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Letter to Judge Rhodes: An Evaluation of the Expert Report of Martha E.M. Kopacz regarding the Feasibility of the City of Detroit Plan of Adjustment

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SEPTEMBER 1, 2014

The Honorable Stephen W. Rhodes
United States Bankruptcy Court
Eastern District of Michigan
211 West Fort Street
Detroit, Michigan 48226

**EVALUATION OF THE "EXPERT REPORT OF MARTHA E.M.
KOPACZ REGARDING THE FEASIBILITY OF THE CITY OF
DETROIT PLAN OF ADJUSTMENT"***

Dear Judge Rhodes:

In response to your *Order Regarding the Solicitation of Applications to Serve as the Court's Expert Witness on the Issue of Feasibility* (April 2, 2014), I submitted my name for consideration. You were generous enough to include me in the final list of candidates interviewed in open court.

In my application and interview, I raised a number of methodological concerns about the types of analyses and qualifications required to make a meaningful assessment of 1) the *reasonableness* of the assumptions that underlie the City's cash flow forecasts and projections and 2) the *feasibility* of the City's Plan of Adjustment (POA).¹

* This letter, presented in slightly edited form, was sent from Peter J. Hammer to Judge Stephen W. Rhodes on the eve of the Detroit bankruptcy hearings. The central issue is the "feasibility" of the bankruptcy Plan of Adjustment. "Feasibility" asks, among other issues, whether sufficient resources will exist post-bankruptcy to address the City's needs. It is one of the few frames in the bankruptcy process where the needs of Detroit citizens are considered and given weight.

1. Letter from Peter J. Hammer, Professor of Law, Wayne State Univ. Law School, to the Honorable Stephen W. Rhodes, U. S. Bankr. Court for the Eastern Dist. of Mich. (Apr. 9, 2014) (on file with author) (applying to serve as the Court's expert witness on the issue of feasibility).

I was particularly concerned that the “balance sheet framework” embedded in the City’s Plan of Adjustment and within the professional expertise of municipal finance was inadequate to address the full range of questions at hand. “Creating a viable city requires much more than balancing revenue and expenses in a narrow accounting framework.”² A broader, multidisciplinary set of expertise is required, including expertise in examining the City’s interconnected social, economic and political systems.

I was further concerned, given the absence of any meaningful discussion in the City’s Plan of Adjustment³ and its Disclosure Statement,⁴ that issues of race and regionalism would be marginalized in the expert analysis, particularly if experts were drawn exclusively from the field of municipal finance. “A feasible Plan of Adjustment based on reasonable forecasts and projections must be assessed in light of the City’s history of still unhealed racial conflict and the City’s position within a fractured and segregated regional economy.”⁵

For example, the divisive history of racial conflict and subsequent urban neglect affects the political equation for future state revenue sharing and any discussion over possible regionalization of the Detroit Water and Sewage Department. Furthermore, the extreme segregation of race and wealth in the region has direct implications for any analysis of the labor and housing markets, which, in turn, directly affect future income and property tax revenue for the City. No defensible economic analysis can ignore these issues.

I have reviewed the City’s Plan of Adjustment and Disclosure Statement. I have carefully evaluated the “Expert Report of Martha E.M. Kopacz Regarding the Feasibility of the City of Detroit Plan of Adjustment.”⁶ With all due respect to this Court’s choice of experts and with equal respect for the intelligence, sincerity and industry clearly reflected in the Expert Report, I write to state my opinion regarding the issues of the *reasonableness* and *feasibility* of the City’s Plan of Adjustment.

2. *Id.* at 2.

3. Fourth Amended Chapter 9 Plan for the Adjustment of Debts for the City of Detroit, In re City of Detroit Michigan, No. 12-52846 (Bankr. E.D. Mich. May 5, 2014).

4. Fourth Amended Disclosure Statement with respect to the Fourth Amended Plan for the Adjustment of Debts for the City of Detroit, In re City of Detroit Michigan, No. 12-52846 (Bankr. E.D. Mich. May 5, 2014).

5. Letter from Peter J. Hammer to the Honorable Stephen W. Rhodes, *supra*, note 1, at 3.

6. Expert Report of Martha E.M. Kopacz Regarding the Feasibility of the City of Detroit Plan of Adjustment, In re City of Detroit Michigan, No. 12-52846 (Bankr. E.D. Mich. May 5, 2014) [hereinafter Expert Report].

Regretfully, the fears motivating my original application have largely been realized. Methodological limitations in the Expert Report substantially undermine the integrity of the Report's conclusions. It is my opinion that a sufficient case has not yet been made in support of the City's Plan of Adjustment. Serious questions remain as to 1) the *reasonableness* of the assumptions underlying the City's cash flow forecasts and projections and 2) the *feasibility* of the City's Plan of Adjustment. Based on the current state of the record and expert analyses, I do not believe that the Court can approve the City's Plan of Adjustment.

Part One of this letter examines the methodological issues needed to assess issues of *reasonableness* and *feasibility*. Part Two re-centers discussion of the Plan of Adjustment in the context of race and regionalism in Southeast Michigan. The Expert Report's neglect of these issues has materially affected the quality and nature of its analysis. For example, the Report embraces a misleading individualistic narrative to the neglect of appreciating the deeper structures and processes required to assess the economic and social systems controlling the Region. Part Three evaluates the *reasonableness* of the assumptions underlying the City's cash flow forecasts and projections, highlighting weaknesses in its assessment of forecasting future revenues. Part Four considers the *feasibility* of the City's Plan of Adjustment, highlighting weaknesses in the definition and assessment of the provision of essential services.

I. THE IMPORTANCE OF METHODOLOGY AND PROPER FRAMING

In addressing an issue as difficult and unprecedented as the Detroit Bankruptcy, it is necessary to ask certain foundational questions: How do we know things? How do we identify gaps in current knowledge (aspects of the Detroit bankruptcy for which there is no clear present understanding or no obvious answers)? To what extent can these gaps be filled with thoughtful application of existing understandings/methods? To what extent does new knowledge need to be created with new methods/disciplines/understanding? To what extent can a professional's own training and expertise actually be an obstacle to understanding (epistemic constraints)?

Not every issue can be resolved in a complex legal proceeding, but the Court deserves an accurate mapping of which aspects of which issues can be answered with what level of certainty. Assessments of *reasonableness* and *feasibility* in the context of the Detroit Bankruptcy unavoidably raise complex questions, requiring self-conscious examinations of how complex systems work. How well does the Report

address this concern? Despite the wide range of difficult issues before it, the Report addresses only two with a self-conscious appreciation for their complexity – pensions and Information Technology (IT) systems.

The problem of complexity is dealt with in the most sophisticated manner in the Report's treatment of pensions. This is a self-acknowledged complex problem, dealt with in an appropriately sophisticated manner, reflecting existing state-of-the-art understandings.

[T]he pension plans are very complex. The accounting and actuarial assumptions are difficult to understand; it is even harder to understand how changes in assumptions may changes [sic] the City's future financial prospects.⁷

This is a good start. An awareness of the complexity of the problem is a prerequisite to appreciating the sophistication of the tools and methods that are needed to address it. For example, an appreciation of the complexity of the issues underlying forecasting pensions leads to the corollary insight of needing a sophisticated "stress test" or "sensitivity analysis" to assess the quality and accuracy of those forecasts.

