

Federal judge delays hearing on objections to bankruptcy filing

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To accelerate Detroit's bankruptcy case, federal judge Steven Rhodes issued a statement Monday declaring that objections to Detroit's bankruptcy filing based on defending the pensions of city workers will not be heard until after it is determined whether the city is eligible to file for Chapter 9.

Detroit's bankruptcy filing last month is the largest municipal bankruptcy in US history. Under the dictates of the unelected Emergency Manager Kevyn Orr, the bankruptcy is targeting workers' wages, pensions and health benefits in order to "restructure" Detroit in the interests of the rich. Using bankruptcy, Orr has stated that he plans to slash the pension by up to 90 percent.

The speed at which bankruptcy is being pushed for in Detroit is designed to run roughshod over workers' rights. By way of contrast, it took more than a year for Stockton, California, then the country's second largest municipal bankruptcy, to proceed to bankruptcy after filing. In Detroit, the process may take only a few months. Kevyn Orr has made it clear he wants to finish the entire bankruptcy procedure before September 2014, the same month that he could be removed by the city council. An early completion of bankruptcy would thus ensure that the full force of the dictatorial emergency manager law could be used against the people of Detroit.

Orr foreshadowed this at his one mandated public hearing in June when he said, "I have a very powerful statute. I have a more powerful Chapter 9. ... I'm going to accomplish this job. That is going to happen." He added the threat, "Now look I'm a trial attorney. I can cut somebody's throat and leave them to bleed out in the gutter with the best of them." If Orr has his way, those out in the gutter will be the working class of Detroit.

Rhodes' ruling largely targets two of the city's biggest creditors; the Police and Fire Retirement System and the General Retirement System that fund the pensions and health benefits of approximately 31,000 city workers and

retirees. Last week, each filed an objection to the bankruptcy based on two points. First, they called Orr's claim that the pension systems are underfunded by \$3.5 billion an overestimation by nearly \$3 billion. Second, they asserted that the bankruptcy itself is "illegal, unconstitutional and erroneous."

The second claim is a reference to Michigan's state constitution, which protects pensions of public workers as "contractual obligations" which "shall not be diminished or impaired." It is these specific arguments that Rhodes is delaying hearing.

To qualify for Chapter 9 bankruptcy, Orr must show that Detroit is insolvent, that he has permission of the state to proceed and that he either has negotiated with Detroit's creditors in good faith or that it is no longer practical to do so.

In the Monday filing in US Bankruptcy Court, Rhodes wrote, "The court fully recognizes and appreciates the extraordinary importance of the pension rights of the city's employees and retirees in this case and of how the city will ultimately propose to treat those rights." He continued, "It is an important question not only to the city's employees, retirees and unions, but also to all of the parties in the case."

"All parties in the case" is a reference to Detroit's bondholders and bond insurers, who are demanding that the city take "haircuts" before they are forced to take any losses to their profits. The mandate of both Kevyn Orr and the bankruptcy court is to make sure that the biggest banks that ensnared the city in billions of dollars of debt are fully paid. This would ultimately result in the dissolution of pensions, benefits and huge cuts to wages for city workers. They would also have Detroit sell off city assets such as masterpieces from the Detroit Institute of Arts.

Michigan Governor Republican Rick Snyder hailed the judge's order. "The sooner relevant issues can be aired

and resolved, the sooner we can ensure Detroit is on path to being a great city again,” said Snyder’s spokeswoman Sara Wurfel after the ruling was issued. Snyder is just as interested as Orr, and largely for the same reasons, in having the emergency manager present to force through the harshest possible measures against the working class during bankruptcy.

Using bankruptcy court to slash pensions of city workers, even those with the protections of state constitutions, has a legal precedent. During the Stockton bankruptcy, Judge Christopher Klein ruled that, “While the Contracts Clause is a key navigational star in the firmament of our Constitution and economic universe, it is subject to being eclipsed by the Bankruptcy Clause.” To further emphasize that workers’ rights were to be trampled, Klein concluded that, “even if the plaintiffs’ benefits are vested property interests, the shield of the Contracts Clause crumbles in the bankruptcy arena.” (Ass’n of Retired Employees of the City of Stockton v. City of Stockton, 2012 WL 3193588 at *1-3 (Bankr. E.D. Cal.).)

Orr, Rhodes and Snyder are no doubt aware of these precedents and will take their cue from them. Orr has already lumped pensions in with Detroit’s “unsecured debt,” such as general obligations bonds, which removes them from Michigan’s constitutional protections. Given that Rhodes is not even going to hear pension-based objections to bankruptcy before deciding whether the case should proceed, he will most likely agree with Orr’s assessment, perhaps going even further.

The hearings for all legal objections to Detroit’s bankruptcy, of which the constitutionality of pension cuts in bankruptcy will apparently not be part of, are scheduled for September 18. All other objections, including whether the city is insolvent, if it negotiated in good faith and ostensibly the constitutionality of cutting pensions, are scheduled for hearing October 23.



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