EXHIBIT 3

Brief

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	:	Chapter 9
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
Debtor.	:	Hon. Steven W. Rhodes
NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION, a New York Corporation, and ASSURED GUARANTY MUNICIPAL CORP., a New York Corporation,	:	Chapter 9
	:	Adv. Pro. No. 13-05309
Plaintiff,	:	Hon. Steven W. Rhodes
v.	:	
THE CITY OF DETROIT, MICHIGAN, KEVYN D. ORR, in his individual and official capacity as the EMERGENCY MANAGER, JOHN NAGLICK, in his individual and official capacity as FINANCE DIRECTOR, MICHAEL JAMISON in his individual and official capacity as DEPUTY FINANCE DIRECTOR, and CHERYL JOHNSON, in her individual and official capacity as TREASURER,	:	
Defendants.	:	

MEMORANDUM IN SUPPORT OF THE CITY OF DETROIT'S MOTION TO DISMISS

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Defendant the City of Detroit files this memorandum of law in support of its motion, pursuant to F. R. Civ. P. 12(b)(6), made applicable to this proceeding by Fed. R. Bank. P. 7012(b), to dismiss the complaint of National Public Finance Guarantee Corporation and Assured Guaranty Municipal Corp. ("National" and "Assured," respectively, or the "monolines").

I. BACKGROUND

A. Unlimited Tax Obligation Bonds

A municipality's issuance of debt is regulated by the Michigan constitution, various statutes, and the particular municipal bond resolutions enacted for each individual bond issue.[1] Generally, Article IX, § 6 of the Michigan Constitution imposes limitations upon the *ad valorem* taxes the State and its political subdivisions could impose. However, there is an exception for "taxes imposed for the payment of principal and interest on bonds approved by the electors … which taxes may be imposed without limitation as to rate or amount … ." Pursuant to the foregoing exception, the City issued eleven series of Unlimited Tax General

[1] The relevant Michigan statutes ate the Revised Municipal Finance Act, Act 34 of 2001, MCL §§ 141.2101 *et seq.*, the Unlimited Tax Election Act, Act 189 of 1978, MCL §§ 141.161 *et seq.,* and the Home Rule City Act, Act 279 of 1909, MCL §§ 117.1 *et seq.*

Obligation Bonds ("UTGOs") between 1999 and 2008 in an aggregate principal amount of $371.3 million. Compl. Ex. G, Appx. E.[2]

The issuance of each series of the UTGOs was approved by a voter referendum that authorized the City to incur this debt and also to impose additional *ad valorem* taxes to fund the payment of interest and retirement of principal of the bonds. Compl. Ex. A. To actually issue each series of bonds, the Detroit City Council enacted a resolution (a "bond resolution") authorizing the issuance of the bonds on specified terms and conditions and obligated the City to take the steps necessary to impose the *ad valorem* taxes that had been approved by the voters. The bond resolutions pertinent to Plaintiff's claims (the "Bond Resolutions") are attached to the Complaint as Exhibit D.

Each bond resolution contained provisions in which the City pledged "to pay the principal and interest on the Bonds from the proceeds of an annual levy of ad valorem taxes on all taxable property on the City without limitation as to the rate or amount for the payment thereof." Compl., Ex. D, § 301.

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[2] This motion refers to various bond resolutions and other documents relating to the issuance of the bonds at issue here, all of which were appended to and are integral to the complaint. "As a general rule, a district court, in ruling on a motion to dismiss, should look only to the allegations of the complaint. A document referred to or attached to the pleadings, and integral to plaintiff's claims, may also be considered without converting a motion to dismiss into one for summary judgment." *Commercial Money Center, Inc. v. Illinois Union Ins. Co*., 508 F. 3d 327, 336 (6th Cir. 2007).

