from the Master Trustee or holders of 25% in principal amount of outstanding Distributable Aid Obligations of the same level of lien priority, (ii) if such event cannot be cured within 30 days but can be corrected without material adverse affect on the holders, the City takes corrective action during such period and diligently pursued until such default is corrected, and (iii) if by reason of force majeure, the City is unable in whole or in part to carry out any agreement on its part contained in the Master Indenture, other than payment of principal, premium, if any, or interest on Distributable Aid obligations, the City shall not be in default during the continuance of such disability</li> <li>• fails to make any deposits to a DSA Escrow Fund or sub-account of a DSA Escrow Fund as required by the Master Indenture or any Supplemental Indenture</li> </ul>
<b>Remedies</b>	Upon occurrence of event of default related to (i) Senior Lien Obligations, at the direction of holders of at least 25% in the aggregate principal amount of outstanding Senior Lien Obligations, and (ii) Subordinate Lien Obligations, at the direction of holders of at least 25% in the aggregate principal amount of outstanding Subordinate Lien Obligations, the Master Trustee will proceed to protect or enforce the rights of the Master Trustee and the holders, either by mandamus to compel the City to perform each and every covenant contained in the Master Indenture, or by injunction to prevent the City from taking any action in violation of said covenants.
<b>Covenants</b>	<p>The City:</p> <ul style="list-style-type: none"> <li>• will not make additional pledges or assignments of Distributable Aid superior to the pledge made in the Bond Resolution</li> <li>• will provide each November 1 so long as the bonds are outstanding to the Finance Director notice requesting the City engage bond Counsel to provide the Continuing Exclusion opinion</li> <li>• will provide notice to State Treasurer and the Master Trustee of each series of Additional Obligation secured and payable from Distributable Aid</li> <li>• will provide notice to State Treasurer and Master Trustee of defeasance or redemption of all or portion of Bonds</li> </ul>
<p>* Distributable State Aid means certain moneys received or to be received by the City, derived from the imposition of taxes by the State and returned to or to be returned to the City as provided by law under the State Constitution and Act 140.</p>	



<b>City of Detroit</b> <b>Michigan General Obligation Bonds (Unlimited Tax)</b> <b>Series 2008-A, 2008-B(1), 2008-B(2) (UTGO)</b>	
<b>Security</b>	Payable from the general funds of the City and secured by the full faith, credit and resources of the City
<b>Credit Enhancement</b>	Insured by Assured Guaranty Corp.
<b>Events of Default</b>	Failure to pay principal and interest on the Bonds when due.
<b>Remedies</b>	Outlined in Act 34 and the bond resolution; the rights and remedies of owners or holders of the Bonds and the enforceability of the Bonds, the bond resolution and Act 34 may be subject to and limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights, and the application of general principles of equity including those relating to equitable subordination, and the enforcement of such rights and remedies may also be subject to and limited by the exercise of judicial discretion in appropriate cases.
<b>Covenants</b>	The City is required by law to levy and collect ad valorem taxes upon all taxable property in the City, without limitation as to rate or amount, to pay principal of and interest on the Bonds when due.

<b>Detroit Retirement Systems Funding Trust Taxable Certificates of Participation Series 2006 (POC)</b>	
<b>Security</b>	<p>Secured by COP Service Payments. Service Payments consist of the following:</p> <ul style="list-style-type: none"> <li>• Contract Administer Payments</li> <li>• Service Charges (regardless of the Funding Rate methodology)</li> <li>• Regular Scheduled Payments</li> <li>• Sinking Fund Installments</li> <li>• Amounts in respect to Hedge Periodic Payables</li> <li>• Amounts in respect to Hedge Termination Payables</li> <li>• Optional Prepayments</li> <li>• Accrued Service Charges</li> </ul>
<b>Events of Default</b>	<ul style="list-style-type: none"> <li>• City fails to pay any 2006 Funding Trust Receivable as and when the same shall become due</li> <li>• City commences any proceeding or files any petition seeking relief under Title 11 of the U.S. Code</li> <li>• City consents to the institution of any such proceeding or the filing of any such petition, or</li> <li>• City makes a general assignment for the benefit of creditors</li> </ul>
<b>Remedies</b>	<p>Upon occurrence of an Event of Default , the Contract Administrator may and shall, at the request of the Certificate holders representing either (i) 25% in principal amount of outstanding Certificates, the payments on which have not been made as a result of such default, or (ii) at least 50% in principal amount of outstanding Certificates, enforce the Service Contract under which the event occurred by such remedies as are available to the Contract Administrator. Any money collected or received by the Contract Administrator from pursuing such remedies shall be applied in the order of the Service Contract Priority Sections, subject to any Creditor Lien.</p>
<b>Covenants</b>	<p><u>Service Corporation Covenants</u></p> <ol style="list-style-type: none"> <li>1. Service Corporations will irrevocably sell, assign and convey to the 2006 Funding Trust all of their rights to receive, collect and enforce all 2006 COP Service Payments due under the 2006 Service Contracts.</li> <li>2. Each Service Corporation covenants with the Contract Administrator, the 2006 Funding Trust, the Specified hedge Counterparties and the Other Corporation as follows: <ol style="list-style-type: none"> <li>(a) the Service Corporation shall not convey, transfer or assign funding Trust Receivables under its Service Contract or any interest therein to any Person other than the 2006 Funding trust;</li> <li>(b) the Service Corporation shall not convey, transfer or assign Hedge Payables under its Service Contract or any interest therein to any Person other than the Specified Hedge Counterparties;</li> <li>(c) the Service Corporation shall not convey, transfer or assign any Stated Hedge or any interest therein to any Person other than as provided in the Service Contract.</li> </ol> </li> </ol>
<b>Hedges and Related Termination Events</b>	<p>See <b><u>Appendix B</u></b>.</p>



