

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5

Jeffrey E. Bjork (Cal. Bar No. 197930)
Christina M. Craige (Cal. Bar No. 251103)
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600
Email: jbjork@sidley.com
ccraige@sidley.com

Guy S. Neal (Admitted *Pro Hac Vice*)
Alan C. Geolot (Admitted *Pro Hac Vice*)
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711
Email: gneal@sidley.com
ageolot@sidley.com

Attorneys for Creditors
Assured Guaranty Corp.
and Assured Guaranty Municipal Corp.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

In re:
CITY OF STOCKTON, CALIFORNIA,
Debtor.

Case No. 12-32118
D.C. No. OHS-1_
Chapter 9

**OFFER OF PROOF IN SUPPORT OF
SUPPLEMENTAL OBJECTION OF
ASSURED GUARANTY CORP. AND
ASSURED GUARANTY
MUNICIPAL CORP. TO DEBTOR'S
CHAPTER 9 PETITION AND
STATEMENT OF
QUALIFICATIONS**

Date: March 20, 2013
Time: 9:30 a.m.
Dept.: C, Courtroom 35
Judge: Hon. Christopher M. Klein

1 Pursuant to *the Stipulation and Scheduling Order Regarding Evidentiary Hearing on*
2 *Objections to the City's Eligibility for Relief under Chapter 9 of the Bankruptcy Code* dated March
3 11, 2013 [Dkt No. 742] and this Court's request at the status conference held on March 6, 2013,
4 Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (collectively, "Assured")
5 respectfully submit this offer of proof regarding the City of Stockton, California's ("City" or
6 "Debtor") contention that it negotiated in good faith for purposes of 11 U.S.C. § 109(c)(5)(B) and
7 California Government Code § 53760.3(o), as required by California Government Code § 53760(a)
8 for authority to file the City's bankruptcy petition under 11 U.S.C. § 109(c)(2).

9 The evidence Assured offers hereby is contained in the Declaration Of Jeffrey E. Bjork In
10 Support Of Supplemental Objection Of Assured Guaranty Corp. And Assured Guaranty Municipal
11 Corp. To Debtor's Chapter 9 Petition And Statement Of Qualifications (the "Bjork Declaration"),
12 attached as Exhibit A hereto, and is also set forth below. This testimony is relevant, admissible
13 evidence because it (i) is within the scope of evidence specifically contemplated for consideration in
14 the evidentiary trial on the City's eligibility by the *Order Granting Joint Motion To Modify Order*
15 *On Motion For Leave To Introduce Evidence Relating To Neutral Evaluation Process Under*
16 *California Government Code § 53760.3(Q)* dated November 11, 2012 [Dkt. No. 608]; and (ii)
17 pertains to whether the City has satisfied its burden of proving that it negotiated in good faith under
18 both the Bankruptcy Code and California law, both of which are required for the City to prove it is
19 eligible to be a chapter 9 debtor.

20 If taken into evidence, this testimony would counter the City's stated position that its Ask is
21 *prima facie* evidence of good faith and its implication that any failure to negotiate with Assured
22 resulted from the post-Ask actions or approach of Assured. Admission of this evidence would
23 therefore not cause undue delay, waste time, or confuse the issues before the Court. See Fed. R.
24 Evid. 403.

25 To the extent the Court desires to hear the evidence set forth in the Bjork Declaration
26 in the question-and-answer format contemplated by Fed. R. Evid. 103(c), the expected testimony
27 would be as follows:

28 Q: Would you please state your first and last name for the record?

1 A: Jeffrey Bjork.

2 Q: Where are you employed?

3 A: I am a partner with the law firm of Sidley Austin LLP, counsel of record for
4 Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (to which I will collectively refer as
5 "Assured") in this chapter 9 case.

6 Q.: What do you understand about Assured's interest in this bankruptcy case?

7 A: Assured provided credit enhancement for certain pension obligation bonds (the
8 "POBs") issued by the City in 2007 and certain variable rate demand lease revenue bonds issued by
9 the City in 2007 in respect of the proposed new City Hall at 400 E. Main Street in Stockton (the
10 "400 E. Main Bonds"). I will refer to both as the "Assured Obligations".

11 Q: In your capacity as counsel to Assured, were you involved in the mediation
12 process called by the City of Stockton, California in 2012 pursuant to the California state statute
13 generally known as "AB 506"?

14 A: Yes.

15 Q: Did you attend any of the actual AB 506 mediation sessions in that capacity?

16 A: Yes.

17 Q: How many?

18 A: I attended two mediation sessions, along with representatives from Assured and
19 Alvarez & Marsal (whom Sidley had hired to provide financial advisory services in connection with
20 Sidley's representation of Assured).

21 Q: When were those held?

22 A: On May 15 and 16, 2012.

23 Q: Did any negotiation of Assured's proposed treatment occur during these sessions?

24 A: No. The City did not engage in any negotiations with Assured in respect of its
25 proposed treatment for the Assured Obligations before or during these mediation sessions.

26 Q: [Show Mr. Bjork a copy of the Ask]: Do you recognize this document?

27 A: Yes.

28 Q: What is it?

1 A: The City's 790-page "Proposals for Modification to Obligations Under AB 506
2 Process," commonly referred to as the City's "Ask."

3 Q: When did you first see this document?

4 A: On May 7, 2012, the City delivered the Ask to Assured, Sidley and Alvarez.

5 Q: Other than attending the due diligence sessions and the mediation sessions we just
6 discussed, what actions did you take in your capacity as counsel to Assured in response to the Ask?

7 A: Following receipt of the Ask, and on numerous occasions throughout the AB 506
8 Process, I initiated discussions with counsel for the City in an effort to explore other repayment
9 options or alternatives with respect to the Assured Obligations (in contrast to the proposed treatment
10 set forth in the Ask), as well as potential budget efficiencies and sources of revenue the City might
11 wish to consider to free up additional funds to repay its obligations. These discussions principally
12 occurred through phone calls and e-mails during the months of May and June.

13 Q: What happened when you initiated these conversations?

14 A: I was consistently informed that the City's position was that the Ask represented
15 its best offer in respect of the Assured Obligations, and that the City could not and/or would not
16 make any general funds available to repay the POBs or alter the proposed treatment of the 400 E.
17 Main Bonds set forth in the Ask, as doing so would divert funds away from other priorities or
18 obligations of the City.

19 Q: What conclusion did you draw from those responses?

20 A: That the City was not willing to negotiate.

21 Q: Did Assured formally respond to the treatment proposed for the Assured
22 Obligations in the Ask?

23 A: Because the City ultimately refused to engage with Assured in negotiations with
24 respect to the Ask, Assured elected not to extend a formal counter-offer.

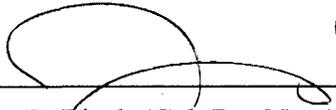
25
26
27
28

1 Dated: March 15, 2013

Respectfully submitted,

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIDLEY AUSTIN LLP



Jeffrey E. Bjork (Cal. Bar No. 197930)
Christina M. Craige (Cal. Bar No. 251103)
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600
Email: jbjork@sidley.com
ccraige@sidley.com

Guy S. Neal (Admitted *Pro Hac Vice*)
Alan C. Geolot (Admitted *Pro Hac Vice*)
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711
Email: gneal@sidley.com
ageolot@sidley.com

Attorneys for Assured Guaranty Corp.
and Assured Guaranty Municipal Corp.