

Former Michigan state treasurer testifies in Detroit bankruptcy trial

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Former Michigan State Treasurer Andrew Dillon testified as the trial on Detroit's eligibility for bankruptcy continued before US Judge Steven Rhodes on Tuesday.

From the time Republican Governor Rick Snyder appointed him treasurer in January 2011, Dillon, a Democrat and former investment banker, was the chief architect of the drive to throw Detroit into bankruptcy and gut the pensions of public sector workers.

Working closely with attorneys from bankruptcy firm Jones Day, Dillon helped draft the consent agreement with the city in April 2012, which imposed draconian concessions on municipal workers. He was a member of the various review teams, which recommended that Snyder declare a financial emergency in Detroit, paving the way for the March 2013 installation of Emergency Manager Kevyn Orr.

In his testimony Tuesday Dillon was visibly bothered by questions probing his relations with Jones Day and the premeditated character of the bankruptcy filing on July 19, 2013. He repeatedly declared "I don't recall" during questioning. In the face of damning evidence to the contrary, he sought to maintain the fiction that the bankruptcy filing was always considered a "last resort" and not motivated by the desire to bypass state constitutional protections for public employee pensions.

Dillon embodies the sordid marriage of the political and financial interests behind the looting of Detroit. The son of a local judge, he served as a district court magistrate and aide to former US Senator Bill Bradley of New Jersey before earning a fortune as a venture capitalist. A vice president of General Electric Capital Corp.'s commercial finance division in the mid-1990s, he became president of an entity called Detroit Steel Company (DSC), which took over bankrupt McLouth Steel in 1996. He later worked as the managing director of Chicago private equity firm Wynnchurch Capital, which made billions for wealthy investors by stripping and flipping companies.

Dillon was elected to the Michigan House of Representatives in 2004 and became House Speaker when Democrats took over the majority in 2006. After a failed bid

to win his party's nomination for the 2010 gubernatorial race, he hitched himself to Snyder's campaign and was rewarded when the Republican governor appointed him treasurer. Armed with the state's undemocratic emergency manager law—which was quickly redrafted and signed by Snyder after being defeated by Michigan voters in November 2012—Dillon set out to restructure distressed municipalities and school districts just as he did steel, auto parts and other companies on behalf of big investors.

The role of handsomely paid financial and legal consultants from firms like Ernst & Young, Miller Buckfire and Jones, which worked closely with Dillon and other state officials, was on full display throughout Dillon's testimony. Among the evidence presented Tuesday were email exchanges between Dillon, Orr, and other Jones Day attorneys conspiring to throw the city into bankruptcy as a means to steal the pensions.

An email dated June 7, 2013 from Orr stated that major cuts to accrued pension benefits would require filing for Chapter 9 bankruptcy.

In another email, dated July 10, 2013 and sent in response to Orr's request to file for bankruptcy, Dillon outlined necessary changes in the language in Orr's declaration, which were needed to create the façade that every alternative to bankruptcy had been exhausted.

"I, Andy Dillon," he wrote, "don't think we are making the case why we are giving up so soon to reach an out of court settlement. Looks premeditated."

"I think we need to say facts got worse as we dug into the numbers, and I believe there is a state court option to get retirees into a class (we don't acknowledge that) and why is that impractical. We don't even say they rejected the city's proposal," Dillon wrote. "I think we may want a take it or leave it demand before we pull this trigger. I agree with the recommendation but I don't think we made the case. After the letter is revised, let's work on the Gov's response."

Machiavellian may be an overused term but in the case of Dillon's role in the bankruptcy it is appropriate. Dillon was clearly anticipating court challenges to the bankruptcy and

sought to provide the pseudo-legal cover necessary for a judge to approve it.

Dillon also played a leading role in the selection process, which tapped Kevyn Orr to become emergency manager in March 2013. Dillon testified that he spoke with Snyder's top advisor Richard Baird about Orr after meeting him in January and described the Jones Day partner as "impressive and someone we should consider."