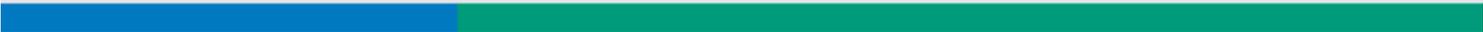
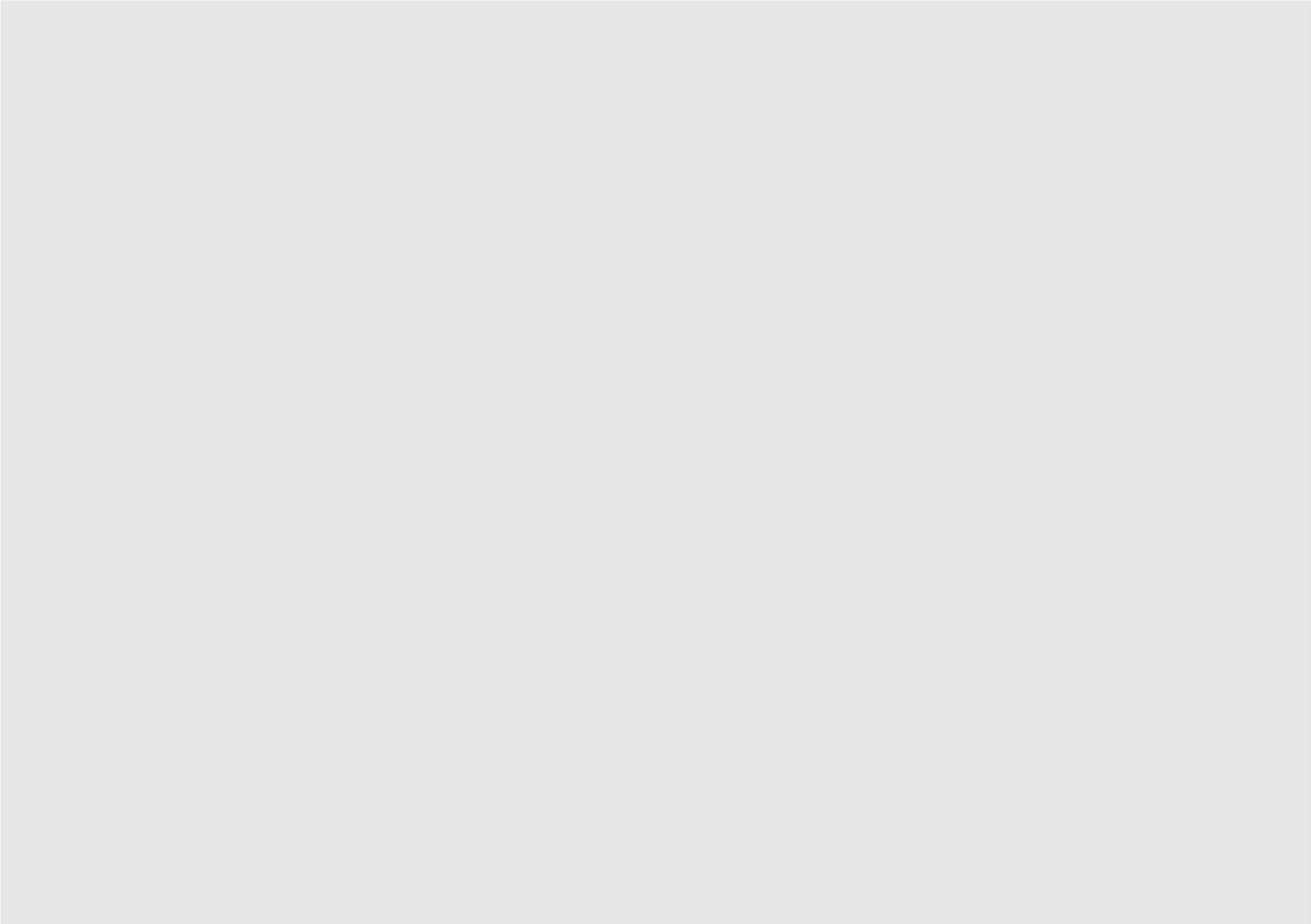
<b>School District of the City of Detroit            Wayne County, Michigan            School Building and Site Improvement Refunding Bonds            (Unlimited Tax General Obligation)            Series 2012A            (Public Schools)</b>	
<b>Security</b>	Payable from annual ad valorem tax to be levied on all taxable property in the School District without regard to amount or rate, and if such amounts are insufficient, with funds borrowed from the School Loan Revolving Fund.
<b>Collateral</b>	If the School is unable to pay principal and interest on the Bonds, the School District will borrow from the State's School Loan Revolving Fund.
<b>Events of Default</b>	See bond authorizing resolution.
<b>Remedies</b>	<p>In the event of the failure of the proper officials to certify taxes for the payment of the principal and interest requirements, a timely action could compel certification and collection of adequate taxes or could compel the District to make application to borrow the necessary funds from the School Loan Revolving Fund to prevent default. However, if the Transfer Agent for any bonds of the District qualified for State loans notifies the State Treasurer that the District has failed to deposit sufficient funds to pay on the bonds when due or if a bondholder notifies the Treasurer that the District has failed to pay on the bonds when due, whether or not the District has filed a draw request with the State Treasurer, the State Treasurer will promptly pay the bonds when due.</p> <p>If sufficient funds for payment of debt service on the Bonds do not reach the Transfer Agent five business days prior to the debt service payment due date, the Transfer Agent will notify the District of the amount of insufficient funds four business days prior to the due date. In the event that the District does not immediately cause to be deposited sufficient funds with the Transfer Agent, the Transfer Agent will notify the Michigan Department of Treasury of the deficiency three business days before the payment due date and the State Treasurer will make the payment.</p> <p>Registered owners of Bonds may attempt to obtain a money judgment against the District for the principal amount of the Bonds or interest not paid when due and may periodically attempt to enforce the collection of the money judgment by requiring the tax assessing officers for the District to place the amount of such judgment on the next tax rolls of the District. The rights of the holders of the Bonds and the enforceability thereof are subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights.</p>
<b>Covenants</b>	The District will certify taxes for the payment of the principal and interest requirements on the Bonds.

<b>Detroit Water and Sewerage Department  Sewage Disposal System  Revenue and Revenue Refunding Senior Lien Bonds  Series 2012A (Water and Sewage)</b>	
<b>Security</b>	Statutory lien on Pledged Assets*
<b>Credit Enhancement</b>	Insured by Assured Guaranty Municipal Corp.
<b>Events of Default</b>	Failure to pay any installment of the principal of or interest on any Senior Lien Bonds or Junior Lien Bonds
<b>Remedies</b>	<p>If there is a default, the Trustee may pursue any remedy permitted by law and the Bond Ordinance to enforce performance of or compliance with the provisions of the Indenture. Holders of at least 20% in the aggregate principal amount of outstanding bonds have the right:</p> <ul style="list-style-type: none"> <li>• to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the Indenture to bring legal action to enforce the statutory lien on Pledged Assets and compel performance of the duties of City officers to fix sufficient rates, collect and segregate Revenues of the Sewage Disposal System, and</li> <li>• cause a Court to appoint a receiver to administer and operate the Sewage Disposal System on behalf of the City.</li> </ul>
<b>Covenants</b>	<ul style="list-style-type: none"> <li>• To fix and maintain such rates for services furnished by the System as shall be sufficient to provide for the foregoing and to repay any borrowing from the Extraordinary Repair and Replacement Reserve Fund.</li> <li>• Keep the System is free from all liens and encumbrances.</li> <li>• The City will, through its Commissioners, or such successor board or body legally charged with the duty of the operation of the System, maintain the System in good repair and working order. The City will make all needful and proper repairs, replacements, additions and betterments to the System, and will install substitutes of at least equal utility and efficiency so that the value and efficiency of the System is maintained.</li> <li>• to keep proper books of record and account separate from all other records and accounts, and to cause an annual audit of such books.</li> <li>• City will not sell, lease or dispose of the System or any substantial part thereof until all outstanding securities have been paid in full.</li> <li>• City will not, and will not to the extent permitted by law, permit others to, operate a sewage disposal system that will compete with the System.</li> <li>• City will take all action and refrain from any action as is necessary, including paying any rebates to the US government that may be required by the Code so as not to impair the tax exemption of the interest on the Bonds.</li> </ul>
<p>* "Pledged Assets" means:</p> <ul style="list-style-type: none"> <li>• Net Revenues</li> <li>• Funds and accounts established by or pursuant to the Bond Ordinance except for the Operation and maintenance fund and the Construction Fund and any account thereof</li> <li>• Investments of amounts credited to any fund, account or subaccount that is a Pledged Asset</li> <li>• Any income or gain realized from investments that are Pledged Assets to the extent that such income or gain is not a Net Revenue</li> </ul>	

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## Appendix B – Swap Summary



