

# PA Supreme Court Matter and Bankruptcy Update

MFRAC Meeting  
May 9, 2023

# PA Supreme Court Matter

- On May 24<sup>th</sup> at 9:30am in Harrisburg (Room 407 in the Main Capitol Building), the Pennsylvania Supreme Court will hear the appeal of certain City elected officials of Judge Ceisler's ruling approving the Receiver's plan modification which included the suspension of administrative duties of elected officials
  - The hearing is open to the public. Those planning to attend should arrive at 9am.
  - The Supreme Court provides a live audio-only broadcast on its YouTube page which can be found here: <https://www.youtube.com/@SupremeCtofPAOfficial/streams>
  - The Pennsylvania Cable Network (PCN) will record the argument, but it is scheduled to be broadcast on PCN on May 30<sup>th</sup> [Cable Channel 186 in Delaware County]
  - There are five other cases that the Court is hearing that day and this matter is listed as #5 of 6; however, the Court can decide to hear cases in any order it wishes

# Pennsylvania FOP and Delaware County Briefs

- In Supreme Court cases, interested parties may submit *amicus curiae* (“friend of the court”) briefs that support the arguments of one party
- In this case, the Pennsylvania Fraternal Order of Police (FOP) and Delaware County submitted *amicus curiae* briefs in support of the Receiver
  - The Pennsylvania FOP represents approximately 40,000 law enforcement officers in the Commonwealth of Pennsylvania
- These briefs, as well as the Receiver’s brief, can be found on the Receiver’s website at:  
<https://www.chesterreceivership.com/documents> under “Court Filings”

# Pennsylvania FOP Brief

- In supporting the Receiver’s position, the Pennsylvania FOP argued:
  - “This is not a city that is capable of operating on its own without the Receiver’s directions....It cannot be allowed to operate ‘as usual.’ Economic security of its police officers and retired police officers is at stake. There is a twenty-eight (28) year record of Chester being a financially distressed community under Act 47 and the current City officials have failed to address the problems of the City of Chester in a sound fiscal way. They have ignored the directives of the Receiver whose responsibility is to put the City of Chester back on sound financial footing. The Receiver, not current City officials, understands the municipal obligations required under Act 205 and will comply with them. There is no evidence the City will.” [FOP Brief at p. 12]

# Pennsylvania FOP Brief (continued)

- “[T]he only reason law enforcement pensioners are even receiving benefits now is because of the Receiver’s action in making MMO payments in 2021 and 2022.” [FOP Brief at pp. 8-9].

# Pension Funding

- As there has been some confusion regarding the Receiver's actions with respect to pensions, we would like to use this opportunity to be clear as to what steps the Receiver has taken to improve Chester's pension situation.
- When the Receiver was appointed, the Police Pension Plan had the equivalent of approximately three (3) months of benefits to pay pensions left in it with the real possibility of running out of money to pay pensions. At the end of April 2023, it has the equivalent of approximately fourteen (14) months
  - The current funding level is still extremely bad and the City still has not been able to pay the approximately \$40 million in missed MMO payments and penalties/interest due to the prior lack of funding.

# Receiver's Actions re Pension

- The Receiver has taken the following actions with respect to pensions that have resulted in the Police Pension Fund's funding improvement:
  - In 2021 and 2022, the Receiver ensured that the City made the annual actuarially calculated MMO payments to all pension funds. This was the first time this occurred since 2013.
  - The Receiver ensured that distressed pension earned income tax (EIT) money was deposited in the pension funds as is legally required. Prior to Receivership, the City was using this money for general fund operations.

## Receiver's Actions re Pension (continued)

- The Receiver discovered that the distressed pension earned income tax rate for residents was lower than legally required and the City raised it accordingly resulting in more funding going into the plans.
- Counsel for the Receiver believes that the Pension Board had been using the wrong final average salary to calculate police pensions for certain officers and directed the Pension Board to recalculate those pensions going forward.
  - Retirees and the FOP dispute this position and it will need to be addressed through the bankruptcy process as litigation/actions surrounding it are stayed (“paused”)
  - The Receiver has offered the Pension Board any documentation that was relied upon in coming to this conclusion in the event that the Pension Board wishes to do a separate review.



# Delaware County Brief

- Delaware County’s brief explained how the Act 47 process worked in other communities and argued:
  - “Judge Ceisler’s factual findings are amply supported by the substantial evidence she cites in her opinion. Similarly, Judge Ceisler’s legal conclusions are amply supported by law.” [Delaware County Brief at p. 4]
  - “The actions approved by the Commonwealth Court in the amended recovery plan are fundamental to reaching a solution for the City. The existing ways of doing things with the Mayor giving discretionary powers to councilpersons to administer departments will not solve the problems facing the City. The fiscal emergency will only be solved if the Receiver has the power to push forward solutions as set forth in the recovery plan.” [Delaware County Brief at pp. 4-5].