The Blue Ribbon Panel recommended stress tests measuring the effect of investment returns over a 20-year period that are three percentage points above and below those used in calculating standardized plan contributions. The panel believes that +/- 3% points represents "plausible stresses" based on its review of prior market returns.⁸

The more rigorous stress testing of pension forecasts was not conducted (as of the time of the Report) and therefore was not incorporated into the Expert Report's final analysis.⁹

7. *Id.* at 177. Additional references noting the complexity of pensions include: "Assessing the City's future pension and OPEB responsibilities involves, among other factors, forecasted health care costs, complex actuarial models, and assumptions for the anticipated rate of returns on the pensions' assets and the rate used to discount the plans' future liabilities." *Id.* at 124. "The accounting for defined benefit plans can be very complex. The calculations used to determine the appropriate funding levels required each year are dependent upon macro-economic factors, actuarial assumptions, and other variables that can be difficult to understand and can be manipulated to bias the required funding levels." *Id.* at 127.

8. *Id.* at 152.

9. "We have requested sensitivity analysis for GRS consistent with the PFRS sensitivity analysis highlighted above. At the time of this Report's release, we have not been provided the GRS sensitivity analysis." *Id.* at 154.

This type of approach should serve as a template for the analysis of other complex economic issues relating to *reasonableness* and *feasibility*. Unfortunately, the only other area of the POA that the Expert Report approaches self-consciously in terms of its inherent complexity is the planned reform of the City's IT systems. This raises not only an issue of "complexity," but also the challenges associated with trying to reform a complex system.

Large IT systems initiatives have historically contained an inherent risk. McKinsey & Co. notes that: "As IT systems become an important competitive element in many industries, technology projects are getting larger, touching more parts of the organization, and posing a risk to the company if something goes wrong. Unfortunately, things often do go wrong."¹⁰

Tellingly, this is one of the few instances where the Report uses the notion of a "root cause" analysis. "The root causes of cost overruns in IT systems implementations for projects over \$15 million include: unclear objectives and lack of business focus, shifting requirements and technical complexity, unaligned teams, lack of skills, unrealistic schedule and reactive planning."¹¹

Again, the root cause analysis used to assess IT system reforms can serve as a template for the types of analyses required for assessing reforms to complex systems more generally. The lessons are clear. IT systems are complex. It is difficult to reform complex systems. As a result, extreme caution must be employed in approaching the problem.

Unfortunately, the Expert Report fails to appreciate and therefore address the existence complexity underlying other significant aspects of the Plan of Adjustment. The entire POA is an effort to reform a complex adaptive system infinitely more challenging than the transformation of the City's IT system. The POA implicates complex systems of interrelated property markets, labor markets, essential city services and regional integration; yet these issues are not acknowledged as raising "complex" concerns. Nor, is any effort made to bring to bear the sophisticated forms of analyses required to address them adequately.

10. *See id.* at 121 (quoting Michael Bloch, Sven Blumberg & Jürgen Laartz, *Delivering large-scale IT projects on time, on budget, and on value*, MCKINSEY & CO. (Oct. 2012), http://www.mckinsey.com/insights/business_technology/delivering_large-scale_it_projects_on_time_on_budget_and_on_value).

11. *Id.* at 121-22 (citing McKinsey Report on City of Detroit as posted on the City of Detroit website (May 2011)).

This raises a number of concerns. Without appropriate methods and forms of analysis, it is not possible to know whether the POA is *reasonable* or *feasible*. Moreover, the Expert Report gives this court a false sense of certainty about what it knows. While the Report occasionally stresses the remaining unknowns that may be implicated, this is a very simplistic way to assess residual risk and reflects the Report's overall failure to address the problem of the POA as a complex, interconnected system.¹²

One of the primary weaknesses of the Expert Report is its failure to properly diagnose the underlying problems (engaging in a "root cause" analysis) and its failure to apply tools and methods appropriate to the complex challenges at hand in the Detroit Bankruptcy. Tellingly, the Report acknowledges as complex issues and employs more sophisticated forms of analyses for only those issues where there is a similar reflection in the literature and, therefore, off-the-shelf tools and methods to address the problem. The Detroit Bankruptcy does not present a run of the mill set of problems. For many central issues, such as the operations of the Detroit real estate market, appropriate tools and methods do not exist and expert analysis must go beyond that found in the standard literature.

The Report fails to identify the complexity of many aspects of the economic assessment of *reasonableness* and *feasibility*. To not even see these knowledge gaps means that the Report contains many blind spots and applies simple and inadequate forms of analysis that could easily mislead this Court. An equally troubling part of the Report is its

12. The Expert Report includes a general caution about the role of unknown factors: It should be noted that this opinion is rendered in an environment where there are many factors that will have influence on the City's conditions post confirmation that are unknown and unknowable. Throughout this Report, I have noted some of these factors, while other factors may not even be recognized today as potentially having an impact. My opinion is necessarily limited by these unknown factors. It should be recognized, that these factors, when known, could have a material impact on my view of feasibility.

Id. at 10, 204. In addition, the Report generates an ad hoc list of the unknown factors that may generate unexpected outcomes: 1) macro-economic issues; 2) state and federal funding; 3) impact of private parties; 4) exit financing and access to capital markets; 5) fate of the DWSD; 6) terms of the sale of assets; 7) and tipping points. *Id.* at 192-98. The Report suggests, among other things, a reserve of more than 1% to deal with these contingencies. "The risks associated with the IT initiatives alone, warrant additional financial contingency beyond the general 1% assumption in the POA projections." *Id.* at 122. Greater appreciation of systems thinking and complexity, however, suggests more appropriate ways to assess and manage complexity and risk. The first and most important of these is a proper diagnosis and understanding of the problem in its entirety. The second is the adoption of appropriate methods of analysis to accurately map what we know and what knowledge gaps exist. Third is to apply the right combination of expertise to address the actual complexities in the underlying problems.

conscious decision to ignore other important dimensions of the problem contributing the City's financial distress *that are clearly known and knowable to any caring observer.*

II. RACE, STRUCTURE AND MISLEADING MYTHS OF TRIUMPHANT INDIVIDUALISM

A. *Substantive Implications*

As I stated in court during my interview, any legitimate analysis of the Detroit Bankruptcy and the City's Plan of Adjustment must be situated in the context of the Three R's—Race, Regionalism and Reconciliation. Indeed, that conviction was the primary motivation for my application. I am deeply disappointed by the neglect of these issues in the Expert Report. The Report is a word-searchable pdf document. Nowhere in the document are the words "race," "racism," "discrimination" or "segregation." While the phrase "white paper" appears twice, the phrase "white flight" does not appear at all. These are the root causes of Detroit's current financial crisis and yet they are completely absent from the report. The Report looks at the root causes of failures of generic IT Systems, but never once examines the root causes of the fiscal crisis underlying Detroit's municipal distress.

My concern about the Three R's stems from my training as an economist. I operate on the assumption that if you do not know the cause of a problem, it is very difficult to figure out how to solve it. This is particularly true for complicated economic and social problems. Rather than placing the financial problems of Detroit within the context of race and regionalism, Section D of the Expert Report, which is devoted to "Context," adopts the odd and vacuous notion of accepting Detroit "as is."¹³ Without even defining the notion, the "as is" label becomes a substitute for analysis. As such, the Report's only effort to even obliquely raise the issue of race produces a sentence that is nearly incomprehensible: "Black, white, Republican, Democrat, poor, wealthy, educated, illiterate and everyone in between have an opportunity to contribute to the virtuous cycle of revitalization, or not."¹⁴ What does this mean?

On a few occasions, the Report makes an attempt to describe how the City's problems came about. To the best of my knowledge, there are only three short passages where the Report tries to provide context into the City's current problems beyond the "as is" baseline:

13. *Id.* at 22, 24-25.