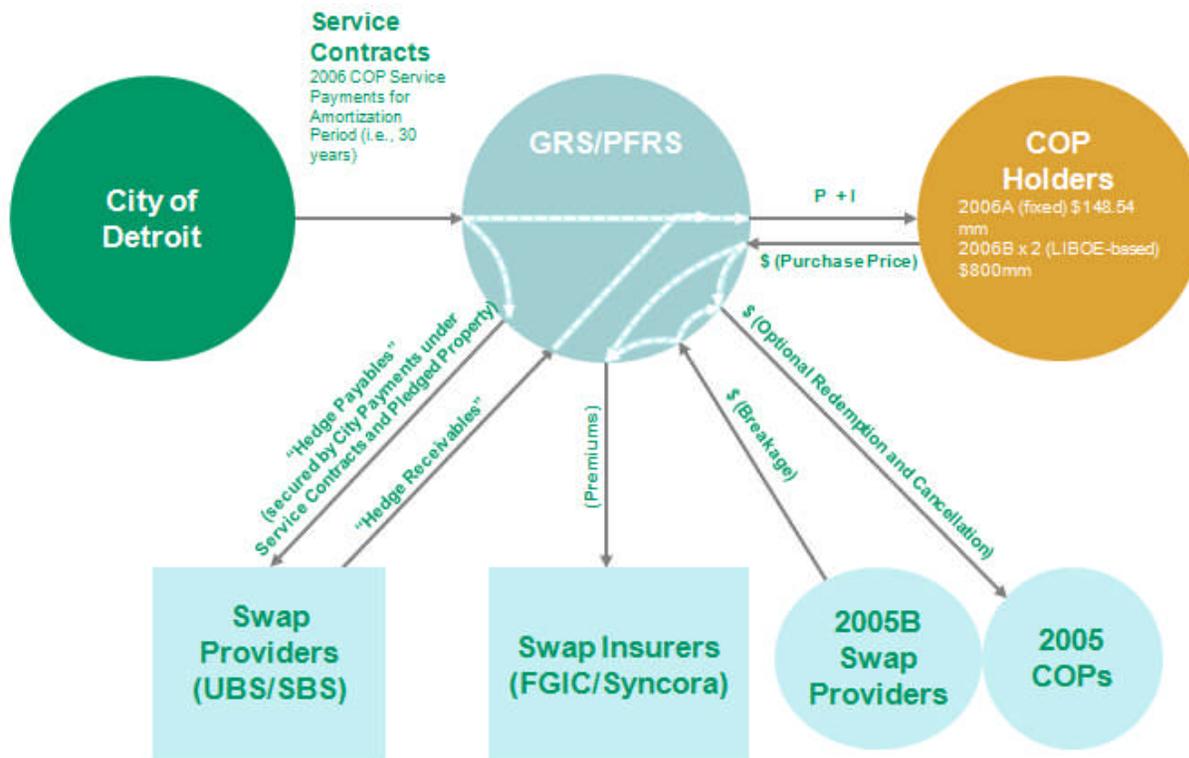


## SWAP SUMMARY

In connection with the issuance of the Certificates of Participation in 2006 (the “2006 COPS”), each of the Detroit General Retirement System Service Corporation and the Detroit Police and Fire Retirement System Service Corporation (together, the “Service Corporations”) entered into several interest rate swap agreements (collectively, the “2006 Swap Agreements”) with UBS AG and SBS Financial Products Company, LLC, as the swap counterparties (the “Swap Counterparties”). Proceeds from the 2006 COPS were used to repay the Certificates of Participation issued in 2005 and, together with early termination amounts from the swaps relating to those certificates, to pay premiums to the Swap Insurers (defined below).

Pursuant to the service contracts entered into in 2006 between each of the Service Corporations and the City (the “Service Contracts”), the Service Corporations’ payments under the 2006 Swap Agreements were payable from monies received by the City under the 2006 Service Contracts. Under the 2006 Swap Agreements, each Service Corporation hedged its variable rate exposure on the two series of 2006B COPS. (The Series 2006A COPS pay a fixed rate of interest, so there was no need for the Service Corporations to hedge interest rate exposure.) Each obligation of the Service Corporations to the Swap Counterparties is insured by a swap surety bond issued by either Financial Guaranty Insurance Company (“FGIC”) or Syncora (formerly XL Capital Assurance Inc.) (together with FGIC, the “Swap Insurers”). A summary of the swap transactions entered into in 2006 is as follows:

<b>SWAP AGREEMENTS RELATING TO THE 2006 COPS</b>		
<b>2006 Swap Agreement</b>	<b>Swap Insurer</b>	<b>Initial Notional Amount</b>
UBS AG and GRS Service Corporation	FGIC	\$96,621,000
UBS AG and PFRS Service Corporation	FGIC	\$153,801,500
UBS AG and GRS Service Corporation	Syncora	\$45,252,000
UBS AG and PFRS Service Corporation	Syncora	\$104,325,500
SBS Financial Products/Merrill Lynch and GRS Service Corporation	FGIC	\$96,621,000
SBS Financial Products/Merrill Lynch and PFRS Service Corporation	FGIC	\$153,801,500
SBS Financial Products/Merrill Lynch and GRS Service Corporation	Syncora	\$45,252,000
SBS Financial Products/Merrill Lynch and PFRS Service Corporation	Syncora	\$104,325,500



Upon the downgrade of the 2006 COPS in January 2009, a termination event occurred under the swap documents that permitted the Swap Counterparties to terminate the swaps. In the event of such an early termination, the Service Corporations would have owed the Swap Counterparties \$300-\$400 million in breakage payments. In June 2009, each Swap Counterparty waived its right to accelerate the swaps in connection with the 2006 COPS downgrade and the 2006 Swap Agreements were renegotiated (as modified, the "Swap Agreements"). As part of the 2009 restructuring, certain Additional Termination Events were added for the benefit of the Swap Counterparties. The City also pledged additional security (including Wagering Tax Property) to the Swap Counterparties under a new Collateral Agreement, dated as of June 15, 2009, among the City, the Service Corporations, U.S. Bank National Association, as custodian, and certain other persons.

### Events of Default

Pursuant to the Swap Agreements, each Swap Counterparty has the right to terminate its swaps upon the occurrence of certain events, including but not limited to:

- *Failure to Pay, Misrepresentation, Breach of Agreement, Merger Without Assumption, Credit Event Upon Merger, Bankruptcy, Credit Support Default (including a default under, or termination or repudiation of, the Service Contract and the Contract Administration Agreement or the Collateral Agreement).*
- *Cross Default (on debt)* – The Service Corporation defaults under an agreement for borrowed money in excess of \$10 million, subject to a 3 Business Day cure period for administrative and operational errors.
- *Authority; Repudiation* – The Service Corporation ceases to have the authority to pay on the swaps or a governmental entity with jurisdiction over the Service Corporation enacts any legislation that would have the effect of repudiating the swaps.



- *Security* – The swaps cease to be payable and secured by the City's payments to the Service Corporation under the 2006 Service Contracts.

### Additional Termination Events

Each Swap Counterparty also has the right to terminate its swaps upon the occurrence of certain events called Additional Termination Events. As a result of extensive negotiations with the counterparties, the following Additional Termination Events were added:

- The Swap Insurer fails to have a claims-paying ability of at least "A-" from S&P or a financial strength rating of at least "A3" from Moody's and an Event of Default or Termination Event is occurring with respect to the Service Corporation.
- The Swap Insurer is in liquidation or another "Insurer Event" occurs and an Event of Default or Termination Event is occurring with respect to the Service Corporation.
- "City Payments" (generally, monthly amounts payable by the City under the Collateral Agreement) in any month are less than the "Holdback Requirement" (generally, the monthly amount payable to the custodian plus one-third of the quarterly amounts payable by the Service Corporation).
- The City fails to appropriate for a fiscal year City Payments as a "first budget" obligation of an amount at least equal to Regular Custodian Payments plus hedge payables (subject to a minimum).
- Quarterly Coverage as of the end of a month is less than 1.75.\*
- Either (i) the 2006 COPS become rated below either "BB" or "Ba2" and the most recent month's Quarterly Coverage is 2.15 or less or (ii) the COPS become rated below either "BB-" or "Ba3".\*
- After a Ratings Upgrade, the 2006 COPS become rated below "BBB-" or "Baa3".\*
- The City, a Service Corporation, or a third party commences litigation or takes other judicial or legislative action to set aside the 2006 transaction, the City Pledge, etc. or the Authorizing Ordinance is amended (without the Swap Counterparty's consent), rescinded or revoked.
- The City rescinds, reduces or ceases to impose the tax currently imposed by Section 18-14-3 of the Detroit City Code or the City fails to promptly wire to the Collateral Agent Custodian "Wagering Tax Property" erroneously paid to it.
- The City fails to pay certain specified charges or other amounts under the Service Contract.
- The City fails to pay on indebtedness (other than Excluded Indebtedness) in an amount of at least \$1 million resulting in the holder of debt being entitled to accelerate the debt prior to its stated maturity.\*
- The City fails, subject to certain exceptions, to pay any judgment(s) in an amount of at least \$1 million.\*
- The City commences a case or files a petition under the Bankruptcy Code or any other insolvency law or procedure, or becomes subject to the appointment of a receiver or an EFM for



all or a substantial part of its assets or if the governor of Michigan determines that a financial emergency exists in the City.

