

# PA Supreme Court Decision and Impact re: Chester

January 31, 2024

# Purpose of Presentation

- On January 29<sup>th</sup>, 2024, the Pennsylvania Supreme Court issued its decision in the Receiver's Plan Modification matter (12 MAP 2023) which affirmed the Commonwealth Court's confirmation of the Plan Modification.
- This presentation will:
  1. Explain the Court's decision and its impact
  2. Identify significant provisions in the now-confirmed Plan Modification

# Court Decision

# Timeline of Plan Modification and Court Decision

- November 8, 2022: Receiver filed Plan Modification
- December 9, 2022: Receiver revised Plan Modification to include “Roots Compromise”
- January 9-11, 2023: Commonwealth Court held three-day evidentiary hearing on Plan Modification
- January 31, 2023: Commonwealth Court issued ruling confirming most of Plan Modification and providing Receiver with ability to cure provisions which Commonwealth Court did not approve
- February 14, 2023: Commonwealth Court approved modified Plan Modification
- February 15, 2023: Certain City elected officials filed appeal of Commonwealth Court approval
- March 29, 2023: Pennsylvania Supreme Court agrees to hear the case using King’s Bench jurisdiction
- May 24, 2023: Pennsylvania Supreme Court hears oral arguments in matter
- January 29, 2024: Pennsylvania Supreme Court affirms Commonwealth Court confirmation of Plan Modification

# Attorneys/Oral Argument

- Receiver was represented by the law firm of Campbell Durrant, P.C.
  - Tiffany Allen, Esquire argued the case and John McLaughlin, Esquire and Ben Patchen, Esquire assisted Ms. Allen on the briefs
- Certain City elected officials were represented by the law firm of Buchanan Ingersoll & Rooney, P.C.
  - Mark Pfeiffer, Esquire argued the case
- The Pennsylvania State Lodge of the Fraternal Order of Police and Delaware County submitted *amicus* briefs in support of the Receiver.

# Purpose of the Plan Modification

- The Plan Modification sought to implement provisions that would work together to ensure professional management of the City's operations and therefore to ensure the provision of vital and necessary services to Chester residents.
  - The Plan Modification sought to establish a clear operational "chain of command" and suspension of the administrative duties of the City' elected officials regarding managing day-to-day operations.
- The previous situation, with elected officials also serving as department heads, simply was not working which threatened the Receiver's ability to ensure that the City was providing vital and necessary services to its residents.

# The PA Supreme Court Opinion

- The 61-page majority opinion can be found at: <https://www.pacourts.us/assets/opinions/Supreme/out/J-34A-B-2023mo.pdf?cb=1> and is also posted at <https://www.chesterreceivership.com/documents>
- This presentation, which quotes extensively from the decision, will refer to the majority opinion as the Opinion and will cite to page numbers in the Opinion.
- This clear and unambiguous decision by the Pennsylvania Supreme Court answers the questions that these parties have been struggling with since Receivership began.

# The Record

- The Court used 10 of the 61 pages to recount the facts in the Record which were established by testimony before the Commonwealth Court (Opinion at pp. 11-21).
- The following slide provides the Opinion's summary of the Commonwealth Court's conclusions which the Commonwealth Court formed after review of the parties' submissions and a three-day evidentiary hearing where both sides were represented by counsel and had the opportunity to present testimony and cross-examine witnesses.



# The Record (continued)

- “Although the Commonwealth Court struck several of the Receiver’s proposed initiatives, it concluded its analysis by reiterating that ‘the credible evidence of record demonstrates that aside from the severe financial distress plaguing the City, **the City also suffers from a municipal government that is internally dysfunctional.**’
- The City’s ‘**current administrative organization and allocation of duties is the single greatest operational obstacle to the City’s ability to provide vital and necessary services**’ to its residents.
- Thus, the Commonwealth Court found, ‘not only is there no clear and convincing evidence that the Plan Modification is arbitrary, capricious, or wholly inadequate to alleviate the City’s financial emergency, but **the credible evidence establishes that Receiver’s proposed initiatives are necessary ... to save the City from the brink of financial doom.**’” (Opinion at p. 27) (emphasis added).