B. The Revised Municipal Finance Act

Since 2001, the City's issuance of bonds has been regulated by the Revised Municipal Finance Act, Act 34 of 2001, MCL §§ 141.2101 *et seq*. ("RMFA"). Section 701 of the Act, § 141.2701, establishes requirements for levying taxes to pay the principal and interest on municipal debt. As to municipal securities that were authorized by the municipality's voters -- that is, UTGOs -- the municipality "shall levy the full amount of taxes required .. for the payment of the municipal securities without limitation as to rate or amount." § 701(3). On the other hand, if the municipal securities were not approved by the voters, then the municipality was required only to "set aside each year from the levy and collection of ad valorem taxes as required by this section as a first budget obligation for the payment of the municipal securities," but "subject to applicable charter, statutory, or constitutional rate limitations." *Id*.

C. This Lawsuit

On October 1, 2013, the City defaulted upon its obligations to make interest payments of over $9.3 million on the UTGOs. Compl., ¶ 8. National and Assured allege that they insured $2,290,787 and $4,200,991, respectively, of these interest payments, paid claims in these amounts, and thus are subrogated to the rights of the bondholders. *Id*., ¶¶ 8, 25.

On November 8, the monolines brought this action for declaratory judgment and injunctive relief against the City and four of its officers under the RMFA and the City's various bond resolutions. The monolines allege that the *ad valorem* taxes were "restricted funds" that the City could use for no purpose other than paying the principal and interest on the bonds. Compl., ¶ 7. In particular, plaintiffs maintain that the RMFA and the bond resolutions require the City to set aside *ad valorem* tax revenues as they are received, deposit them into the applicable Debt Retirement Fund, account for the funds separately, and use the funds solely to retire the bonds for which the *ad valorem* taxes were authorized. Compl., ¶¶ 40-42.

National and Assured obviously brought this action to compel the City to make payments to them with respect to the bonds. However, to avoid the City's anticipated defenses, the monolines crafted their Complaint to seek only declaratory and injunctive relief as to certain provisions of the RMFA. In particular, the monolines seek decrees stating that the City must deposit its *ad valorem* tax revenues into certain Debt Retirement Funds (Compl., ¶¶ 57-59), requiring the City to segregate and to not commingle the ad valorem tax revenues with the City's other funds (*id.,* ¶¶ 60-62), prohibiting the City from using its ad valorem tax revenues for any purpose other than repaying bondholders (*id.,* ¶¶ 63-65), and barring the City from granting super-priority status or any other interest to

any other creditor or person that would impair the monolines' interests (*id.,* ¶¶ 66-68). Finally, plaintiffs request injunctive relief enjoining the City to comply with any declaratory relief they are granted (*id.,* ¶¶ 69-70).

In addition to the City, the monolines also have sued four City officials in their official and also in their personal capacity. Plaintiffs rely upon a provision of the RMFA that makes officials "*personally liable* to the municipality or to a holder of a municipal security for loss or damage arising from his or her failure." Compl., ¶ 47 (emphasis supplied by the monolines, and not in original statutory text).

II. ARGUMENT

Federal Rule of Civil Procedure 12(b)(6), made applicable to this proceeding through Federal Rule of Bankruptcy Procedure 7012(b), requires dismissal of a complaint that fails to state a claim on which relief can be granted. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "[C]ourts may no longer accept conclusory legal allegations that do not include specific facts necessary to establish the cause of action." *New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, 650 F.3d 1046, 1050 (6th Cir. (*citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569-70 (2007)). Nor is it enough that well-pleaded factual allegations "are consistent with" or suggest a "possibility of misconduct." *Iqbal*, 556 U.S. at 679 & 681. Rather, the facts alleged

in the complaint must show that, if true, "the pleader is entitled to relief." *Id*. at 677-78 (quoting Fed. R. Civ. P. 8(a)(2)). "To state a valid claim, a complaint must contain either direct or inferential allegations respecting all the material elements to sustain recovery under some viable legal theory." *Han v. Univ. of Dayton*, 2013 U.S. App. LEXIS 22788, *6-7 (6th Cir. 2013) (citation omitted). The monolines' complaint fails to meet this standard.

