

Detroit Bankruptcy at center of National Bankruptcy Judges conference

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The bankruptcy of Detroit, Michigan—the largest municipal bankruptcy in US history—was a major topic of discussion at the National Conference of Bankruptcy Judges held in Atlanta, Georgia last week, which brought together bankruptcy attorneys, government restructuring specialists, mediators, and judges.

Attendees included a number of major figures from the Detroit bankruptcy, including Steven Rhodes, the judge presiding over the trial to determine whether Detroit is eligible for bankruptcy, and lawyers representing the city's pension funds. The trial was adjourned Thursday and Friday in order to allow Rhodes to attend the conference, according to CBS Detroit.

Detroit Emergency Manager Kevyn Orr was scheduled to speak at the conference Wednesday, but had to cancel his appearance because he is a witness in the ongoing trial.

Attendees made clear that Detroit's bankruptcy filing will set a major precedent for the use of Chapter 9 bankruptcy to slash constitutionally protected public employee pensions, health care benefits, and city assets.

Los Angeles attorney Gary Klauser, the moderator on the municipal bankruptcy discussion, told the *Detroit News* that elimination of pensions and health care benefits was the “holy grail issue” and “alien territory” in municipal bankruptcy cases.

Klauser said he agreed with Detroit's Emergency Manager Kevin Orr's claim that the use of Chapter 9 to slash city worker's retirement benefits and carry out the privatization of the city's assets is legal. He told the *Detroit News* that the \$5.7 billion in unfunded retiree health insurance was “enormous, if not back-breaking.”

The debate on the validity of Detroit's Chapter 9 bankruptcy centered on two legal issue: whether pensions and health care benefits for municipal workers

can be protected by state constitutions, and what constitutes “good faith” bargaining.

Kevyn Orr has maintained that pensions are a contractual agreement that can be overturned in bankruptcy court despite constitutional protections. The unions, representing Detroit retirees, have maintained that pensions are a property right, and therefore protected by the US and state constitution.

“There are more constitutional rights for property than a contract,” attorney Kenneth Klee told the *Detroit Free Press*. “It depends on whether the right is a property right or a contract right.” Klee serves as the bankruptcy attorney for Jefferson County, Alabama, which had been the largest municipal bankruptcy prior to the Detroit filing.

Throughout the US, local and state governments have over \$1 trillion in unfunded pension liabilities. There are at least 8 states with constitutions that protect workers benefits including Alaska, Illinois, New York, Arizona, Hawaii, Louisiana, and Michigan.

“Ultimately, there is going to have to be a (US) Supreme Court decision that resolves that,” US bankruptcy Judge Christopher Klein told the *Detroit News*. Klein is overseeing the bankruptcy filing of Stockton, California, another formerly industrial city afflicted by mass unemployment where nearly 25 percent of families live below the poverty line.

Also at issue in Detroit's municipal bankruptcy was the question of what constitutes “good faith” negotiations. Emergency Manager Kevyn Orr and Michigan Governor Rick Snyder must prove “good faith” negotiations took place with the creditors, including the unions, to justify taking Detroit into Chapter 9 bankruptcy.

The unions have argued that Orr had made up his mind to take the city into bankruptcy and never

engaged in good faith negotiations. During the court hearings last week, union lawyers said they had offered \$180 million in concessions but were turned down.

To give the appearance of impartiality, US Bankruptcy Judge Stephen Rhodes has asked the attorneys involved in the Detroit bankruptcy case to provide him with opinions on the definition of “good faith” negotiations. Klein told *USA Today*, “There’s a problem with the phrase ‘good faith’. It shows up in five different places in the Chapter 9 process. And as far as I can tell, it has five different meanings.”

During an earlier court hearing, Rhodes challenged lawyers who upheld the constitutional protection of Michigan workers’ pensions. “Is there any constitutional right, state or federal that is absolute?” asked Rhodes. He added, “even freedom of the press isn’t that absolute.”



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