# The Decision

- In addition to confirming the Plan Modification, the Opinion clarifies the broad reach of Act 47 and – by extension – the Receiver’s powers to address the City’s dire situation.
- The Opinion noted that, “Act 47 is a remedial statute, and it must be construed liberally to effectuate its purpose of alleviating the challenges posed by financially distressed municipalities.” (Opinion at p. 33)

# Home Rule Charter vs. Act 47

- Where there is a tension between the City’s Home Rule Charter and Act 47, the Court found that Act 47 prevails:
  - “Wherever there is a tension between the City’s Home Rule Charter and Act 47 – and by extension, between the Home Rule Charter and the recovery plan mandated by Act 47 – it is axiomatic that the Home Rule Charter gives way.” (Opinion at p. 32)

## Home Rule Charter vs. Act 47 (continued)

- Where there is a tension between the City’s Home Rule Charter and Act 47, the Court found that Act 47 prevails:
  - “Act 47 makes its precedence over any home rule charter abundantly clear in Section 704(a), which states that confirmation of a receiver’s recovery plan has the effect of ‘imposing on the elected and appointed officials of the distressed municipality ... a *mandatory duty* to undertake the acts set forth in the recovery plan,’ and “*suspending the authority of the elected and appointed officials of the distressed municipality ... to exercise power on behalf of the distressed municipality ... pursuant to law, charter, ordinance, rule or regulation to the extent that the power would interfere with the powers granted to the receiver or the goals of the recovery plan.*” (Opinion at pp. 32-33) (emphasis in original).

# Court Review of Receiver's Plan

- The Order also clarified that a court reviewing any recovery plan or modification thereto must not substitute its judgment for the Receiver. Rather such a court is **limited** to confirming the plan or modifications unless the court finds clear and convincing evidence that meets a specific, and highly deferential, standard of review. (See next slide)

# Court Review of Receiver's Plan (continued)

- “Act 47 does not direct the court to conduct an independent analysis of whether, in its view, the modifications are ‘necessary.’ **The determination of the necessity of the modifications is committed to the Receiver’s judgment.**
- The court may take evidence on the modifications at a hearing, but **its role is limited** to confirming the modifications, which it *must* do unless it finds, by clear and convincing evidence, that the modifications are ‘arbitrary, capricious, or wholly inadequate to alleviate the fiscal emergency’ under Section 703(e).
- Neither this Court nor the Commonwealth Court are experts in municipal finance, and Act 47 does not ask us to be.
- **The question for a reviewing court is not whether the Receiver is, in fact, correct in determining that a particular modification is ‘necessary to achieve financial stability.’ Rather, Act 47 directs the court to apply a specific, and highly deferential, standard of review to the Receiver’s determination.”** (Opinion at pp. 34-35) (Italicized emphasis in original; Bold emphasis added).

# Did the Plan Modification Change the City's Form of Government?

- No. The Opinion stated definitively that the Plan Modification did NOT change the City's form of government as the statute clearly says that recovery plans do NOT change the form of govt.:
- “Although the Commonwealth Court concluded that Section 704(b)(1) of Act 47 precludes initiatives that would change the City's form of government, this assumed limitation is inconsistent with the plain language of the statute.
- Section 704(b)(1) states that confirmation of the recovery plan or any modification thereto ‘*shall not be construed to ... change the form of government of the distressed municipality.*’
- This is an unambiguous instruction to those who might ‘construe’ a recovery plan – reviewing courts, for instance – that they should *not* view a recovery plan as effecting a change to a distressed municipality's ‘form of government.’ ...
- **The measures taken during an Act 47 receivership are temporary in nature, and the legislature specified that changes to governmental operations that may be needed in the interest of financial recovery do not permanently alter the municipal government – and are not to be ‘construed’ as a change to the municipality's form of government.** (Opinion at pp. 37-38) (Italicized emphasis in original; Bold emphasis added).

# Suspension of Authority of Elected Officials

- The Opinion also made clear the broad extent to which the authority of City elected and appointed officials is suspended.
- The Opinion held that, consistent with the plain language in Act 47, City elected officials' authority is suspended not only where there is a specific and existing relevant recovery plan provision, but also where its exercise conflicts with the "goals of the recovery plan."