# PA Supreme Court Matter Next Steps

- There is no deadline for the PA Supreme Court to issue a decision in the matter
- However, the Court is acting very quickly as both the briefing schedule and the oral argument schedule are much faster than in a typical case
- During this litigation, the Court has temporarily stayed (“paused”) those appealed provisions of Judge Ceisler’s order
  - This does not mean that the Court has ruled against the Receiver. Rather, an automatic stay is normal procedure when the PA Supreme Court decides to hear a case using King’s Bench jurisdiction.

# Bankruptcy Update

# Bankruptcy Update

- Eligibility Issues
- Official Retiree Committee
- Plan of Adjustment
- Mediation

# Bankruptcy Update

## *Eligibility Issues*

- On March 14, 2023, Judge Ashely Chan issued an opinion finding that the City of Chester met the criteria to be a debtor in a chapter 9 bankruptcy
- On March 28, 2023, certain elected officials gave notice that they were appealing this decision
  - No other party in this matter, except for certain elected officials, both objected to eligibility and appealed Judge Chan's decision finding that the City met the criteria for a chapter 9 bankruptcy
- On April 11, 2023, certain elected officials filed their statement of issues on appeal and designation of items to be included on the record

# Bankruptcy Update

## *Eligibility Issues*

- Certain elected officials raised two issues on appeal:
  - Whether the Bankruptcy Court erred in entering an Order and Opinion determining that the Appellants do not have standing to object to the City of Chester’s eligibility to be a debtor under Chapter 9 of the Bankruptcy Code.
  - Whether the Bankruptcy Court erred in entering an Order and Opinion determining that the City of Chester has met the requirement under 11 U.S.C. § 109(c)(4) that a debtor “desires to effect a plan to adjust such debts” and is therefore eligible to be a debtor under Chapter 9 of the Bankruptcy Code.
- Note that the appeal does not challenge the Court’s finding that the City is financially insolvent

# Bankruptcy Update

## *Eligibility Issues*

- However, Act 47 clearly provides the Receiver with the power to act on the City's behalf in a bankruptcy:
  - Section 706(a)(9) of Act 47 states “Notwithstanding any other provision of law, the receiver shall have the following powers and duties: To file a municipal debt adjustment action under the Bankruptcy Code and to act on the municipality's behalf in the proceeding.” (emphasis added)

# Bankruptcy Update

## *Eligibility Issues (continued)*

- In her eligibility opinion, Judge Chan found:
  - “[A]ct 47 explicitly provides the Receiver with the authority to file a bankruptcy petition and act on behalf of the City in a bankruptcy action.
  - As such, the City of Chester’s Home Rule Charter is limited by Act 47. The General Assembly “may limit the functions to be performed by home rule municipalities” as it has done through Act 47. In fact, the City’s Home Rule Charter itself expressly limits the Elected Officials’ authority by only granting them any powers and functions “not denied by the Constitution of Pennsylvania, the General Assembly of the Commonwealth of Pennsylvania, or this Charter.” The Elected Officials’ power to govern and make decisions for the City, therefore, is not an absolute power and is specifically limited by Act 47.” [Opinion at footnote 20, p. 28. Citations omitted]



# Bankruptcy Update

## *Eligibility Issues – Next Steps*

- The eligibility appeal has been assigned to Judge Mia Roberts Perez of the Eastern District of Pennsylvania
- The current briefing timeline (which may change) is:
  - May 30, 2023: Certain elected officials brief due
  - June 29, 2023: City brief due
  - July 13, 2023: Certain elected officials reply brief due
  - The Court will then determine if and when to have oral argument on the matter

# Bankruptcy Update

## *Official Retiree Committee*

- The bankruptcy process provides for the ability of retirees to form an official committee whose responsibility is to act on their behalf
  - The US Trustee (Court officer) has appointed retirees to this committee after soliciting interest
- The Official Retiree Committee can hire their own attorneys and experts. The Committee has hired:
  - Jenner & Block of New York as attorneys
  - Flaster & Greenburg of Philadelphia as attorneys
  - FTI Consulting of New York as financial consultant
  - The Segal Company as actuary

# Bankruptcy Update

## *Plan of Adjustment*

- The goal of the bankruptcy process is to develop a confirmable “plan of adjustment” which will comprehensively address the City’s condition.
  - The Bankruptcy Court will need to approve any plan of adjustment
- That plan will then have to be implemented which will take time
- As indicated in prior MFRAC presentations, given the City’s reliance on federal ARPA funds to fund operations, a plan of adjustment needs to be developed by the end of this year so that it can be implemented in 2024 since the ARPA funds expire in 2025.

# Bankruptcy Update

## *Mediation*

- As part of the bankruptcy, Judge Chan has appointed Judge Mary Walrath, a bankruptcy judge in the US District Court of Delaware, as mediator. Judge Walrath has assigned Bankruptcy Judge Craig Goldblatt of the US District Court of Delaware to mediate with bond creditors
- The mediation process is ongoing and is a confidential process where parties are legally prohibited from disclosing information discussed. This is to ensure that information can be freely shared so that parties can work towards a consensus solution.
- The Receiver has indicated that the City is running out of time to develop a plan of adjustment that can be implemented before the City faces insurmountable deficits in 2025 and hopes that all parties involved will work without delay to develop that plan.

End