A. The Complaint Must Be Dismissed Because There Is No Private Right Of Action Under The Revised Municipal Finance Act

At the outset, the monolines' complaint should be dismissed because there is no private right of action against the City or the individual defendants under the Revised Municipal Finance Act. The RMFA clearly states that it is to be enforced by the Department of Treasury and, under Michigan law, absent clear indications to the contrary, private parties have no standing to sue.

1. The RMFA May Only Be Enforced by the Department of Treasury

When it was enacted in 2001, the RMFA created a new financial and regulatory scheme for municipal financing and describes in detail how it is to be enforced. Section 201(a) of the Act provides that Department of Treasury "is authorized and directed to protect the credit of this state and its municipalities, and to enforce the provisions of this act." Specifically, the Department of Treasury is given the sweeping authority to:

> enforce compliance with any provision of this act or with any provisions of any law, charter, ordinance, or resolution with respect to debts or securities subject to its jurisdiction, including the levy and collection of taxes and the segregation, safekeeping, investment, and application of money for the payment of debt. The department may institute appropriate proceedings in the courts of this state, including those for a writ of mandamus and injunctive relief.

MCL § 141.2201(d); *see also* MCL § 141.2802(2) (specifying the Department of Treasury's responsibilities in the event of municipal debt defaults).

"[W]here a statute creates a new right or imposes a new duty unknown to the common law and provides a comprehensive administrative or other enforcement mechanism or otherwise entrusts the responsibility for upholding the law to a public officer," the Michigan courts have found that a private right of action cannot be inferred. *Claire-Ann Co v Christenson & Christenson, Inc.*, 566 N.W.2d 4, 6 (Mich. Ct. App. 1997) (citations omitted). Here, the RMFA clearly provides a comprehensive mechanism entrusting the Department of Treasury with the responsibility for determining whether, when and how to enforce the law. Indeed, the Department is charged with enforcing the very rights plaintiffs raise here for "the segregation, safekeeping, investment, and application of money for the payment of debt." MCL § 141.2201(d); c*ompare* Compl., ¶¶ 57-68.

This is especially true because the RMFA creates new statutory rights for, and imposes new statutory duties upon, municipalities that did not exist at common law. The Michigan Supreme Court has explained that "where a new right is

created or a new duty is imposed by statute, *the remedy provided for enforcement of that right by the statute for its violation and nonperformance* ***is exclusive***." *Fisher v. W.A. Foote Mem'l Hosp*., 703 N.W.2d 434, 436 (Mich. 2005) (emphasis added). Thus, the Department of Treasury has exclusive jurisdiction to enforce the rights and duties created under the RMFA, and the monolines cannot do so.

2. There Is No Private Right of Action Under the RMFA

Nor does the RMFA confer a right of action for private enforcement of the provisions of the Act. It is well settled in Michigan that

> [i]f the common law provides no right to relief, and the right to such relief is instead provided by statute, then plaintiffs have no private cause of action for enforcement of the right unless: (1) the statute expressly creates a private cause of action or (2) a cause of action can be inferred from the fact that the statute provides no adequate means of enforcement of its provisions.

N. Warehousing v. State, 2006 Mich. App. LEXIS 2595, *4-6 (Mich. Ct. App. 2006) (citing *Long v. Chelsea Community Hosp.*, 219 Mich. App. 578, 583 (Mich. Ct. App. 1996)); see also *Forster v. Delton School Dist.*, 440 N.W.2d 421, 423 (Mich. Ct. App. 1989).

Nothing in the text of the RMFA provides an express private cause of action that would permit the monolines to sue to enforce its terms. And, in the absence of an express grant, a private right cause of action may only be inferred when the statutory remedy is plainly inadequate – which is not the case here, where the

statute includes a robust enforcement mechanism by the Department of Treasury. *Forster*, 440 N.W.2d at 423.