# Suspension of Authority of Elected Officials (continued)

- “Most significantly, as discussed throughout this Opinion, Section 704(a)(2) provides that a receiver’s recovery plan has the effect of ‘suspending the authority of the elected and appointed officials of the distressed municipality ... to exercise power on behalf of the distressed municipality’ to the extent that the officials’ authority ‘would interfere with the powers granted to the receiver or the goals of the recovery plan.’ ...
- Although the City argues that Section 704(a)(2) only comes into effect where the local officials’ actions contradict some specific and already extant provision of the recovery plan, we find no such limitation in the statutory text. Rather, the officials’ authority may be ‘suspended’ where its exercise conflicts with, *inter alia*, the ‘goals of the recovery plan.’” (Opinion at pp. 46-47).

# PA Supreme Court's Conclusion

- “The Commonwealth Court acted entirely within its authority in weighing the evidence before it and determining that conditions in the City justified the proposed initiatives.
- The General Assembly predicted that circumstances may arise in which ‘local officials are unwilling or unable to accept a solvency plan developed for the benefit of the municipality.’ It decided that such situations may require ‘the exercise of the Commonwealth’s sovereign and plenary police power in emergency fiscal conditions to protect the health, safety and welfare of a municipality’s citizens.’
- The City of Chester’s local officials must accept the exercise of that power, whether they like it or not.” (Opinion at pp. 59-60)

# Impact of Decision: Plan Modification

# Plan Modification Provisions

- The following slides provide relevant excerpts from certain Plan Modification provisions that the Opinion has now confirmed are in effect. This is not an exhaustive list of provisions, nor do the excerpts always include the entirety of those provisions. Please refer to the Plan Modification for all provisions in their entirety.
- The purpose of these slides is to highlight – particularly for City employees – the practical impact of the Plan Modification confirmation on their day-to-day work and the chain of command for City operations.

# Plan Modification

## *Chief of Staff Reporting (p. 30)*

- Note: Although titled “Chief of Staff” in Chester, this position is effectively a City Manager.
- “The Chief of Staff shall report to the Receiver and the Mayor.”
- “City elected officials may contact the Chief of Staff for the purposes of inquiry, but they shall not direct the Chief of Staff relating to any matter in the line of his responsibilities.”
- Practical impact:
  - The Chief of Staff’s bosses are the Mayor and the Receiver.
  - City Council members may ask the Chief of Staff questions or make requests of him (i.e., constituent requests), but cannot direct him in his job duties.

# Plan Modification

## *Administrative Duties of Elected Officials (pp. 30-31)*

- “The administrative duties of City elected officials with respect to day-to-day operations shall be suspended.
- The Chief of Staff shall have the ability to assign those administrative duties to qualified employees and contractors.
- City elected officials may not direct a City employee relating to any matter in the line of the employee’s employment.”
- Practical impact:
  - City Council members do not serve as department heads.
  - The Chief of Staff assigns department head duties.
  - City employees report through to the Chief of Staff, not City Council. City Council members may not direct any City employee in their job duties.

