New deal would pay $85 million to banks that swindled Detroit

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5 March 2014

Detroit Emergency Manager Kevyn Orr has proposed a payoff to end the catastrophic interest rate swaps deal between the city and UBS and Bank of America, which was initiated in 2005-06 and modified in 2009. The deal would pay $85 million, or about 30 cents on the dollar, to terminate the interest rate swap and close out $288 million in debt owed by the city to the banks.

The payment is being made even though Orr and US Bankruptcy Court Judge Steven Rhodes have acknowledged the banks likely broke the law when they foisted the deal on city officials.

The city entered into the swaps deal before the 2008 crash, in an effort to offset costs associated with rising interest rates. When the Federal Reserve drove interest rates near to zero after the 2008 crash, the deal, which amounted to an enormous bet on the direction rates would move, turned massively against the city and in favor of the banks.

After the 2008 economic crisis began, Detroit was unable to make payments on the deal, and in 2009 agreed to put up the city's casino revenues as collateral. The deal, which remains in effect, has been costing the city some $50 million annually, totaling nearly five percent of the city's budget. Since 2009, the deal has cost the city at least $200 million, according to court documents filed by the city.

In a statement, Orr praised the $85 million payoff deal saying, "We appreciate the banks' willingness to work with us to reach a solution…We look forward to Judge Steven Rhodes' decision on our proposed settlement, and we hope the 'swaps' resolution serves as a model for compromise on other matters related to Detroit's finances."

US Bankruptcy Judge Steven Rhodes rejected previous deals that would have paid the banks $165 million and $230 million, saying these offers were too high and he would accept a lower payment. Sensing the enormous anger building in the working class, Rhodes considered such a naked transfer of city resources to the banks to be needlessly provocative.

The current deal is being promoted as a victory with the claim that it will save the city from paying the remaining $203 million nominally owed to the banks. The *Detroit Free Press* wrote, for instance, "The city will save about $201 million, more than its annual Fire Department budget."

In reality, however, it is the banks that should be paying hundreds of millions to the city. Any payment to the banks at all amounts to the aiding and abetting of further acts of grand larceny against the people of Detroit.

As Caroline English, an attorney representing bond insurer Ambac Assurance, declared during the bankruptcy hearing, "This deal should have the swap counter-parties paying the city, not the city paying the swap counter parties. The swap payments were about 50 million a year…The swap counter-parties owe the city hundreds of millions of dollars."

English said that the deal violated Michigan's Revised Municipal Finance Act of 2001, also known as Act 34, which was passed precisely to protect cities against such predatory deals. English said that the "swap counter-parties have no legal position to be protected by the safe harbors" because under Act 34, the deal was illegal from the beginning.

The illegality of the swaps deal was even acknowledged by Judge Rhodes and Orr himself, who said that a legal challenge to overturn the deal would likely meet with success.

Testifying in early January, Orr said that the city had concluded that there were "serious questions" about whether the city should pay the banks anything, and "strong legal arguments" to be made against the banks.

Orr acknowledged that before filing for bankruptcy in July of 2013, he approached the Securities and Exchange Commission (SEC) to inquire about criminal prosecution against UBS and Bank of America in relation to the swaps deal.

Orr offered three reasons the deal was illegal: a) presentation of false or misleading information about future interest rates by the banks during the 2005-06 negotiations b) the Michigan Gaming Act's prohibitions against use of casino revenue as collateral for loans as was done in 2009 c) the deal violated restrictions placed on borrowing by the city's debt limit.

Nevertheless, Orr—whose former law firm Jones Day counts UBS and Bank of America among its clients—insisted there was only a 50-50 chance for a court to toss out the deal.

Now, as he prepares to slash pensions and health benefits for retirees, Orr is seeking another massive payment for the same financial institutions that profited by wrecking the economy.

Like virtually all major financial institutions, UBS and Bank of America have been engaged in systematic acts of predation against the population during the past decade. In 2012, UBS paid $1.5 billion in punitive fees to the SEC and European regulators after being caught rigging the LIBOR, a key interest rate that influences financial transactions around the globe.

During the run up to the 2008 crash, Bank of America and other major banks used similarly complex financial instruments to rip off homeowners and cities from coast to coast. Tens of thousands of Detroiters have been foreclosed upon since the crash began as a result of variable interest rate mortgage schemes cooked up by the banks.

Far from being paid another handsome fee, these banks should have their assets impounded and their executives indicted and thrown in prison. Their rampant criminality, facilitated at every turn by the state, highlights the complete bankruptcy of private ownership of society's wealth and resources.