14. *Id.* at 24.

At every level, Detroit was failing as a city – as measured by the shrinking of its population, useful infrastructure and purposeful enterprises - and as a government – as measured by its inability to deliver essential services.¹⁵

Detroit's fifty year decline was caused by changing demographics, economics and the failure of elected officials to respond effectively. The downward spiral finally resulted in the City filing for Bankruptcy.¹⁶

The City of Detroit, due to its shrinking population, depressed economy, and sagging property values, has experienced a metastasizing urban blight condition over the past several decades.¹⁷

No effort is made beyond this to state why these phenomena occurred. There is no discussion of an eighty year history of discrimination, segregation, racial tension and white flight, producing a dysfunctional region. There is no discussion of how economic markets nested in a hostile and highly fractured geopolitical space fail to thrive. These are the core forces that produced the Bankruptcy, yet they are not recognized in the Expert Report at all.

One has to try hard *not to see* the effects of these forces on the physical landscape of Southeast Michigan. Detroit is a city where nearly 40% of the population lives below the federal poverty level, yet it sits in a region that is defined by its relative wealth and prosperity. The Michigan Roundtable for Diversity and Inclusion and the Kirwan Institute of Race and Ethnicity at Ohio State have conducted "opportunity mapping" of the region.¹⁸ "Opportunity," defined by a metric reflecting the quality of housing, education, employment, health care, transportation, and civil society, can be assessed and given a colored representation on a map of Southeast Michigan.¹⁹ (A copy of the map is reproduced as an appendix to this Letter). What becomes obvious from the map is that there are high and low levels of opportunity in the region and that these areas are spatially segregated. One can almost see

15. *Id.* at 24-25.

16. *Id.* at 157.

17. *Id.* at 167.

18. JASON REECE, KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, OPPORTUNITY FOR ALL: INEQUITY, LINKED FATE AND SOCIAL JUSTICE IN DETROIT AND MICHIGAN (2008), http://www.kirwaninstitute.osu.edu/reports/2008/07_2008_MIRoundtableOppMap_FullReport.pdf.

19. *Id.* at 21.

the outlines of the geopolitical boundaries of Detroit and Pontiac as defining the lowest levels of opportunity in the region. When one overlies spatial mappings of race on top of the mapping of opportunity, one sees a region completely segregated in terms of both race and opportunity.²⁰ (A copy of the map is reproduced as an appendix to this Letter). This is the core of what John Powell terms “spatial racism” in modern America.²¹ Detroit is ground zero for spatial racism.

Detroit remains one of the most racially and economically segregated regions in the country, yet there is no trace of this realization in the Expert Report. Its absence is even more troubling given my conversations with Ms. Kopacz shortly after her appointment as Expert.²² In a cordial and constructive conversation, I raised many of these exact concerns, particularly the significance of regional opportunity mapping. In a follow-up email, I included references to a number of supporting documents including direct links to the Kirwan Institute Report cited here. A choice was made here not to incorporate this analysis.

Other absences also define the Report. Tellingly, the word “poverty” appears only once in the entire 226-page Report, and then only in the context of defining criteria for participation in the pension income stabilization fund.²³ The failure to consider the economic effects of poverty is inexcusable. Endemic, structural poverty lies at the heart of the tax foreclosure crisis, the collapse of the real estate markets and the water shutoffs that have triggered international condemnation. These factors are critical to any serious economic assessment of *reasonableness* and *feasibility*, yet they appear nowhere in the Expert Report. The absence of such analyses substantially undermines the credibility and usefulness of the Report’s conclusions.

B. *Implications of Cognitive Frames*

Incorporating issues of race, systems and structure into the expert analysis matters for additional reasons – thinking about these issues in the right way also changes the way one thinks. Cognitive frames can be controlling of outcomes. Frames and associational priming create cascading systems of thought that generate predictable sets of inferences.

If one adopts the frame of The Three R’s—Race Regionalism and Reconciliation—one immediately creates a cognitive frame that

20. *Id.* at 22.

21. JOHN POWELL, RACING TO JUSTICE: TRANSFORMING OUR CONCEPTION OF SELF AND OTHER TO BUILD AN INCLUSIVE SOCIETY 147-50 (2012).

22. Expert Report, *supra* note 6, at 218.

23. *Id.* at 108.

resonates associationally with systems, processes and structure. In contrast, when one adopts a frame that consciously ignores these factors, one creates a counter frame with very different associational references. The dominant frame of our country echoes in archetypes of individualism. If one is not thinking about systems and groups, one is likely thinking in terms of atomistic individuals making rational choices in relative social isolation. Sadly, this is the defining frame of the Expert Report. The adoption of such a frame is not inconsequential. Official reports can be approached as social artifacts. They reflect the belief system of the individuals, epistemic communities and institutions that produce them.²⁴ This is true of the Kopacz Expert Report.

The Report's individualistic cognitive frame distorts its analysis in a number of ways, likely beyond the authors' conscious awareness. Individual, atomistic frames are associated with predictable patterns and tendencies. For example, such frames are likely to 1) blame individuals and not systems for problems, 2) focus on choice and culture (not structure) as explanations for social outcomes, and 3) exaggerate the role of individuals in producing collective results—"great men" theories of history. In contrast, systems frames, such as that found in theories of structuralized racialization, are associated with other predictable patterns and tendencies. A systems frame would highlight the significance of history and context (the Three R's), emphasize the role of structure—your zip code in Southeast Michigan is a greater predictor of your likely life achievement than your aptitude—and acknowledge the importance of complexity and interconnectivity, such as emphasizing the role of regional markets in the POA's economic analyses.

In truth, most analyses reflect combinations of systemic and individual factors – the difference is in their emphases and the prioritization of causal relations. The Expert Report contains two striking illustrations of a controlling atomistic frame. One is the Report's analysis of city workers. The other is the Report's tendency to exaggerate the role of particular individuals in producing social outcomes, such as the roles of the Mayor and the Emergency Manager and the Report's persistent emphasis on individual "skill & will" as controlling factors.

Section K of the Report is devoted to "Human Capital and Leadership."²⁵ The strongest language in the Report reflective of true

24. PETER HAMMER, CHANGE AND CONTINUITY AT THE WORLD BANK: REFORMING PARADOXES OF ECONOMIC DEVELOPMENT (2013); Peter J. Hammer, *Development as Tragedy: The Asian Development Bank and Indigenous People in Cambodia*, in LIVING ON THE MARGINS: MINORITIES AND BORDERLINES IN CAMBODIA AND SOUTHEAST ASIA (Peter Hammer ed., 2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1371595.

25. Expert Report, *supra* note 6, at 157-66.

moral outrage can be found in this section and it is reserved for Detroit city workers. Two references are made to the “vortex of underachievement”, responsibility for which is laid at the feet of city employees.²⁶ “There are also employees who don’t grasp that their job is to provide a service to the taxpayers versus the taxpayers owing them a job.”²⁷ The quality of workers is disparaged elsewhere in the Report as well. “Current human resources are lacking and senior leadership, while generally capable is not plentiful.”²⁸ The causal explanation for the “vortex of underachievement” is an alleged “*cultural malady*” that will “have to change if Detroit is to be successful.”²⁹ Anyone doing racial equity work would have counseled the author, at a minimum, to use different language. The words in the Report echo insensitively close to blame-oriented explanations of an asserted “culture of poverty.”