He was also central in the city's decision to hire Orr's law firm Jones Day as Detroit's "chief restructuring counsel." Asked by an attorney representing retirees if he was concerned about a conflict of interest given that Jones Day had already been retained by the state for months, Dillon said, "Not terribly." He added that he had some concern the decision "could have the appearance of impropriety" and that is why he abstained from the vote on Jones Day, leaving it to his team to approve the hiring of the firm.

Dillon's claim, touted throughout the mainstream press, that the alleged \$3.5 billion pension shortfall was "relevant but not a driving factor" in the bankruptcy, is a ruse. In order to cover themselves politically and legally, Orr, Snyder and Dillon have insisted that the bankruptcy filing was necessitated by the financial crisis of the city.

The absurdity of his claim was revealed when Dillon—the former state treasurer—claimed at one point not to know that state revenue sharing has been steadily reduced to the city in the years preceding the bankruptcy. In fact, over the last decade, Detroit has lost more than \$700 million due to such cuts by Snyder and his Democratic predecessor, a figure that is more than double the city's current general fund deficit.

The decision to throw Detroit into bankruptcy was rooted in political, not economic imperatives. The testimony and documents presented as evidence since the trial began have made it clear that the main purpose of the Chapter 9 filing was to circumvent constitutional safeguards against the reduction of accrued pension benefits.

Dillon went as far as to instruct city officials in Detroit to reject a deal with a coalition of trade unions, which had agreed to impose massive wage and benefit concessions on their members. This was presumably because a new three-year collective bargaining agreement—which cut more than \$100 million from the annual deficit—might prove to be an obstacle to justify throwing the city into bankruptcy. "I was not supportive of the agreements. I didn't think they would work for the city," he told union attorneys on Tuesday.

For their part, the unions, including the American Federation of State, County and Municipal Employees and the United Auto Workers, have insisted they were willing to make such concessions and even more. Union officials have also been the most adamant that Orr should have sold off city assets, including the masterpieces from the Detroit

Institute of Arts, instead of declaring bankruptcy.

In his testimony Tuesday, Steven Kreisberg, director of collective bargaining for the AFSCME, the city's largest union, acknowledged that a deal with the union last February granted the city the right to change pensions, including ending additional payments to accrued pensions and setting up a defined contribution retirement plan for current employees to replace the employer paid plan. He said the union did not believe this violated the state constitution.

Even more significant was the testimony of Michael Nicholson, the general counsel for the UAW International, who said UAW President Bob King encouraged him to offer Jones Day attorneys representing the city a plan to dump retiree health care benefits into a union-controlled Voluntary Employees Beneficiary Association, or VEBA fund, similar to the ones set up between the UAW and the Detroit Three automakers.

Nicholson said the UAW had a long relationship with Jones Day, in particular with the late Andy Kramer, who the UAW "greatly respected as a dealmaker *par excellence*." The UAW and other unions had negotiated deals with Jones Day at the bankrupt auto parts firm Dana, tiremaker Continental, Rouge Steel and other companies that had resulted in "well-funded VEBAs," he testified.

It was the union's position, he said, that retirees have to individually consent to have their vested pensions being reduced.

"However, we live in a real world, and if we are convinced that there are risks inherent and those risks require we consider to make a deal to put our retirees in a better position in the long run," he said, the unions "are authorized and can negotiate reductions." But class actions suits by retirees, he said, were required to gain legal authority for the unions to negotiate such cuts on behalf of retired workers.

Nicholson said, "I told lawyers for Jones Day on July 11 that the UAW was willing to engage in class action to try to resolve the OPEB (Other Post-Employment Benefits) issue, and take leadership on this because we have done more of this than anyone in the country."

Despite the union's offer to join in the slashing of retiree health care and other benefits in return for the setting up of a VEBA, Orr refused to negotiate such a deal. "We told them we got this done quickly at GM, Ford and Chrysler," Nicholson said, adding sorrowfully, "Orr never responded."



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