### Calculation of Early Termination Amounts

Generally, a Swap Counterparty may designate an Early Termination Date and accelerate the swaps with respect to Events of Default or Termination Events occurring with respect to the Service Corporation only with the Swap Insurer's consent. However, because the Swap Insurers' relevant ratings are below "A-" by S&P and "A3" by Moody's, the Swap Counterparty is currently entitled to accelerate the swaps under appropriate conditions without the Swap Insurer's consent. (Note, however, that any amendment of the swap documents requires the consent of the Swap insurer.)

### The UBS Swap Documents

Upon the designation of an Early Termination Date by the Swap Counterparty, the process for the calculation of early termination amounts under the UBS master agreements appears to be standard. The Non-Defaulting Party or non-Affected Party (*i.e.*, UBS in this case), would use the Market Quotation payment measure selected by the parties in the Schedule to the ISDA Master Agreement and solicit quotations from four Reference Market-makers for "Replacement Transactions" (*i.e.*, transactions "that would have the effect of preserving the economic equivalent of any payment . . . that would, but for the occurrence of the relevant [Early Termination Date], have been required after that date").

- Reference Market-makers are defined as "leading dealers . . . from among dealers of the highest credit standing which satisfy all the criteria that such [i.e., the requesting] party applies generally at the time in deciding whether to offer or to make an extension of credit and . . . to the extent practicable, . . . having an office in the same city."
  - The UBS swap documents also require that such dealers be rated at least A+/A1 (unless the relevant Service Corporation and Swap Insurer agree otherwise).
- The UBS swap documents provide that the Swap Counterparty, the relevant Service Corporation and the Swap Insurer may agree to use less than four dealers in determining the Market Quotation.
- However, if Market Quotation cannot be determined, then the Swap Counterparty must use the "Loss" Payment measure, which essentially is "an amount that [the determining] party reasonably determines in good faith to be its total losses and costs . . . in connection with . . . [the] Terminated Transactions . . . . A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets."

After designating an Early Termination Date, the Swap Counterparty must provide a calculation statement showing, in reasonable detail, the calculations made and the details of the relevant account to which payment is to be made. The calculation notice must be delivered by the Swap Counterparty on or as reasonably practicable following an Early Termination Date.

Payments in connection with an Early Termination Date relating to a Termination Event are payable (with interest accruing from the Early Termination Date) two Local Business Days after the



calculation statement is delivered by the Swap Counterparty; in connection with an Event of Default, payment is due immediately. Default interest accrues thereafter.

The process conducted for and calculations relating to early terminations are often disputed based on content of requests for quotation, timing of receipt of quotation responses, reasonableness of quotations received and other theories.

### The SBS Swap Documents

Pursuant to a "Transaction Transfer Agreement" relating to the SBS Swap Agreements, Merrill Lynch Capital Services, Inc. ("MLCS") acts as a "Backing Provider" to SBS. Under this arrangement, upon an Early Termination Date under the SBS Swap Agreements with the relevant Service Corporation (other than an early termination as a result of a default directly attributable to MLCS, as Credit Support Provider to SBS), an option of the Service Corporation to enter into with MLCS identical transactions (known as "Transfer Transactions") to those terminated with SBS is automatically exercised. In effect, MLCS and the Service Corporation enter into new trades to replace the terminated trades between SBS and the Service Corporation and early termination amounts on the terminated trades are settled between MLCS and SBS.

- In calculating these settlement amounts, MLCS (again, other than if the early termination was a result of a default directly attributable to MLCS, as Credit Support Provider to SBS) acts as the determining party and its determinations are conclusive.
- MLCS need only solicit and obtain quotations for Replacement Transactions from a single Reference Market-maker, which Reference Market-maker may be MLCS itself.

The Transfer Transactions between MLCS and the Service Corporation are governed by underlying swap documents that are substantially similar to those between SBS and the Service Corporation. MLCS has the same rights as SBS to terminate based on a default by the Service Corporation; presumably, it would affect such an early termination on the same date that the option to enter into the Transfer Transactions is automatically exercised. The process for determining an early termination amount would follow the same process as that set forth above for UBS.

In accordance with an Intercreditor Agreement, the Swap Counterparties and MLCS agree to share pro rata in swap payments made for or on behalf of the Service Corporations (other than payments made by a Swap Insurer).

### Additional Remedies

Following the designation of an Early Termination Date in connection with an Event of Default or Termination Event with respect to a Service Corporation, as additional remedies, the Swap Counterparty, as a secured party, has the right to enforce the Service Corporation Pledge (*i.e.*, the Service Corporation's pledge to the Swap Counterparties relating to the Service Corporation Property under the Collateral Agreement), the Service Corporation Security Interest (*i.e.*, the Service Corporation's pledge relating to the City Hedges Payables Related Obligations and the City Pledge under the Collateral



Agreement) and the City Pledge (*i.e.*, the City's pledge relating to the Pledged Property under the Collateral Agreement).

A Swap Counterparty's remedies include the exercise of all remedies available to the Service Corporations as secured parties under the City Pledge, including the right to: (i) cause the Pledged Property to be applied to amounts owing to the Swap Counterparty up to amounts appropriated; (ii) use judicial process to obtain appropriations for unappropriated amounts owing to the Swap Counterparty; and (iii) exercise other equitable remedies against the Service Corporations and the City (as a Michigan home rule city) in respect of unappropriated amounts. However, if certain Termination Events occur (known as "Specified Additional Termination Events"), the Swap Counterparties must forbear from exercising remedies of a secured party against the Pledged Property during the Term Payment Period, which ends up to 7 years later. (The Specified Additional Termination Events are marked with an asterisk (\*) above.)

## Indemnification

The Service Corporation agrees, subject to certain conditions, to indemnify the Swap Counterparty from any liability arising out of an action by the City, a Service Corporation, or a third party to set aside the 2006 Transaction, the City Pledge, etc. or if the Authorizing Ordinance is amended (without the Swap Counterparty's consent), rescinded or revoked.

## Source of Payment

Amounts owed to a Swap Counterparty are secured by amounts owing by the City to the Service Company under the Service Contract which, in turn, are payable by the City from all available revenues of its General Fund. If the City fails to make a payment to the Service Corporation under the Service Contract, the Swap Counterparties could pursue remedies against the City to compel payment and, if the City were to fail to provide for payment of any resulting judgment, the parties recognize that a court can compel the City to raise such a payment through the levy of taxes, without limit as to rate or amount.

As additional security (added during the 2009 renegotiation), amounts owed to swap counterparties are secured by the Pledged Property (including amounts held in the Holdback Account) under the Collateral Agreement.

## Process for Enforcing Payment of Early Termination Payment

If the Service Corporations do not pay the early termination amount in a timely manner, then the Swap Counterparties may seek to enforce their claims for the unpaid early termination amounts against the City. The process is the same for all parties that seek to recover a claim against the City. A description of the procedures for enforcing a claim against the City is summarized on the next page. Because the Swap Counterparty must first provide advance notice to the City before commencing any lawsuit against the City, there will be some delay before the Swap Counterparty can effectively recover against the City. The major steps include the following:



- Swap Counterparty submits claim against the City for termination amounts to the City's law department.
- Once submitted, the City's law department investigates, approves or disapproves the claim, and informs the claimant of its decision by mail (no apparent deadline for determination by the City's law department).
- If denied, Swap Counterparty must, within 20 days of notice of the decision, indicate to the City's law department whether or not it wishes to appeal the law department's decision. Alternatively, the Swap Counterparty may file suit or could appeal the denial recommended by the law department to the auditor general for a hearing and determination.
- The process for suing the City after this advance notice procedure is very similar to the process for suing a non-municipal party.