The Report’s focus on individuals and its resort to individual blame is ironic, because the same section of the Report is rife with alternative insights suggesting the significant role that systems, structure and processes play as co-explanations for the broken state of City services. “Throughout our discussion in the finance and accounting functions it has been noted: *‘Many qualified and experienced employees have left their jobs over concerns about the long term prospects of their positions; Difficulty in replacing employees with qualified personnel because salary structure is no longer reasonable and competitive.’*”³⁰ Elsewhere, the Report acknowledges that the city workers who have not left have suffered wage reductions of 10%³¹ and must work side-by-side with highly paid external consultants who judgmentally are doing work that city workers should be doing “but are not sufficiently trained to do so.”³² Furthermore, the Report acknowledges that the POA will predictably make things worse (not better), by further reducing benefits and moving to a defined contribution systems benefits.³³ This will make future hiring and retention of city workers even more uncertain than the troubled past.³⁴

Connecting the dots from a structural perspective would lead to advocating for the type of systemic reforms that would make positions in Detroit competitive with public jobs elsewhere in the Region. This would

26. *Id.* at 164.

27. *Id.* at 159.

28. *Id.* at 201.

29. *Id.* at 159 (emphasis added).

30. *Id.* at 159-60 (emphasis in original).

31. *Id.* at 160.

32. *Id.* at 163.

33. *Id.* at 160.

34. *Id.* at 161.

require paying market wages and providing market benefits. Instead, the POA allocates insufficient resources to make these key positions competitive, creating the need for additional triage in human resource allocation in the future. True to its individualistic frame, however, the Report advocates “hiring fewer but more skilled employees” if “compensation is a barrier to hiring the skilled talent required.”³⁵ A few gifted and heroic individuals, so the Report would have us believe, will be able to overcome the challenges of a continuously broken and under-resourced system.

The greatest illustration of the atomistic bias in the Report, however, is its indulgence of the “great man” theory of history and its invocation of the hero archetype. There is an acknowledged economic, political and financial crisis in Detroit. Given that the POA fails to identify the root structural causes of the crisis and implement necessary structural reforms, one must invent a hero to single-handedly rescue the City from the current crisis, if there is to be any hope.

The heroes here are the Mayor and the Emergency Manager. “I have confidence in Mayor Duggan. My opinion of feasibility is favorably influenced by my view of Mayor Duggan as a leader and an operational executive.”³⁶ Indeed, as in any good myth, if it were not for the new-found hero riding to the rescue, all would be lost. The Report places the economic assessment of the *feasibility* of the entire Plan of Adjustment on a knife’s edge. The day is saved by placing the burden of *feasibility* squarely on the shoulders of the mythically invoked hero. “I can say, unequivocally, that without the positive and capable leadership of Mayor Duggan and the constructive relationship between the City Council and the Mayor, I would be unable to opine that the plan, as currently proposed, is feasible.”³⁷

I find this statement as remarkable as it is troubling. As an economist and someone who understands complex systems, I can envision no scenario in which a single individual, no matter how gifted, could rescue the city in the absence of having appropriate systems, structures and processes in place to address the root causes of the City’s financial distress. Individuals, without the aid of properly designed systems have no such superpowers. Such a conclusion is indefensible and absurd from a systems perspective that properly weighs the role of economic and structural analysis. It is magical thinking. In saying this, I stress that there is no malicious intent in the expert analysis. The reliance on myths and the invocation of heroic archetypes are often revelatory of the

35. *Id.* at 162-63.

36. *Id.* at 164.

37. *Id.* at 29.

knowledge gaps and weaknesses embedded in the expert's own tools, analysis, training and epistemic constraints. This is why the foundational methodological framing stressed earlier is so important. If you do not ask the right questions and adopt the right methodologies, you will not get useful insights and answers. It is a predictable aspect of human nature to resort to myths to restore order when our own frames and tools are inadequate to the task.

The analytical weaknesses of the Report become evident in its treatment of the issues of *reasonableness* and *feasibility*.

III. THE *REASONABLENESS* OF THE ASSUMPTIONS UNDERLYING THE CITY'S FORECASTS

As an economist, what I am most struck by in the Expert Report is the absence of any effort to model the underlying economic problems as a basis for forecasting future revenues and expenses. Indeed, there is little theory, methodology or developed frameworks specified in the Expert Report to justify its assessment of the *reasonableness* of the POA or to substantiate its conclusions.

The term "macro" is used in the report on seven occasions, but only twice in reference to the type of macro-economic concerns an economist might anticipate³⁸ Rather, a "macro" for purposes of the Report is the often hidden and undefined formulas embedded in excel spreadsheets.

The term "model" is used in this Report to describe the one or more excel spreadsheets that together form a financial projection. A "values only model" or "flat model" is essentially a printout of the excel spreadsheets, although it may be provided in electronic format rather than in hard copy. A "working model" contains all the cell references, formulas and "macro" commands that are within the spreadsheets and allows a reviewer of the model to understand what the inputs and assumptions are that create the projections. It is in the working model that a reviewer can understand the "art" of the analyst's modeling.³⁹

Whether it is art or something else is difficult to tell, because for all intents and purposes these "macros" exist in multiple black boxes held by different external consultants and somehow aggregated together to produce the POA. Little revealed in the Expert Report permits an intelligent review or evaluation of these hidden assessments. If I were

38. *Id.* at 127, 193.

39. *Id.* at 14-15 n.10.

tasked with the job of doing a professional critique of the specific analysis, I would have nowhere to begin.

In the absence of a clearly specified model, a logical evaluation would start by trying to test the most objective and externally verifiable aspects of the economic analysis. This would point to the casino revenue. Casino revenue should be the easiest forecast to get right, because it is mostly influenced by national trends without the complicated, dysfunctional characteristics that plague Detroit's labor and property markets. A report by Reuters is very critical of the POA's casino revenue assessments.⁴⁰ The article criticizes the POA for making assumptions of a 0.5% growth rate in casino revenues between 2016-17 and a 1% growth rate 2018-2023, when the national growth of casino revenue is actually likely to decline. The decline is due to the fact that younger demographics are not entering the market and the market is experiencing more competitive entry, such as the new casinos in Ohio that compete with Detroit.

None of these complicating considerations are addressed in the Expert Report. When one reads a legal brief or listens to a legal argument, one tests the credibility of the whole by how well the advocate deals with the most objective and verifiable facts. If these issues are not dealt with well, one's skepticism of the entire case increases. If the POA is not being forthcoming with the casino revenue, how credible is its assessments of more complicated and difficult issues?

As I told the Court during my interview, the most complicated economic forecasting concerns the future of Detroit's real estate market. I told the Court that this was a regional market that had to be looked at in a regional context. I further told the Court that the historic collapse of the Detroit real estate market was the product of racial conflict and that its future recovery could not adequately be assessed without express consideration of prospective race relations (reconciliation). Troublingly, none of these concerns are incorporated in the economic analysis of the Expert Report.

Not only are these issues missing in the analysis, there is absolutely no effort to introduce a theory, methodology or framework that could intelligently inform the analysis of the likely future course of Detroit's property market. This is an essential component of forecasting property value and therefore property tax revenue. There is no appreciation of the inherent complexity of these issues, as was acknowledged in the Report's pension analysis. This highlights the reflexive nature of the Report's

40. Tim Reid and Michael Erman, *Detroit Rolls Dice by Relying on Casino Cash*, REUTERS (June 9, 2014, 7:00 AM), <http://www.reuters.com/article/2014/06/09/usa-detroit-casinos-idUSL1N0ON2BO20140609>.

analysis. The Report addresses pensions as a complex problem and therefore deals with it in a relatively sophisticated manner because that is the state of the art recognition of the literature. The Report fails to address the complexities of Detroit's real estate market and deal with it in a sophisticated manner because there is no off-the-shelf analysis to frame the problem. As the earlier discussion of methodology makes clear, this is understandable, but not excusable.