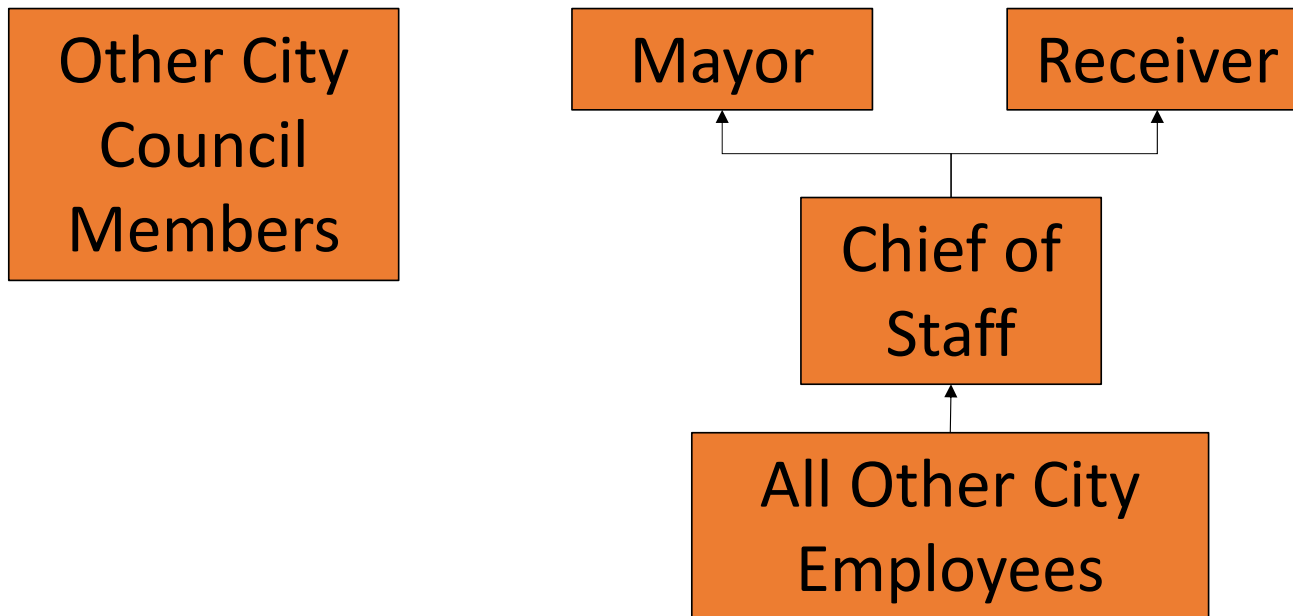
## Plan Modification

### *Compliance with Directives and Duty to Provide Information (p. 31)*

- “City employees must follow the directives of the Chief of Staff relating to any matter in the line of their employment.
- “City elected officials shall not interfere with the directives of the Chief of Staff or the Receiver.
- All City elected officials, employees and contractors shall be required to provide any information in furtherance of their responsibilities that the Receiver or the Chief of Staff requests.”

# Plan Modification

## *City Chain of Command/Staff Reporting Structure*



Note: With the exception of the Chief of Staff/City Manager also reporting to the Receiver, this is how most Pennsylvania cities operate. Chester is the exception.



# Plan Modification

## *Ability to Hire and Fire Employees (p. 41)*

- “The City may not hire, rehire, suspend or terminate any personnel without the Receiver’s review and written approval. The City shall not create new positions or add to the City’s complement without the Receiver’s review and written approval.
- The Receiver shall have the sole ability to initiate or approve any hiring; enact layoffs and/or terminations; convert full-time positions to part-time; restructure department operations including through consolidations or outsourcing; or reassign personnel, subject to the provisions of collective bargaining agreements if applicable. This shall include employees appointed by city elected officials per the Home Rule Charter.”
- Practical impact:
  - Receiver has sole authority to hire and fire City employees (subject to provisions of collective bargaining agreements if applicable), including those appointed by city elected officials per the Home Rule Charter.

# Plan Modification

## *Requests for Proposals (p. 47)*

- “The Receiver shall have the sole authority to determine the members of a selection committee for a City or Authority request for proposals or any other procurement where a selection committee is convened. At least one member of City Council, selected by the Receiver, will be on any selection committee.”
- Practical impact:
  - Receiver has sole authority to determine members of an RFP selection committee or any other procurement where a selection committee is convened.

# Plan Modification

## *Ethics Policy (p. 50)*

- “The Receiver, Chief of Staff and City elected officials shall work in good faith to develop a City-wide ethics policy for City elected officials and City employees. Such a policy shall cover areas including but not limited to conflicts of interest, personnel decisions and disclosure. In the event that the Receiver, Chief of Staff and City elected officials cannot agree on such a policy, the Receiver will submit the policy or policies to Commonwealth Court in the form of a Plan Modification. In such proceedings, the City elected officials shall be represented by the City Solicitor. The Chief of Staff shall ensure the implementation and enforcement of such an ethics policy.”

# Conclusion

- This clear and unambiguous decision by the Pennsylvania Supreme Court answers the questions that these parties have been struggling with since Receivership began.
- The Receiver will implement the Plan Modification and believes that it will ensure the provision of vital and necessary services to residents.
  - There is now a clear chain of command in City operations.
- The Receiver looks forward to working with the Mayor and other members of City Council to move Chester forward.

End