Even if plaintiffs were to try to re-cast their Complaint as one predicated solely on their contractual rights, the Complaint would still have to be dismissed. In an analogous case, the Michigan Court of Appeals found that a plaintiff cannot "get around" the lack of a private right of action under a statute by arguing that there was a breach of contract based on a violation of that statute:

> In its brief on appeal, plaintiff states that it "does not claim a private right of action under [the RSC or UCA] for enforcement of either statute. Instead, plaintiff claims breach of contract facilitated through a violation of the RSC and UCA." However, in plaintiff's first amended complaint, Count II alleges a "VIOLATION OF THE URBAN COOPERATION ACT." Plaintiff goes on to allege that defendants have "materially and substantially violated the requirements" of the UCA in various ways. Thus, as before us on the record, plaintiff has alleged a violation of the UCA and we agree with the defendant that plaintiff cannot prevail on the merits of such a claim as no private right of action exists.

N. Warehousing 2006 Mich. App. LEXIS 2595. Similarly, the Complaint here alleges violations of the RMFA and seeks enforcement of the RMFA's provisions. Since the RMFA provides no private right of action and one cannot be inferred, the Complaint must be dismissed.

B. This Declaratory Judgment Action Is An Improper Attempt To Circumvent The Bankruptcy Code's Provisions For Adequate Protection

Relying on their interpretation of state law, the monolines seek seeks to

force the City to put money into a separate account and not use it for any other purposes than to repay bondholders. *See* Compl. pp. 24-27. In actuality, though, plaintiffs are making a request for adequate protection, which is governed by the federal bankruptcy law.[3] But as unsecured creditors, the monolines are not entitled to seek this relief. And the Supremacy Clause prohibits plaintiffs, as an unsecured creditors, from using state law to subvert the bankruptcy scheme by obtaining the rights of secured creditors.

1. Under The Bankruptcy Code Holders Of Secured And Unsecured Claims Have Different Levels Of Protection

Section 506(a) of the Bankruptcy Code, applicable to a Chapter 9 bankruptcy under 11 U.S.C. § 901(a), defines a "secured claim" as "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an 11 U.S.C. § 506(a). It is well established that "a claim cannot be a 'secured claim' for purposes of section 506(a) unless it is secured by a 'lien' on some specific item of property in which the estate has an interest, or, alternatively, is a claim that is subject to a right of setoff." 4 Collier on Bankruptcy ¶ 506.03 ("Collier"). As the

[3] The plaintiffs have not sought payment of their claims with the proceeds of the *ad valorem* taxes, although that clearly would seem to be their intent in seeking to have the City segregate those taxes. However, because the plaintiffs have not sought payment, the City is not moving at this time to dismiss the Complaint on the basis that the Michigan statutes that may require payment of the plaintiffs' claims with *ad valorem* taxes are pre-empted by the Bankruptcy Code. The City reserves its right to assert this position at the appropriate time.

Supreme Court explained in construing section 506: "[T]here are two types of secured claims: (1) voluntary ... secured claims, each created by agreement between the debtor and the creditor ..., and (2) involuntary secured claims, such as a judicial or statutory lien ... which are fixed by operation of law and do not require the consent of the debtor." *United States v. Ron Pair Enters., Inc*., 489 U.S. 235, 240 (1989) (citations omitted).

"By its terms, § 506(a) of the Bankruptcy Code bifurcates claims into distinct secured and unsecured components." *In re Aubuchon*, CIV 09-56881-MM, 2010 WL 744806 (Bankr. N.D. Cal. Mar. 4, 2010). The Code confers upon holders of secured claims "a number of special rights and protections." Collier, ¶ 506.02 (emphasis added). But, "[i]n each of these situations . . . the availability of the Code's special protections turns on the existence of a *secured* claim." *Id*. (emphasis added). Thus, the Code gives unsecured creditors lesser rights than secured creditors, and as explained below, adequate protection is one instance of such disparate treatment. *Id*.