Even a cursory examination of the recent literature (none of which was cited or assessed in the Expert Report), reveals the complexities of the problem. Allen C. Goodman conducts an extensive econometric evaluation of housing stocks in central U.S. Cities between 2000 and 2010, a period encompassing the immediate effects of the Great Recession.⁴¹ The author's main conclusion is that while traditional economic theory can explain some parts of the changes in housing markets, there are important parts of what is happening in cities like Detroit that traditional economic theory simply cannot explain. "Market fundamentals help explain many of the changes, but performances in cities like Detroit were generally worse than could be explained by the models. . . . it appears that indeed large portions of many American Central cities have been 'thrown away.'"⁴² This reinforces the need to ask foundational methodological questions. Off-the-shelf municipal accounting and economic theory cannot address the issues underlying Detroit's property market and Bankruptcy.

When markets start to fail, the challenges facing them become more and more difficult. An illustration of this fact can again be found in the current economic literature on the Detroit housing market. The sale of an individual house conveys pricing information about the entire market that benefits many different stakeholders. Reliable information about pricing, in turn, is essential for the market to function effectively. When there are fewer sales, there is less information, which can lead the entire market to unravel and fail. Lei Ding of the Federal Reserve Bank in Philadelphia examines this phenomenon as it relates to Detroit.⁴³ The negative feedback loop can be triggered at very low thresholds in distressed markets. The odds of a new buyer being denied a mortgage "increase 32 percent if the number of previous mortgagee purchasers is no greater than five."⁴⁴ Unfortunately, this threshold for a "failed"

41. Allen Goodman, *Is there an S in Urban Housing Supply? Or What on Earth Happened in Detroit*, 22 J. HOUS. ECON. 179 (2013).

42. *Id.* at 190.

43. Lei Ding, *Information Externalities and Residential Mortgage Lending in the Hardest Hit Housing Market: The Case of Detroit*, 16 CITYSCAPE: J. POLICY DEV. & RESEARCH 233 (2014).

44. *Id.* at 242.

market encompasses almost the entire footprint of the city of Detroit.⁴⁵ (A copy of the map is reproduced as an appendix to this Letter). Tellingly, the absence of comparable distress (and therefore presence of opportunity) characterizes most of the rest of the region. The same reality is illustrated in the opportunity mapping discussed earlier.

The desperate shape of the housing market and the ways in which such a crisis defies contemporary economic theories and models are why I told the Court that this was the most challenging task facing whomever was selected as an expert. You cannot assess the future property values without modeling the real estate market. You cannot forecast future tax revenue without knowing property tax values. The absence of any such realizations in the Report substantially undermines the credibility of the Report and the veracity of its conclusions.

It is one thing to fault an Expert Report for not citing the most recent economics literature on the Detroit housing market. This may be excusable. It is not excusable, however, for the Report to fail to address the current tax and mortgage foreclosure crisis (both of which are reflections of the endemic high levels of poverty in the city) in its assessment of future property tax revenues. *Remarkably, the word “foreclosure” appears nowhere in the Expert Report.* The Report repeatedly cites the Detroit Blight Removal Task Force Report (DBRTFR), but fails to incorporate its teaching on tax foreclosures.⁴⁶

Since 2008, the beginning of the Great Recession, more than 60,000 Detroit properties have gone through the tax foreclosure process.⁴⁷ The numbers in the tax foreclosure pipeline are even greater. “At this moment, more than 76,000 properties across Detroit are subject to tax foreclosure because the property owners have not paid their taxes in more than three years. More than 42,000 are tax distressed and on their way to foreclosure, with unpaid taxes for at least one year (but not yet three years delinquent).”⁴⁸ That is a total of nearly 180,000 properties either tax foreclosed or at risk since 2008.

These are mind-blowing statistics that bear directly on the issues of *reasonableness* and *feasibility*. They document the devastating effects of poverty in Detroit and the complete collapse of the City’s real estate market. These numbers represent people losing their homes for the inability to pay taxes, let alone the need to pay for water, utilities, insurance and mortgages. How can an Expert Report ostensibly

45. *Id.* at 247.

46. DETROIT BLIGHT REMOVAL TASK FORCE REPORT, EVERY NEIGHBORHOOD HAS A FUTURE . . . AND IT DOESN’T INCLUDE BLIGHT (2014) [hereinafter DBRTFR].

47. *Id.* at 200.

48. *Id.*

examining the reasonableness of future property tax revenue forecasts not even raise this issue?

The tax foreclosure crisis does not stand in isolation. To this disaster must be added the mortgage foreclosure crisis, fueled by racialized predatory Wall Street practices. *Adkins v. Morgan Stanley* is a class action race discrimination case brought by the ACLU challenging sub-prime lending practices in Detroit tailored to meet the demands of the secondary lending market. The case is now pending in the Southern District of New York. In denying Morgan Stanley's motion to dismiss, Judge Harold Baer directly linked the issues before him to the Detroit Bankruptcy.

Detroit's recent bankruptcy filing only emphasizes the broader consequences of predatory lending and the foreclosures that inevitably result. Indeed, "[b]y 2012, banks had foreclosed on 100,000 homes [in Detroit], which drove down the city's total real estate value by 30 percent and spurred a mass exodus of nearly a quarter million people." Laura Gottesdiener, *Detroit's Debt Crisis: Everything Must Go*, Rolling Stone, June 20, 2013. The resulting blight stemming from "60,000 parcels of vacant land" and "78,000 vacant structures, of which 38,000 are estimated to be in potentially dangerous condition" has further strained Detroit's already taxed resources. Kevyn D. Orr, Financial and Operating Plan 9 (2013). And as residents flee the city, Detroit's shrinking ratepayer base renders its financial outlook even bleaker. *Id.* Given these conditions, it is not difficult to conclude that Detroit's current predicament, at least in part, is an outgrowth of the predatory lending at issue here.⁴⁹

All of these issues are interrelated. The tax and mortgage foreclosure crises, endemic poverty, the collapse of the Detroit real estate market and the question of the *reasonableness* of the POA's projection of future property tax revenue. If the economic connections are so clear to a federal judge sitting hundreds of miles away, why are these issues completely absent from the Expert Report?

Rather than engaging in appropriate economic and structural analysis of these issues, the Report collapses back to its mythical individualistic frame. Completely ignoring the question of endemic poverty and the tsunami of tax foreclosures, the Report reduces the problem of property tax collection to a simple question of individual "skill and will."

49. *Adkins v. Morgan Stanley*, No. 12. Civ. 7667, 2013 WL 3835198, at 3-4 (S.D.N.Y. July 25, 2013).

As I noted in my definition of feasibility, the second assessment prong of feasibility is “will and skill.” Leadership, political and intestinal fortitude define “will” and talent and training equate to “skill.” For example, in order to arrest the downward trend of revenue, City employees must do a better job of collecting the taxes and fees that are currently due—that is skill.⁵⁰

In the face of the tax and mortgage foreclosure crisis and the collapse of the real estate market, the City needs much more than “intestinal fortitude” and more highly “skilled” tax collectors. It needs a rigorous examination of future revenues, methods of collection and structures of tax assessment that are predicated on the realities of endemic poverty and limited resources. Such critical elements are completely missing from the POA and the Expert Report.

