Court-appointed “monitor” to enforce Detroit bankruptcy plan

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28 July 2014

In a further sign of the financial dictatorship being imposed on the people of Detroit, the federal bankruptcy court will appoint a “Plan Monitor” to ensure elected officials do not stray from the savage austerity measures contained in the city’s restructuring plan, according to a new proposal made public over the weekend. The financial enforcer, who will have the power to subpoena city officials and pension trustees, will remain in power until the Detroit’s bankruptcy case is closed.

The attorneys ostensibly representing the city—from Emergency Manager Kevyn Orr’s former law firm Jones Day—added the proposal to the latest version of the so-called Plan of Adjustment (POA). The plan sets a national precedent for gutting city worker pensions and health benefits and the handover of public assets and services to private interests. US Bankruptcy Judge Steven Rhodes is scheduled to begin a confirmation hearing August 14 to approve the plan.

Like the emergency manager, the Plan Monitor will be an unelected official who is not subject to “political pressure,” i.e., being voted out by Detroit residents for implementing the deeply unpopular measures demanded by Wall Street.

According to Section IV.X of the POA, “The Plan Monitor shall not be an appointed or elected official of any governmental unit currently serving in such capacity and shall not be a former appointed or elected official of the City or the State.” The monitor, it further states, must be a tested turnaround specialist with “experience in complex financial and operational restructurings, preferably including municipal restructurings.”

The monitor’s “sole role and responsibility” will be “to evaluate the City’s ongoing compliance with the Plan and the Confirmation Order and to report to the Bankruptcy Court” through quarterly reports, the plan states. In their proposal, the Jones Day attorneys insist that “Officers of the City, the trustees of GRS (General Retirement System) and PFRS (Police and Fire Retirement System), the trustees of the Detroit General VEBA and the Detroit Police and Fire VEBA and the Litigation Trustee shall cooperate with the Plan Monitor by providing information reasonably requested by the Plan Monitor in connection with the preparation of Quarterly Reports.”

If the mayor, the city’s financial officer or legal representative challenge the “reasonableness” of the monitor’s “information requests,” the proposal states, the monitor can turn to the bankruptcy court to compel them to release information and “the Plan Monitor will have the power to issue subpoenas to obtain information reasonably necessary to prepare the Quarterly Reports.”

These measures further underscore the fact that the city’s elected officials will be little more than figureheads and decision-making power will remain in the hands of direct representatives of the financial elite. To add insult to injury, the Jones Days attorneys—whose hiring by former law partner Kevyn Orr is just one of the many blatant conflicts of interest in the bankruptcy case—are demanding legal immunity for the Plan Monitor. “As an officer of the Bankruptcy Court, the Plan Monitor is hereby provided with the maximum immunity permitted by law from civil actions for all acts taken or not taken in the performance of his/her duties and the exercise of his/her powers. No person or entity shall commence an action against the Plan Monitor in connection with such duties and powers except in the Bankruptcy Court, and with the prior approval of the Bankruptcy Court, which retains exclusive jurisdiction thereof.”

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Moreover, "The Plan Monitor is not a public body and is not subject to (a) the State's Open Meetings Act, Public Act 267 of 1976, as amended; (b) the State's Freedom of Information Act, Public Act 442 of 1976, as amended; or (c) any similar law."

Attorney James Spiotto, a municipal bankruptcy expert in Chicago, told the *Detroit News* it would be unprecedented in the nation's handful of Chapter 9 cases to have the city remain under the court's oversight for years to come. "It is not something that has been used for Chapter 9," Spiotto said. "To make it fit within Chapter 9, it would have to be something the city is agreeable to—the City Council and the mayor—because they're the ones who are going to have to live with it."

The plan for a court-appointed monitor is only the latest step to impose what amounts to a financial dictatorship in the city that will continue long after the departure of Orr, whose term expires in the fall. Under the terms of the "Grand Bargain," agreed to by the city worker unions, the state legislature approved a plan to install a nine-member "Financial Review Commission" with veto power over all labor and city contracts over $750,000 for 13 years after bankruptcy. Detroit Mayor Mike Duggan hailed the state funding deal with the oversight board.

Orr's spokesman tried to deny that the monitor proposal was aimed at imposing another oversight body, which is answerable to no one but the banks. "What ultimately happens will be up to the judge to decide," Bill Nowling said. "It's not about governance or oversight of elected officials, but it's about how can the court be reassured that the details and the fine points of the plan will be implemented to the satisfaction of the court."

The amending of the Plan of Adjustment further underscores the antidemocratic character of the bogus "vote" organized by the bankruptcy court over the last two months. Active and retired workers were lumped together with other "creditors" in the vote, while Orr, with the backing of the unions, threatened even more draconian pension and health care cuts if the city's 32,000 current and retired workers rejected the deal. If the deal was rejected, Judge Rhodes had the power to unilaterally impose the plan through what is called a "cram-down."

Even if the vote passed, as the present case shows, Orr had the power to redraft it and seek the court's backing for more onerous terms. According to Jones Days attorneys, since no creditors have been "impaired" by the new proposal, it is unnecessary to hold another vote.

Last week, Orr announced that the Plan of Adjustment had passed overwhelmingly with 82 percent of firefighters and police backing it, and 73 percent of general retirees. While this has been hailed as a ringing endorsement of the austerity plan, in reality, city workers largely boycotted the vote, with more than half refusing to vote or spoiling their ballots and only 38 percent of eligible voters among active and retired workers approving it.

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