### **Enforcing a Judgment Against the City**

In Michigan, the only way in which a creditor can enforce/collect on a judgment against the City is to have a tax levied to pay the judgment.

- On the application of the judgment creditor, the clerk of the court delivers to the judgment creditor a certified transcript of the judgment. The certified transcript includes the amount and date of the judgment, the rate of interest, and the costs.
- The judgment creditor files the certified transcript with the assessing officer of the municipality.
- The assessing officer assesses the amount of the judgment, with costs and interest, upon the "then next tax roll" of the municipality. The tax rolls are delivered by the City supervisor/assessing officer to the City treasurer twice a year: by June 30 and December 1. If the assessing officer fails to do so, the claimant can petition a court to issue a writ of mandamus requiring the assessing officer to levy the tax.

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## Appendix C – Attorney Resumes





## Lorraine S. McGowen

Partner, Restructuring  
New York  
(212) 506-5114  
lmcgowen@orrick.com

Lorraine McGowen is a member of the firm's 11-member Board of Directors and a former co-chair of the Restructuring Group. She is also the Chair of Orrick's firmwide Diversity & Inclusion Initiatives. She has practiced in the areas of creditors' rights and bankruptcy for more than 20 years, with a particular focus on the enforcement of creditors' rights and remedies in out-of-court workouts and bankruptcy proceedings. Ms. McGowen represents formal and ad hoc creditors' committees and secured and unsecured creditors, and other significant parties in complex bankruptcy cases, corporate restructurings and other insolvency matters, and has extensive experience representing public and private entities in out-of-court workouts and bankruptcy proceedings. Ms. McGowen advises clients on the bankruptcy and commercial law implications of proposed transactions, including mergers and acquisitions, project and structured financings, leveraged leases, securitizations and other transactions.

### Related Practice Areas

- Restructuring
- Distressed Assets & Alternative Investments
- Mergers & Acquisitions
- Structured Finance

### Education

- J.D., Columbia Law School, 1986
- B.S., *School of Foreign Service*, Georgetown University, 1983

### Honors

- New York City Bar Association, Diversity & Inclusion Champion, 2012
- New York Super Lawyers, Metro Edition, Bankruptcy & Creditor/Debtor Rights, 2010-2012

A sample of her recent notable engagements includes the following.

- South Bay Expressway, L.P. Ms. McGowen represented a bank syndicate in connection with the bankruptcy case involving the owner and operator of a toll road on State Route 125 South running south from San Diego to the Mexican border, having claims in excess of US\$340 million.
- Lehman. Ms. McGowen represents municipal, corporate and financial counterparties with swap, forward contracts, repurchase agreements and other derivative products in various aspects of the Lehman Brothers proceedings pending in the United States and the United Kingdom. Claims include termination payments, indemnity and guaranty claims, and contractual breaches.
- Recent Committees. Ms. McGowen represented the General Motors National Dealers Council (consisting of approximately 6,000 US GM dealers) in connection with the restructuring and bankruptcy of General Motors Corporation. Ms. McGowen also represented the Official Unsecured Creditors Committee in the Chapter 11 cases of Stone & Webster, an international engineering and construction enterprise with 72 subsidiaries (creditor claims initially totaled in excess of US\$6 billion). Ms. McGowen continues to represent the SWE&C Liquidating Trust, which was formed upon the confirmation of the Stone & Webster Inc. joint plan of liquidation, among other matters, to resolve claims against Stone & Webster Engineers &

Constructors, Inc. and its direct and indirect subsidiaries totaling in excess of US\$1 billion, to liquidate the Trust's remaining assets, and to prosecute insurance coverage actions against insurers for environmental and professional liability losses.

- **Suppliers and Customers.** Ms. McGowen represents various suppliers, customers and other trade vendors regarding their rights in bankruptcy, including rights to enforce, terminate, or obtain payment under supply agreements, forward contracts, licensing agreements, and joint venture agreements, and prosecuting and defending claims brought by and against them in the bankruptcy case (including, for example, fraudulent conveyance, preference and other avoidance actions).
- **Derivative Transactions.** Ms. McGowen represents various counterparties who have been affected by the liquidity crisis involving distressed financial institutions, monoline insurers and other parties, advising them regarding their rights, bankruptcy and other insolvency proceedings, including rights to enforce, terminate, or obtain payment under swap agreements, repurchase agreements, forward contracts, and other derivative transactions. Recently, Ms. McGowen represented the City of Detroit in the restructuring of certain derivative transactions relating to the City of Detroit's 2006 Pension Obligation Certificates, of which US\$800 million were variable rate taxable certificates.
- **Aviation Restructurings and Bankruptcies.** Ms. McGowen represented lenders, credit enhancers and other financing parties in domestic leveraged leases, EETCs, liquidity facilities and mortgage indentures in the US Air I, US Air II, United Airlines, Northwest Airlines, Delta Airlines and Atlas Air bankruptcies.

Ms. McGowen, among other committees and boards, is on the Advisory Committee of the Cyrus R. Vance for International Justice of the New York City Bar Association and on the Board of Legal Advisors for Legal Outreach, Inc.

**Admitted in**

- New York
- District of Columbia

**Court Admissions**

- United States Court of Appeals
- Second Circuit
- United States District Court
- Eastern District of New York
- Southern District of New York



### **Memberships**

- American Bankruptcy Institute
- American Bar Association, Business Law Committee
- American College of Investment Counsel
- The Association of the Bar of the City of New York
- District of Columbia Bar

### **Speeches & Programs**

- Trident Municipal Research Roundtable – Navigating Municipal Credit in Volatile Times, May 22, 2012
- The Bond Buyer Webinar, Navigating the Municipal Bankruptcy Minefield, March 22, 2012
- Sovereign & Municipal Debt Roundtable, 18th Annual distressed Investing Conference, Beard Group, Inc., November 28, 2011
- The Bond Buyer's 2nd Annual 501(c)(3) Super Conference Healthcare, Higher Education & Non-Profit Institutions: Restructuring, Workouts and Bankruptcy, October 18, 2011
- Collateral Valuation in the New Economy, Lorman Business Center, December 14, 2010
- Real Estate Bankruptcies: The Impact of In re General Growth, Strafford Publications, Inc., November 4, 2009



## Pauline A. Schneider

Partner, Public Finance  
 Washington, D.C.  
 (202) 339-8483  
 paschneider@orrick.com

Pauline A. Schneider is a partner and head of the Public Finance Group in the Washington, D.C., office. Ms. Schneider's practice focuses on transactional matters, including the representation of state and local governments and governmental instrumentalities, not-for-profit borrowers and other eligible beneficiaries, underwriters, investment bankers and credit enhancement providers on general obligation and revenue bond financings for airports, mass transit, water and sewers, housing, hospitals, educational facilities, convention centers, sports arenas and general government projects.

Ms. Schneider has been in private practice since 1985. Before joining Orrick, she was a partner at Hunton & Williams, LLP in Washington, D.C. Prior to that, she spent four years in the Carter White House in the Office of Intergovernmental Affairs/Secretary to the Cabinet, and four years in District of Columbia government, where she was director of the Office of Intergovernmental Relations. Ms. Schneider has received numerous awards for her contributions to the legal profession, including the 1999 Margaret Brent Women of Achievement Award from the American Bar Association Commission on Women.