The extreme mismatch between the Expert’s Report’s understanding of the underlying economic problems and the tools it brings to bear in assessing *reasonableness* and *feasibility* is further illustrated in the Report’s purported “sensitivity” analysis of the property tax revenue projections.⁵¹ There are a number of problems. The first limitation is that the Report engages only in a single scenario analysis. Given the complicated nature of the economic problems, profound gaps in knowledge and the absence of off-the-shelf models of analysis, a single scenario analysis can be profoundly misguided. The real risk is not that the forecast will be a little off (1%-3%). The real risk is that the entire model is unfounded and that the forecasts will be wrong by orders of magnitude. In this setting, one would like to test the robustness of the underlying specification of the model. This was not done. Given the multiple “black boxes” in which the excel spreadsheet macros sit; it is unlikely that any one person could identify the real “specification” underlying the analysis and therefore test its robustness.

As such, the analysis underlying the POA is sitting on a tinderbox of unknown and unstated assumptions that defy any legitimate sensitivity analysis. In such a situation, based on the current state of the record, it is nearly impossible to do any credible assessment of *reasonableness* or *feasibility*. Similar critiques could be made of the thin economic analysis of labor markets and likely income tax revenue in the report.

50. Expert Report, *supra* note 6, at 158.

51. This statement becomes even truer if one anticipates the planned reappraisal of property values and the restructuring of property tax rates. Even if done in a manner that is intended to increase revenue and equity, such structural reforms introduce additional forms of uncertainty into the analysis.

Given the many problems and limitations in the existing record, the kindest professional opinion I can render is that the case has not yet been made to support the legal conclusion that the POA is *reasonable*.

IV. THE *FEASIBILITY* OF THE CITY'S PLAN OF ADJUSTMENT

The most important decision the court is likely to make in the entire bankruptcy proceeding will be its legal and factual determinations regarding *feasibility*. This is the only legal frame in the bankruptcy process where the needs of the average Detroit citizen are given priority. The Court's decision will determine not only the quality of life of the citizens of Detroit for decades to come; it will also determine the fates of scores of similar cities that will likely pass through Chapter 9 proceeding in the coming years. Like Detroit, the majority of these cities will be characterized by endemic poverty. Since poverty is racialized in this country, these cities will also predominately be majority minority central cities, surrounded by wealthier white suburban regions. As such, the bankruptcy determination of *feasibility* is also a determination of the future lives and livelihoods of the citizens of these cities and what stake they will be given in the American dream.

The 50th anniversary of the 1967 urban rebellion in Detroit is on the horizon. Echoes of urban unrest resonate in the recent confrontations in Ferguson, Missouri. In my own research this summer, I had occasion to revisit the Kerner Commission Report, prepared in the wake of the late 1960s urban violence. Its famous conclusion is worth repeating: "Our nation is moving toward two societies, one black, one white – separate and unequal."⁵²

What most people fail to recall is that a good portion of the Kerner Commission Report—What can be done?—consisted of a broad range of policy prescriptions that could reverse negative trends in cities and create greater equality and shared opportunity. As such, the Kerner Commission Report can be viewed as its own Plan of Adjustment, detailing the types of programs and investments necessary to provide essential services in cities like Detroit. The Kerner Commission Report outlines proposals for employment, education, the welfare system and housing, in addition to reforms in police departments and practices. The document was a national call to action to invest in our cities and its residents. "This alternative will require a commitment to national action—compassionate, massive and sustained, backed by the resources

52. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, I (1968), www.eisenhowerfoundation.org/docs/kerner.pdf (commonly referred to as the Kerner Commission Report)

of the most powerful and the richest nation on this earth. From every American it will require new attitudes, new understanding, and, above all, new will.”⁵³

That “new will” never materialized. Dr. Martin Luther King spoke of the “promissory note” issued by the Constitution and Declaration of Independence.⁵⁴ In his famous “Dream” speech, he declared that he “refuse[d] to believe that the bank of justice is bankrupt”⁵⁵ Dr. King may have been wrong.

The promise remains unfulfilled in the context of the Detroit Bankruptcy. Indeed, the maps attached as exhibits to this letter illustrate the contemporary reality of the separate and unequal, black and white societies prophesied by the Kerner Commission Report as defining characteristics of Southeast Michigan. We can give the counties in these spatially segregated locations names—Oakland, Macomb, Washtenaw—and we can list its cities—Livonia, West Bloomfield, Troy and Ann Arbor.

Central cities have increasingly become separate, unequal, minimal cities, with minimal wealth, minimal opportunity and minimal city services. The question for this Court is whether Chapter 9 determinations of *feasibility* will be the instrumentality that legally ratifies the second class status of these economically deprived cities.

I admire the Expert Report’s effort to wrestle with the difficult question of feasibility. The Report’s definition is a useful point of departure.

Is it likely that the City of Detroit, after the confirmation of the Plan of Adjustment, will be able to sustainably provide basic municipal services to the citizens of Detroit and to meet the obligations contemplated in the Plan without the significant probability of a default?⁵⁶

In examining the Report’s analysis of *feasibility*, however, one is again stuck by the absence of any developed theory, methodology or framework to define what “basic municipal services” are and therefore to assess whether they are sufficiently provided for in the POA.

53. *Id.* at 1.

54. Dr. Martin Luther King, Jr., I Have a Dream, Address at March on Washington for Jobs and Freedom (Aug. 28, 1963), http://mlk-kpp01.stanford.edu/index.php/encyclopedia/documentsentry/doc_august_28_1963_i_have_a_dream/.

55. *Id.*

56. Expert Report, *supra* note 6, at 13.

The Report contains many statements as to what feasibility is not. According to the Report, feasibility is not about “whether there may be alternative plans that could produce better outcomes for the city.”⁵⁷ In addition, the authors state: “I do not need to determine that Detroit will become a best in class municipality to determine that the POA is feasible.”⁵⁸ Much less is said about what feasibility is. Apparently, one benchmark is the provision of “adequate and reasonable service delivery”,⁵⁹ but no effort is made to define what those services are or what is meant by “adequate and reasonable.”⁶⁰

What services are “basic” or “essential?” What services are not? What do residents in a city need or deserve? Is the answer to this question the same for all communities, races and areas of the country? Should one look to neighboring communities to make these determinations? There is no guidance in the Expert Report or the POA to these questions.

Simply for analytic purposes, it is helpful to have some benchmarks from which to assess the feasibility of the POA and the types of services that should be provided. The components of employment, education, welfare, and housing found in the Kerner Commission Report could be one such benchmark. Standards of economic development theory might be another useful source. Nobel Prize winning economist Amartya Sen lists five types of instrumental freedoms that governments have an obligation to provide: 1) political freedoms (basic civil rights, including rights to vote and participate in democratic governance); 2) economic facilities (the ability of individuals to fully participate in economic markets and have fair access to economic resources); 3) social opportunity (including access to quality education and health care); 4) transparency guarantees (mandates of openness in governance, including disclosure rights and protections against political corruption and financial irresponsibility); and 5) protective security (including social safety nets, unemployment benefits, income supplements and the provision of physical security).⁶¹ One can also envision the basic building blocks necessary for a healthy society as basic reference points: physical

57. *Id.* at 20.

58. *Id.* at 19.

59. *Id.*

60. At one point, the Kopacz Expert Report states: “The role as the Court’s expert on feasibility is both vast and specific, and subsumed within a unique set of facts and circumstances surrounding the City of Detroit, its history and plethora of challenges.” *Id.* at 22. This and other statements are lacking in much helpful guidance for analysis.