2. "Adequate Protection" Is A Remedy For Secured Creditors Only And Must Be Sought Through A Rule 4001 Motion

The basic purpose of adequate protection is to help ensure that a secured creditor is not negatively impacted by a debtor's use of its collateral during a bankruptcy proceeding. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 207

(1983) ("At the secured creditor's insistence, the bankruptcy court must place such limits or conditions on the [debtor's] power to sell, use, or lease property as are necessary to protect the creditor."). Adequate protection payments or other relief are designed to compensate a holder of a secured claim for any decline in the value of its collateral post-petition and pre-confirmation. *U.S. Savings Ass'n v. Timbers of Inwood Forest Ass'n Ltd*, 484 U.S. 65 (1988). *See also In re Deico Elecs., Inc.*, 139 B.R. 945, 947 (B.A.P. 9th Cir. 1992) ("Adequate protection prevents creditors from becoming more undersecured because of the delay that bankruptcy works on the exercise of their state law remedies"); *Metropolitan Life Ins. Co. v. Murel Holding Corp. (In re Murel Holding Corp.)*, 75 F.2d 941 (2d Cir. 1935) (L. Hand, J.) ("It is plain that 'adequate protection' must be completely *compensatory*") (emphasis added). Thus, it is a basic principle of bankruptcy law that "adequate protection" is mandated by certain provisions of the Code when requested "by an entity with an interest in property in which the estate has an interest." Collier, ¶ 361.02 (citing 11 U.S.C. §§ 362, 363, 364). All these sections speak of protection for secured creditors. *See, e.g.*, §§ 362(d); 363(e); 364(d).

Conversely, it is clear that "the concepts of adequate protection of an interest in property and the existence of an equity interest in property do not apply to unsecured claims." *In re Pioneer Commercial Funding Corp.*, 114 B.R. 45, 48 (Bankr. S.D.N.Y. 1990). *See also, e.g., In re Dairy Mart Convenience Stores, Inc.*,

351 F.3d 86, 90-91 (2d Cir. 2003) (concluding that an unsecured creditor was ineligible to receive adequate protection under section because it protects only secured creditors) (citing, inter alia, Collier ¶ 506.03[4][a][iv] ("[S]ection 506(a) establishes the existence and extent of the creditor's secured claim for purposes of the adequate protection determination."); *United Sav. Ass'n v. Timbers of Inwood Forest Assocs*., 484 U.S. 365, 371-72 (1988) (defining the value of an "entity's interest in property" that is entitled to adequate protection in light of the meaning of value of "creditor's interest" in property under section 506(a)); *In re Winthrop Old Farm Nurseries, Inc*., 50 F.3d 72, 74 (1st Cir. 1995) ("[A] valuation for § 361 purposes necessarily looks to § 506(a) for a determination of the amount of a secured claim.")); *In re Babcock and Wilcox Co*., 250 F.3d 955, 961 n.12 (5th Cir. 2001) (no adequate protection available to unsecured creditors); *In re Simasko Prod. Co.*, 47 B.R. 444, 448 (Bankr. D.Colo. 1985) (same); *In re Southern Biotech, Inc*., 37 B.R. 318, 324 (Bankr. M.D. Fla. 1983) (same).

Finally, it is clear under the Bankruptcy Code that the means of obtaining adequate protection is to file a motion under Bankruptcy Rule 4001, and not to bring an adversary proceeding for a declaratory judgment premised upon state law rights. "The procedure will depend in large part on the particular provision of the Code (automatic stay, use of property or borrowing) under which the issues arise . . arise . . . and may be determined by agreement of the parties or by order of the

court," but it is Rule 4001 that governs. Collier ¶ 361.05. That Rule sets forth specific requirements for the proper sequence of events associated with that including service, notice, hearings, and stay, as well as rules relating to contents of the motion and burdens of proof. *See* Bankr. R. 4001.