### Related Practice Areas

- Public Finance
- General Obligation Bonds
- Governmental Affairs
- Health Care Financing
- Higher Education and Student Loan Financing
- Investment Bank Representation
- Lease Revenue and Certificates of Participation
- Nonprofit Corporation Financing
- Revenue Bond Financing
- School Finance
- Transportation Finance
- Water and Wastewater

### Education

- J.D., Yale Law School, 1977
- M.S., Urban Studies, Howard University, 1972
- B.A., Glassboro State College, 1965

### Honors

- Listed in *The Best Lawyers in America* for Financial Institutions and Transactions Law; Public Finance Law, 2005 through 2012
- Listed in *Who's Who in the East* and in *Who's Who in the United States*, 2005 through 2012
- Woman of Achievement Award, Anti-Defamation League - 2001
- Outstanding Alumni Award, Rowan University, Glassboro, N.J. - 2001
- Woman of Genius Award, Trinity College, Washington, D.C. - 2000
- Margaret Brent Award, ABA Commission on Women - 1999
- President's Award, National Association of Women Lawyers - 1998
- Woman Lawyer of the Year, Women's Bar Association of the District of Columbia - 1995
- Women Who Shape the Future Award, Women's Legal Defense Fund - 1994
- Washington, D.C., Super Lawyers, 2008 through 2012

Ms. Schneider's representative engagements include:

- More than 25 years serving as bond counsel, underwriter's counsel, special counsel, or disclosure counsel on public finance transactions on behalf of state and local governmental entities, including a number of airports.
- Represented underwriter and/or airports in bond and note financings valued in excess of \$5 billion secured by general airport revenue, passenger facility charge revenues, or special facility revenues, including one issue in excess of \$1.01 billion.
- Served as bond or underwriter counsel to numerous municipalities on general obligation financings ranging from \$4 million to over \$1 billion.
- Acted as bond counsel on a \$542 million revenue bond financing of an instrumentality of a territorial government that included five series of new money and refunding bonds for working capital and capital projects with senior and subordinate liens, portions of which were AMT and non-AMT, taxable and tax-exempt.
- Acted as bond counsel or underwriters counsel for two state housing agencies on numerous multifamily and single family

housing financings issued under stand alone and open indentures, structured with housing tax credits, letters of credit, bond insurance, FHA insurance, GNMA and FNMA credit enhancement.

- Represented underwriters or consortium of banks on sports arena financing and convention center financing, each secured by revenues generated through special tax assessments on businesses expected to benefit from development of those facilities.
- Served as bond counsel to large municipality on dozens of issues of conduit revenue bonds on behalf of 501(c)(3) corporations (primarily hospitals, elementary and secondary schools and colleges), or businesses located in enterprise zones.
- Acted as bond counsel or underwriter on several tax increment bond financings for projects designed to generate economic development in large urban center.
- Represented developer in negotiation of lease of air rights and in zoning relating to development of air rights parcel.
- Directed the District of Columbia Office of Intergovernmental Relations and served on the staff of the White House Office of Intergovernmental Affairs, handling legislative and policy matters for the mayor of the District and president of the United States.

#### **Admitted in**

- District of Columbia

#### **Memberships**

- District of Columbia Bar
- American Bar Association
- American Law Institute
- National Bar Association
- National Association of Bond Lawyers
- Board of Directors, Pepco Holdings Inc.
- Former member of Board of Directors, Diamond Management and Technology Consultants, Inc.
- Board of Directors, The Access Group, Inc.
- Board of Trustees, The Shakespeare Theatre
- Board of Trustees, WETA
- Board of Directors, National Partnership for Women & Families
- Board of Trustees, Rowan University Foundation
- Former member of Board of Trustees, University of Maryland, Baltimore Foundation



- Member, The Economic Club of Washington
- Member, The Federal City Council

#### **Publications**

- "What Conclusion Can We Draw From Statistics," Syllabus, September 2004.
- "From Brown to Grutter: Reflections on Life's Education and Legal Education," Syllabus, June 2004.
- "Thoughts on Age and Sage Advice," Syllabus, February 2004.
- Corporate Political Activities, "Complying with Campaign Finance & Ethics Law -- Attempts to Limit Political Contributions by Municipal Finance Professionals and Lawyers," 2001, 2002, 2003 2004, 2005.

#### **Speeches & Programs**

- "Rainmaking - Myths and Realities," to the Young Lawyers of the District of Columbia Bar, Corporation, Finance and Securities Law Section, Washington, D.C., June 27, 2007.
- "Thoughts on the Disconnect Between the Academy and Private Practice of Law and the Report of the Accreditation Policy Task Force," to the Association of Legal Writing Directors Annual Meeting, Denver, Colorado, June 16, 2007.
- "The Current State of the Professional Education Continuum for Lawyers," at the Colloquium on The Educational Continuum for Lawyers: Collaborations Among the Academy, Bench and Bar, sponsored by the Section of Legal Education and Admission to the Bar, American Bar Association, Chicago, Illinois, April 28, 2007.
- "Attempts to Limit Political Contributions by Municipal Finance Professionals and Lawyers," Seminars on Complying with Campaign Finance & Ethics Laws, Washington, D.C., 2001, 2002, 2004.
- "Empowerment and Leadership," ABA Commission on Women Leadership Development, Chicago, Illinois, 2004.
- "From Brown to Grutter: My Life, Your Future," University of Seattle School of Law, 2004.
- "Maintaining and Increasing Diversity in the Legal Market Place," University of Maryland School of Law, 2004.
- "Thoughts on the Disconnect Between the Academy and Private Practice of Law," University of Toledo College of Law, 2004.



## Darrin L. Glymph

Partner, Public Finance  
Washington, D.C.  
(202) 339-8401  
dglymph@orrick.com

Darrin L. Glymph, partner in the Washington, D.C. office, is a member of the Public Finance Department. Mr. Glymph's practice focuses primarily on transactional matters, such as general obligation and revenue financings, economic development incentives, financings for charter schools and other non-profit organizations, securities law matters and legal issues relevant to state and local governments. Examples of notable engagements include the following:

### Related Practice Areas

- General Obligation Bonds
- Revenue Bond Financing
- School Finance
- Charter School Finance
- Governmental Affairs
- Lease Revenue and Certificates of Participation
- Nonprofit Corporation Financing
- Public Private Partnerships
- Public Finance

### Education

- J.D., Tulane University Law School, 1993
- B.A., Williams College, 1985

- Representation of Issuers. Mr. Glymph has represented large municipalities as well as New York and regional banks in a variety of matters pertaining to the issuance of bonds and the offering and the sale of conduit revenue bonds. He has served as bond counsel for the inaugural tax increment bond financing of a large municipality, and as bond and underwriters' counsel on other tax increment financings for economic development projects. He also has acted as counsel to a large municipality on five bond financings involving the issuance of auction rate securities issued pursuant to multimodal bond indentures.
- Representation of Underwriters and Borrowers. Mr. Glymph has represented a large municipality on several public-private partnership transactions, utilizing payment in lieu of taxes (PILOT) and qualified zone academy bonds (QZABS). Mr. Glymph served as borrower's counsel to a public charter school in the nation's largest tax-exempt financing for an individual public charter school. He acted as underwriters' counsel for a state housing agency in multi as well as single family housing financings. Finally, he regularly advises clients on tax incentive programs and creative approaches to financing economic development projects.

Before joining Orrick, Mr. Glymph was counsel within the Public Finance Group at Hunton & Williams LLP. He also has served as chairman, director or member of several boards and commissions including the Small and Local Business Opportunity Commission (D.C.), EdBuild, Center for Youth and Family Investment, D.C. Mayor's Task Force for Procurement Reform, Industrial Development Authority of the City of Richmond, Virginia, Balm in Gilead, Inc., the United Way of Greater Richmond, Allocations and Assessments Committee, the Boy Scouts of America, Friends Association for Children and Richmond AIDS Ministry.