61. AMARTYA SEN, DEVELOPMENT AS FREEDOM 38-40 (1999). See also MARTHA NUSSBAUM, CREATING CAPACITIES: THE HUMAN DEVELOPMENT APPROACH (2011).

security, food security, social security, economic security and spiritual security.

How does the POA rate on these scales? The City's POA embodies the complete devolution of distressed cities into second-class "minimal cities," as lamented by Michelle Anderson.⁶² While a slight oversimplification, the POA envisions a post-bankrupt city that essentially provides only 1) police protection; 2) fire protection; and 3) the demolition of blighted buildings. At its base, this is an anemic list of "essential" services that provide only a shadow of the services required to take care of the needs of city residents and to provide them any meaningful opportunity for the future.

When the POA is juxtaposed to the opportunity mapping of Southeast Michigan, the implications are clear (see exhibits to this letter). The state-appointed Emergency Manager wants this Court to ratify as *feasible* and, therefore, legitimize the *de facto* existence of "two societies, one black, one white—separate and unequal."

No one questions the importance of police and fire protection. "Physical security" is the first building block for creating a sustainable society. What the POA fails to appreciate is that there are other essential building blocks for a healthy society—food security, social security, health security and opportunity security. These later items are grossly neglected in the POA. Indeed, focusing on physical security to the neglect of the other building blocks is short-sighted and self-defeating. Young men are not out scrapping for metals in abandoned homes because that is the first best use of their time in an ideal society. People make the best choices that are available to them. When a whole range of productive, healthy and fulfilling choices are denied, other choices are made. If the POA is ratified with its focus on physical security and not human security, it could result in an endless spiral of violence and increased physical repression as people in deprived minimalist cities become more and more opportunity starved and desperate. Civilized societies invest in the other building blocks of society not because they are luxuries, but because they are necessary for the existence of civilized societies.

The POA's focus on property rather than people is clear. While the POA makes no serious investment in creating opportunities for people, the POA contains substantial funds for the demolition of buildings. The Blight Removal Task Force Report proposes spending \$850,000,000 dollars for the demolition of residential buildings (it will require an additional 500 million to 1 billion dollars to demolish larger commercial

62. Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L. REV. 1118 (2014).

and industrial properties).⁶³ Where will this money come from? The answer is “exit financing” through the POA. “The Exit Financing contemplated appears to be the primary source for this funding.”⁶⁴ Ironically, after the City retires all of its long term debt, it will take out \$420,000,000 in new debt, primarily to knock down buildings.⁶⁵

Sadly, no economic case has been made to justify this decision. The most revealing statement in the Expert Report’s assessment of the proposed blight removal in the POA is the following sentence: “Quantifying the near- and long-term economic impact of a successful City of Detroit blight removal initiative is difficult *due to the absence of a calculable immediate return on the City’s investment.*”⁶⁶ The Report rightfully acknowledges that there is no methodology identified in the POA (or the Expert Report or the DBRTFR for that matter) to actually assess the rate of return, if any, from this near billion dollar investment in demolishing buildings. After acknowledging the absence of any theory or method to assess the “rate of return” on blight removal, however, the Expert Report pivots to engage in sustained “cheerlead” for the initiative. The very same paragraph concludes that “the relative impact of blight removal cannot be overstated.”⁶⁷ How can this make sense? With no framework in which to analyze or assess the economics of the plan, on what bases could it be overstated, understated or stated at all?

Equally troubling, the DBRTFR itself is devoid of economic analysis. To determine the “rate of return” on investment in blight removal, one would have to model the underlying real estate market and have a defensible theory about the relationship between blight removal and property values. As detailed in the discussion of *reasonableness*, however, this type of analysis is missing in the Expert Report. It is equally absent in the DBRTFR. There is simply no “there” there to justify the enterprise. In terms of an economic case for the substantial investment in blight removal, it is not just that the case has not been made, the case has not even been attempted.

While blight is a serious problem and one that needs to be *managed*, it is but one of a constellation of reciprocally related causes underlying Detroit’s municipal distress. The DBRTFR and the POA, adopts a myopic focus on demolishing buildings. Infant mortality is also a real crisis in Detroit, but the same sense of urgency and resources are not brought to this issue. The same could be said of maternal mortality and

63. DBRTFR, *supra* note 46, at 19.

64. Expert Report, *supra* note 6, at 171.

65. *Id.* at 170.

66. *Id.* at 173 (emphasis added).

67. *Id.*

the entire meltdown of public education, but no one is seeking a billion dollars to invest in people (human capacity) rather than property.

The Expert Report repeatedly states that it need not determine that the POA is the best plan; just that it is *reasonable* and *feasible*. This is true. The failure to consider *any other possible plans*, however, means that the Report has no benchmark for its analysis. The notion of “opportunity cost” is a critical economic concept. An investment is assessed in terms of the next best alternative use of the resources. The economic exercise is to ask whether the 850 million dollar investment in blight removal would create greater social benefits if it were invested for some other social purposes. Blight removal is a near-billion dollar investment in a moribund and failed real estate market.

What would be the economic benefits of investing comparable amounts in people—building human capacity—head start, schools, reducing health disparities, citizen re-entry, job training and economic opportunity? Even in a narrower economic frame, we need to ask what would be the differential in economic benefits of spending comparable funds in foreclosure relief designed to keep people in their homes, as opposed to demolishing those same homes after the residents have been forced to leave. This type of analysis is critical to an economic evaluation of the POA, but it is missing in the Expert Report.

The DBRTFR adopts a single intervention solution to what is a complex multi-causal phenomenon. It proposes a capital-intensive strategy to knock down buildings with the biggest bulldozers that can be found, where the economic benefits of those expenditures will likely redound to suburban contractors and not the residents of Detroit. The billion dollar expense will yield only 430 jobs, when a careful rethinking of the capital/labor ratio of blight management could make it the biggest jobs bill ever designed for Detroit, to the benefit of Detroit residents.

If there is any analytic substance to the legal definition of *feasibility*, then the separate, unequal and segregated minimalist Detroit future city outlined in the POA is not *feasible*. In the context of a city experiencing decades of decline, the minimalist city infrastructure envisioned in the POA will not be economically sustainable given current trends and could ultimately collapse upon itself. Moreover, the POA fails to outline a sufficient range of services and resources to provide opportunity to the residents of the city. The investments in police, fire and physical security will ultimately be self-defeating in the absence of comparable investments in social opportunity. The tremendous imbalance reflected in the POA could create a dynamic where more and more militant police practices will be required to contain the problems that will be, in part, its own creation.

Given the many problems and limitations in the existing record, the kindest professional opinion I can render is that the case has not yet been made to support the legal conclusion that the POA is *feasible*.

V. CONCLUSION

Citing Malcolm Gladwell, the Expert Report makes a strained effort to frame the situation in Detroit as a “tipping point.”⁶⁸ This is surprising in a Report that has striven to avoid examining issues from a structural perspective. The “tipping point” metaphor is a rhetorical move to suggest a singular moment in history reminiscent of earlier efforts to invoke the hero archetype in the role of Mayor and the Emergency Manager. Even here, the author must try hard not to let notions of race and regionalism seep back into the analysis. The Report omits the fact that the term “tipping point” “first came into popular use in the 1970s to describe the flight to the suburbs of whites living in the older cities of the American Northeast.”⁶⁹ If acknowledged, a discussion of the origin of “tipping points” would have been the first and only recognition in the Report of the role that racism and white flight played in defining the fate of northern cities.