3. Plaintiffs Are Not Eligible For Adequate Protection Here As They Are Unsecured Creditors And the Supremacy Clause Forbids Using State Law To Circumvent The Bankruptcy Code

(a) Plaintiffs Have No Lien On Bonds Here, Making Them Unsecured Creditors

Plaintiffs do not have a lien to secure the UTGOs. The RMFA nowhere uses the word "lien" and does not purport to grant one. The Act uses the term "escrow" once, but only to authorize municipalities to engage escrow agents. RMFA § 141.518(7). The Act in various places uses the word "pledge," but only as a synonym for "promise."[4] The Act in a few places identifies certain funds as funds that may be used only for specified purposes, but in neither case speaks of a lien or a security interest. *See id*. at §§ 141.2411, 141.2607(3).

Similarly, the Bond Resolutions do not grant a lien against the *ad valorem* taxes to anyone. Like the RMFA, the resolutions use the word "pledge," but again

[4] See, e.g., id. at § 141.2103(l)(iii) and (r); 141.2105(f), 141.2304(c), 141.2305(3)(c), 141.2308, 141.2317(4)(a), 141.2317(5), 141,2401, 141.2409, 141.2413(1) and (2), 141.2415(1), (2) and (3), 141.2513, 141.2601(6)(a) and (f), 141.2603(2), 141.2607(1) and (3), 141.2609, and 141.2611(2)(e).

chiefly as a synonym for a promise. *See* Compl. Ex. D, §§ 301 and 307 of each of the Bond Resolutions. In sum, there is nothing in the documents amounting to a lien either by an agreement or by a judicial order or a statute.[5] Because Plaintiffs have no lien, they are unsecured creditors.

(b) Under The Supremacy Clause, Plaintiffs Cannot Rely On State Law And Contracts To Obtain Protection That The Bankruptcy Code Withholds

As explained above, the Bankruptcy Code does not provide the remedy of adequate protection for an unsecured creditor such as National and Assured. The Supremacy Clause, furthermore, prevents plaintiffs from using state law to circumvent this rule to obtain the equivalent of adequate protection.

It is settled that individual states may not "pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations." *International Shoe Co. v. Pinkus*, 278 U.S. 261, 263 (1929) (citing U.S. Const. art. VI, cl. 2). Thus, courts have held that where Congress incorporates state law into the Bankruptcy Code, it does so explicitly, and "[t]he absence of similar language indicates that Congress intended federal law, not state law, to control the application of [bankruptcy code sections]." *In re Spa at Sunset*

[5] Indeed, the monolines themselves do not claim that they were granted a lien under the Bond Resolutions; rather, they suggests that it is an open question, subject to later determination, "whether the Restricted Funds are impressed with a statutory lien." Compl. n.1.

Isles Condominium Ass'n, Inc., 454 B.R. 898, 906-07 (Bankr. S.D. Fla. 2011) (citing *In re Welzel*, 275 F.2d 1308, 1315 (11th Cir 2001) ("When Congress intend[s] for state law to control in the bankruptcy context, it [says] so with candor.")).

The monolines cannot circumvent this limitation by styling their case as one merely for a declaratory judgment and injunctive relief. "The overarching principle is that the primacy of the bankruptcy laws may not be subverted by labels placed on obligations by the parties themselves." *In the Matter of Joseph*, 157 B.R. 514, 518 (D. Conn. Bankr. 1993). *See also, e.g.*, *In re Schafer*, 689 F.3d 601, 614 (6th Cir. 2012) ("Permitting assertion of a host of state law causes of action to redress wrongs under the Bankruptcy Code would undermine the uniformity the Code endeavors to preserve and would stand as an obstacle to the accomplishment and execution of the full purposes of Congress."); *In re Networks Electronic Corp*., 195 B.R. 92, 97 (9th Cir. B.A.P. 1996) ("To the extent that [an unsecured creditor] argues that state law should prevail over the Bankruptcy Code, such is not the case under the Supremacy Clause, U.S. Const. art. VI, § 2. Federal law preempts a state law or order which 'stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.'").