**Admitted in**

- District of Columbia
- Virginia

**Memberships**

- American Bar Association
- National Association of Bond Lawyers
- District of Columbia Bar
- Virginia State Bar

**Publications**

- "Charter Schools: Borrowing With Tax-Exempt Bonds," *Orrick, Herrington & Sutcliffe LLP*, 2009



## Marc A. Levinson

Partner, Restructuring  
 Sacramento  
 (916) 329-4910  
 malevinson@orrick.com

Marc A. Levinson is a partner in the Restructuring Group. Mr. Levinson is nationally recognized for his capabilities in complex reorganizations and restructurings, out-of-court workouts and other insolvency matters. In 2009, Mr. Levinson was named one of *The American Lawyer's* "Dealmakers of the Year" for his role in the bankruptcy case of the largest California city ever to seek Chapter 9 relief. He also was ranked this year by *Chambers USA* as one of the top restructuring lawyers in California. A sample of notable recent engagements includes the following.

### Related Practice Areas

- Restructuring
- Committees & Other Court-Appointed Fiduciaries
- Distressed Real Estate Transactions

### Education

- J.D., University of California, Davis School of Law, 1973
- B.A., University of California, Los Angeles, 1970

### Clerkship

- Chief Justice Donald R. Wright, California Supreme Court, 1973-74
- Hon. William H. Orrick, Jr., United States District Court for the Northern District of California, 1974-75

### Honors

- Editor-in-Chief, *U.C. Davis Law Review*

- **City of Vallejo, California.** Mr. Levinson is the lead insolvency lawyer on the Orrick team that filed a Chapter 9 case for this city of more than 120,000 residents in May 2008, making it the largest California city to seek bankruptcy relief. The case has generated cutting edge legal issues, as well as litigation over a number of hotly-contested factual issues, including those relating to the city's insolvency and its eligibility to be a Chapter 9 debtor.
- **Official Committee of Equity Security Holder of USA Capital Diversified Trust Deed Fund LLC.** Mr. Levinson led an Orrick team in representing the interests of approximately 1,300 investors whose cumulative investment exceeds US\$150 million. The Diversified case is one of five companion Chapter 11 cases pending in Las Vegas. The total investment in the Chapter 11 debtors approximates US\$1 billion. The joint plan of reorganization went effective on March 12, 2007, and Orrick now represents the reconstituted Diversified Fund.
- **Oxford Automotive and Polymer Group.** Mr. Levinson was the lead bankruptcy partner in Orrick's representation of a multibillion dollar distressed debt fund that acquired a controlling interest in the publicly-traded notes of two 1934 Act reporting companies. Through confirmation of consensual Chapter 11 plans (Oxford in Detroit and Polymer Group in Columbia, SC), the client acquired majority interests in the post-reorganization companies, each with a balance sheet delivered by hundreds of millions of dollars.
- **Colo.com.** Mr. Levinson represented the creditors' committee in this San Francisco Chapter 11 case of a failed colocation facility empire. During the case, which concluded with a confirmed plan of liquidation, more than 20 locations, including real estate leases and personal property, were sold as a going concern to one buyer; additional leases and equipment were sold to other buyers.

- **Tri Valley Growers.** This California cooperative was among the largest canners and processors of fruit in the world. In Tri Valley's Chapter 11 case, Mr. Levinson represented a publicly-traded insurance company owed in excess of US\$120 million of term debt secured by various canneries and the equipment located there. The matter was resolved consensually when Orrick's client purchased the California operation (including assets not in its collateral package) obtaining full credit for its debt.
- **IRM Corporation.** Mr. Levinson headed a team of Orrick lawyers in the representation of 22 affiliated companies in Chapter 11 cases filed in Sacramento. The confirmed joint plan of reorganization resulted in the restructuring of approximately US\$165 million of senior secured institutional debt and the creation of more than US\$100 million in equity for investors. The reorganization plan, which was consensual among all constituencies, was the largest ever confirmed in the Sacramento bankruptcy court.

Mr. Levinson frequently lectures on bankruptcy, insolvency and corporate reorganization topics. He has spoken to numerous bar associations as well as to in-house counsel and business people at large corporations such as Wells Fargo Bank, Mitsubishi Electric America, and Lend Lease. Mr. Levinson has served as a guest lecturer at the U.C. Davis School of Law, the Pacific McGeorge School of Law, the University of Washington School of Law and the University of Southern California Law Center.

Prior to joining Orrick, Mr. Levinson was a partner at Sidley & Austin in Los Angeles from 1980 to 1990. He was an associate and partner at Shutan & Trost in Los Angeles from 1975 to 1980.

#### **Admitted in**

- California

#### **Memberships**

- Conferee and Member of the Executive Committee, National Bankruptcy Conference
- Fellow and Member of the Board of Directors, American College of Bankruptcy
- Past President, California Bankruptcy Forum
- Past President, Sacramento Valley Bankruptcy Forum
- State Bar of California
- Former Member, Board of Directors, Crocker Art Museum



### **Publications**

- Co-Author, "Municipalities in Peril: The ABI Guide to Chapter 9," January 2010; Second Edition January 2013.
- "Municipal Bankruptcy: Avoiding and Using Chapter 9 in Times of Financial Stress," Western City, November 2009.
- Co-Author, "Municipal Bankruptcy: Avoiding and Using Chapter 9 in Times of Fiscal Stress," January 2009.



## Nikiforos Mathews

Partner, Structured Finance  
New York  
(212) 506-5257  
nmathews@orrick.com

Mr. Mathews, a partner in Orrick's New York office, is a member of the Structured Finance, Banking and Finance, and Energy and Infrastructure Groups. His practice focuses on representing financial institutions, governmental and regulated entities, hedge funds and corporate end-users in structuring and negotiating a broad range of fixed income, foreign exchange and credit derivative products. He has successfully negotiated numerous cross-border transactions involving both developed and emerging market jurisdictions in North America, Latin America and Europe. Mr. Mathews also has significant experience in foreign exchange and fixed income prime brokerage issues, as well as various structured products. He also advises clients on derivatives regulations, including those relating to the Dodd-Frank legislation.

Mr. Mathews is lead editor of Orrick's publication, *Derivatives in Review*, which periodically highlights important legal, regulatory and other newsworthy developments in the area of derivatives. He has also published articles in several journals, including on rating agency hedge criteria in connection with structured finance transactions.

Before joining Orrick, Mr. Mathews was director and counsel at UBS AG. Prior to that, he was a vice president and assistant general counsel at Goldman, Sachs & Co. He also served as a law clerk to the Honorable Nicholas Tsoucalas in the United States Court of International Trade.

From 1999 to 2007, Mr. Mathews held a commission as a Captain in the United States Army Reserve, where he was qualified to practice as a Judge Advocate. A veteran of both Operations Iraqi Freedom and Enduring Freedom, he served as an Operational and Administrative Law attorney in Kuwait, Iraq and Afghanistan.

### Related Practice Areas

- Structured Finance
- Derivatives
- Energy

### Education

- J.D., Yeshiva University, Benjamin N. Cardozo School of Law, 1996
- B.A., *with honors*, Government, University of Notre Dame, 1993

### Clerkship

- Judicial Law Clerk to the Hon. Nicholas Tsoucalas, United States Court of International Trade (1996-98)

### Honors

- Articles and Symposia Editor, *Cardozo Law Review*
- Alexander Fellowship

### Languages

- English
- Greek

### Admitted in

- New York

### Court Admissions

- Federal District Court
- Eastern District of New York
- Southern District of New York
- United States Court of Appeals
- Second Circuit
- United States Court of International Trade



### **Memberships**

- Board Member (2004 – Present), Hellenic Classical Charter School, Brooklyn, NY

### **Publications**

- "Circuit Court Erie Errors and the District Court's Dilemma: From Roto-Lith and the Mirror Image Rule to Octagon Gas and Asset-Securitization," 17 *Cardozo L. Rev.* 739 (1996).
- "Beyond Interrogations: An Analysis of the Protection Under the Military Commissions Act of 2006 of Technical Classified Sources, Methods and Activities Employed in the Global War on Terror," 192 *Mil. L. Rev.* 81 (2007).
- "Structured Finance Hedge Criteria Compared: An Overview and Comparison of Rating Agency Hedge Criteria Relating to Structured Finance Transactions" (co-author), 14 *J. Structured Fin.* 39 (2008).
- "Fitch Ratings Links Structured Finance Ratings to Credit Quality of Related Hedge Counterparties" (co-author), *Pratt's Journal of Bankruptcy Law* 336 (May/June 2008).
- Client Alert, "Wall Street Transparency and Accountability Act of 2010" (Jul. 21, 2010).
- Client Alert, "Derivatives Regulation Reform and Provisions Affecting Governmental Entities in the Dodd-Frank Act" (Aug. 4, 2010).