A more apt Gladwell book to describe the underlying dynamics of Detroit might be “Outliers.”⁷⁰ This book debunks the common individualistic story of success, revealing the role of embedded systems, structures and processes in leading to the triumphs of our great heroes from politics, sports and business. Systems matter. Structure matters. History matters. In pretending that they do not, and in eschewing the Three R’s of Race, Regionalism and Reconciliation, the Expert Report has placed an analytical straightjacket on itself to the point that it cannot see the plain facts in front of it. The Report does not see the reality of endemic poverty, water shutoffs and tax foreclosures. It does not see the reality of the segregation of race and wealth and regional conflict that underlie the bankruptcy. It sees complexity only in standard issues where those realities are reflected in the existing literature (pensions and IT systems), but fails to see the multiple complexities that define Detroit’s municipal distress—the realities of dysfunctional regional labor, transportation and real estate markets. The Report concludes that the POA is feasible and will provide essential services without outlining a framework for what cities should provide their citizens or explaining

68. *Id.* at 24, 197-98.

69. MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 12 (2000).

70. MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS* (2008).

what services are not essential and why. It uncritically cheerleads for blight removal, knowing that no defensible method has been outlined to demonstrate a reasonable rate of return on such spending or exploring the social opportunity cost of alternative investments that could be spent building human capacity, rather than demolishing buildings.

For the reasons outlined in this letter, my opinion is that a sufficient case has not yet been made in support of the City's Plan of Adjustment. Serious questions remain as to 1) the *reasonableness* of the assumptions underlying the City's cash flow forecasts and projections and 2) the *feasibility* of the City's plan of adjustment. Based on the current state of the record and expert analyses, I do not believe that the Court can approve the City's Plan of Adjustment.

Sincerely,

Peter J. Hammer

EXHIBIT A

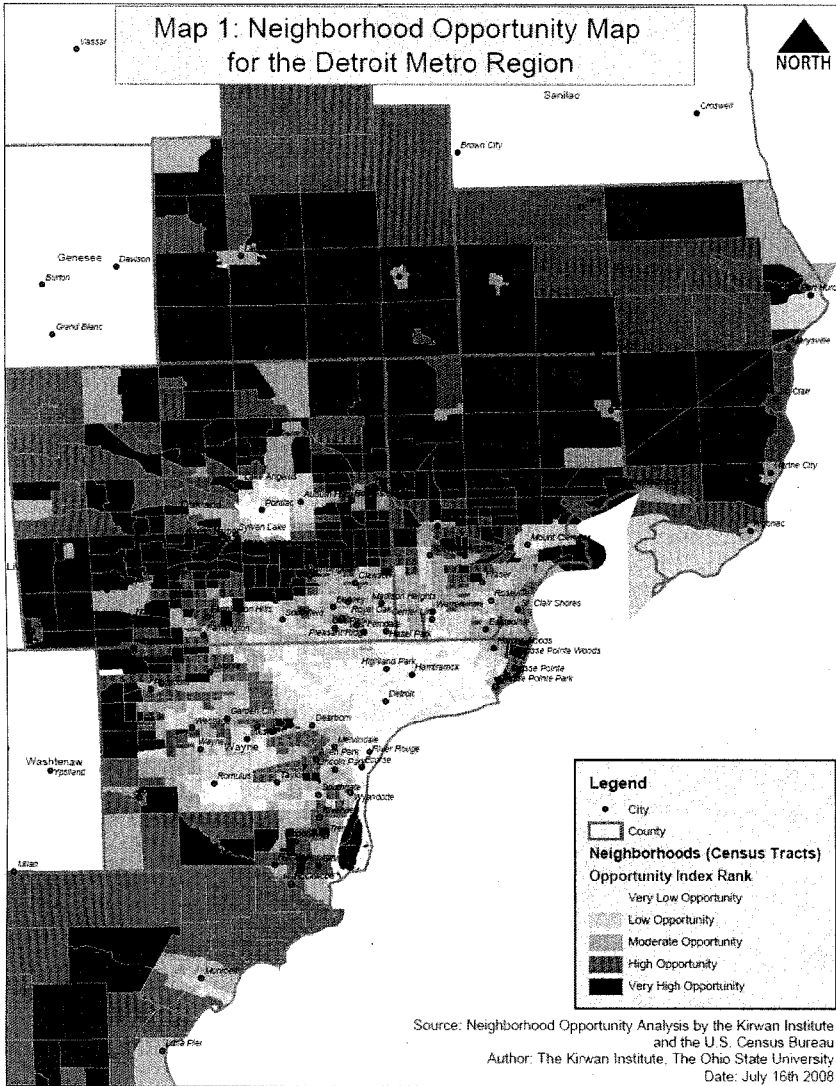


EXHIBIT B

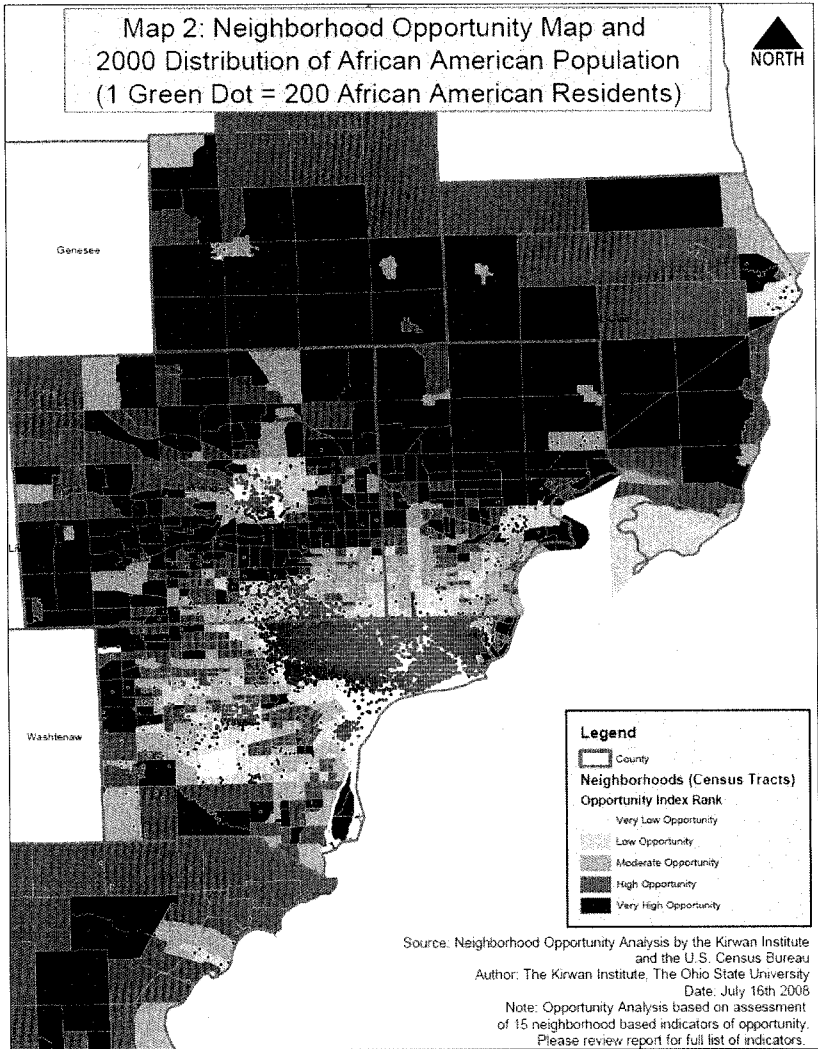


EXHIBIT C