Moreover, relying on state law in a complaint for declaratory and injunctive relief, as plaintiff does here, cannot substitute for a Rule 4001 motion and the

requirement that the monolines comply with the Rule's procedural and substantive requirements. *See, e.g., In re Sharon*, 234 B.R. 676, 684 (6th Cir. B.A.P. 1999) (holding that continuation of the automatic stay may be conditioned by the bankruptcy court on the provision of adequate protection, but the procedural prerequisite is that the lien creditor must first "request" relief from the stay by motion to the bankruptcy court under Bankruptcy Rule 4001(a)).

C. The Relief Sought By Plaintiffs Also Is Prohibited By Bankruptcy Code Section 904

Section 904 of the Bankruptcy Code provides that "unless the debtor consents or the plan so provides, the court may not . . . interfere with—(1) any of the political or governmental powers of the debtor; (2) any of the property or revenues of the debtor; or (3) the debtor's use or enjoyment of any income-producing property." 11 U.S.C. § 904. "By virtue of § 904, a debtor in chapter 9 retains title to, possession of, and complete control over its property and its operations, and is not restricted in its ability to sell, use, or lease its property." *In re Valley Health Sys.*, 429 B.R. 692, 714 (Bankr. C.D. Cal. 2010).

Notwithstanding these protections, however, plaintiffs' Complaint seeks an order from this Court directing the City to divert certain revenues for their benefit.

See ¶¶ 69-70 (seeking injunctive relief).[6] Section 904, on its face, prohibits this. Indeed, "§ 904 means that the City can expend its property and revenues during the chapter 9 case as it wishes." *In re City of Stockton, Cal.*, 486 B.R. 194, 199 E.D. Cal. 2013).

III. CONCLUSION

For the foregoing reasons, defendant the City of Detroit submits that the Complaint should be dismissed with prejudice.

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[6] In the Sixth Circuit, a party seeking a permanent injunction must show that "(1) it will suffer an irreparable injury absent an injunction; (2) legal remedies, such as money damages, provide inadequate compensation; (3) the balance of hardships warrants an injunction; and (4) the public interest would not be disserved by an injunction." *Lucky's Detroit, LLC v. Double L, Inc*., 2013 U.S. App. LEXIS 16589 (6th Cir. 2013) (citation omitted). The monolines' complaint is devoid of any factual allegations meeting these requirements. Accordingly, the monolines' request for injunctive relief is deficient on its face and must be dismissed.

Dated: December 9, 2013 Respectfully submitted,

/s/ Deborah Kovsky-Apap
Robert S. Hertzberg (P30261)
Deborah Kovsky-Apap (P68258)
Lesley S. Welwarth (P75923)
PEPPER HAMILTON LLP
4000 Town Center, Suite 1800
Southfield, MI 48075
Telephone: (248) 359-7300
Facsimile: (248) 359-7700
hertzbergr@pepperlaw.com
kovskyd@pepperlaw.com
welwartl@pepperlaw.com

ATTORNEYS FOR THE CITY[7]

[7] National recently indicated to Jones Day its concern that Jones Day may have a conflict of interest in representing the City against National in this adversary proceeding, which National brought against the City on November 8 and in which Jones Day has already appeared. (National is a Jones Day client in unrelated matters. National has consented to Jones Day's taking adverse positions in certain circumstances.) In the time available, Jones Day has not been able to complete its investigation into National's concerns. In an abundance of caution, Jones Day is not appearing as counsel of record in this adversary proceeding until this issue is resolved. Jones Day has no conflict it is aware of in the companion proceeding brought by Ambac Assurance Corporation, Adversary Proceeding 13-05310, and will continue to appear as counsel of record in that case.