**Tatjana Misulic**

Of Counsel, Public Finance  
 Washington, D.C.  
 (202) 339-8574  
 tmisulic@orrick.com

Ms. Misulic, of counsel in the Washington, D.C., office, is a member of the Public Finance Department. Ms. Misulic's practice is primarily transactional, focusing on public finance and legal issues facing state and local governments and instrumentalities. Public finance practice includes representation of issuers or underwriters in long-term and short-term general obligation and revenue bond financings for municipalities, airports, educational facilities, mass transit authorities and water and power authorities. Ms. Misulic's practice also includes international commercial arbitration matters.

Ms. Misulic's representative engagements include the following.

**Related Practice Areas**

- Public Finance
- General Obligation Bonds
- Higher Education and Student Loan Financing
- International Arbitration & Dispute Resolution
- Lease Revenue and Certificates of Participation
- Public Finance Credit Enhancement/Direct Purchase
- Revenue Bond Financing
- Water and Wastewater

**Education**

- J.D., *with honors*, The George Washington University Law School, 2002
- B.A., *with honors*, International Affairs, The George Washington University, 1997

**Externships**

- U.S. Court of Federal Claims, Washington, D.C., 2000-2001
- Department of Justice, Office of International Affairs, 2000

**Languages**

- Croatian

**Honors**

- Washington, DC Super Lawyers, 2013 Rising Stars

- Serving as underwriter's counsel to several large investment banking firms on airport revenue bond financings involving issuance of new money and refunding bonds including variable rate demand obligations and fixed rate and auction rate securities valued in excess of \$1.1 billion.
- Acting as bond counsel to a large municipality on bond financings involving issuance of more than \$1.3 billion variable rate demand obligations, fixed rate and auction rate securities issued pursuant to a multimodal bond indenture.
- Representing underwriters on various refunding and new money revenue bond financings for international airports, educational facilities and water and power authorities.
- Acting as underwriter's counsel to an investment banking firm on developing of a commercial paper program for an international airport.
- Assisting in a privatization of an Eastern European state electrical utility.
- Serving as counsel to an Eastern European state electrical utility in an international commercial arbitration proceeding before the International Centre for Settlement of Investment Disputes.

Ms. Misulic has served as an adjunct professor at The George Washington University Law School, Washington, D.C.

Before joining the firm, Ms. Misulic was an associate at Hunton & Williams LLP.

**Admitted in**

- Virginia
- District of Columbia

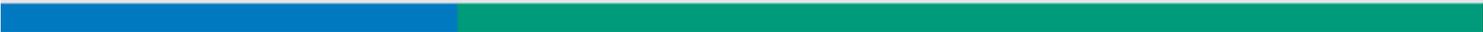
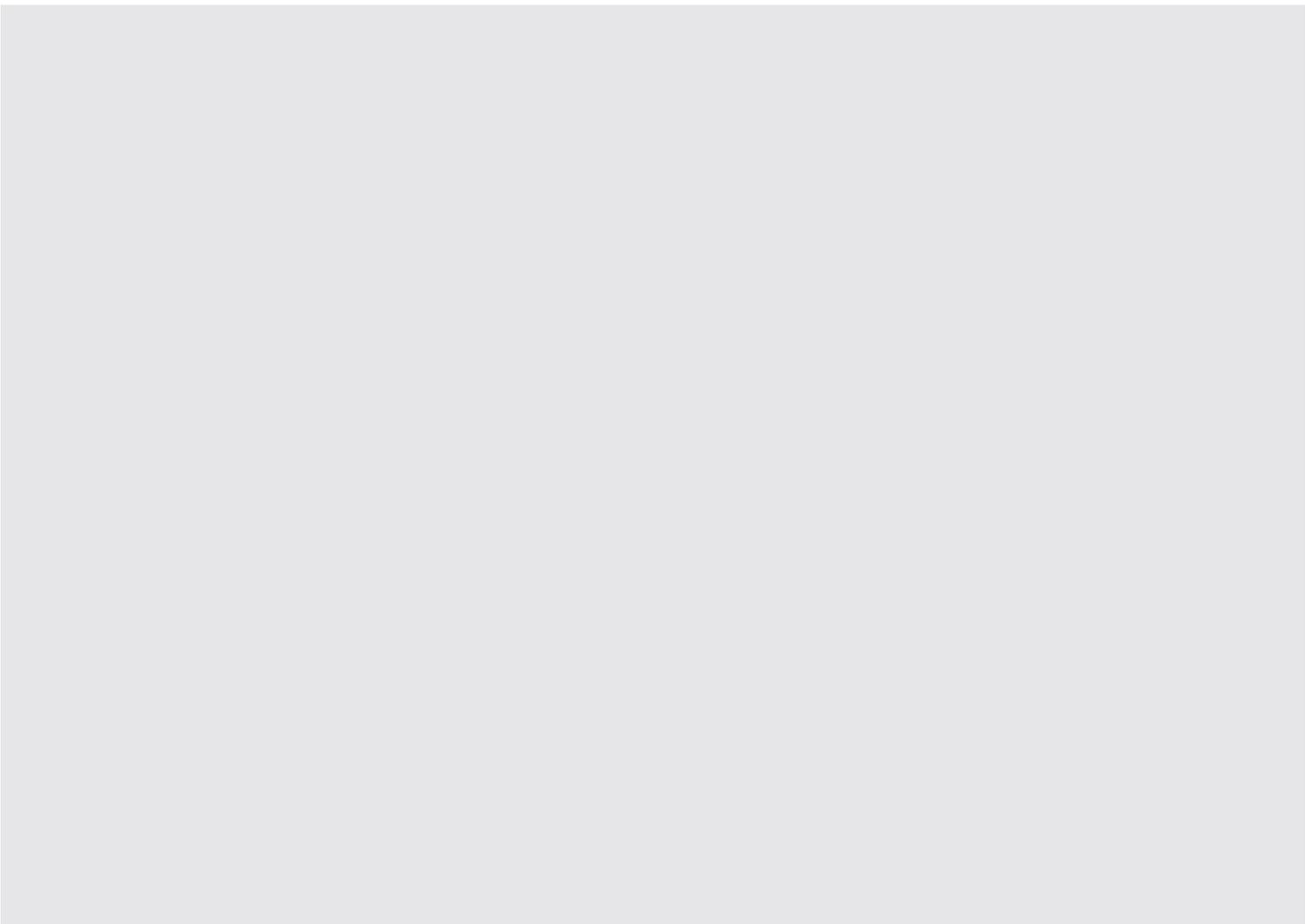
**Memberships**

- National Association of Bond Lawyers
- The District of Columbia Bar
- Virginia State Bar

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## Appendix D – Review of Model Services Contract





## **REVIEW OF MODEL SERVICES CONTRACT**

We have reviewed the model services contract that was provided with the RFP and find the contract provisions generally acceptable. There are only two provisions in the contract we would like to discuss with you. We would like to discuss a formulation of the indemnity in Section 7.01 that is consistent with our professional responsibilities as your counsel and does not impair coverage by our professional liability insurer. Secondly, we also would request a knowledge qualifier be added to Section 11.02.