

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

<p>In re: City of Detroit, Michigan, Debtor.</p>	<p>Bankruptcy Case No. 13-53846 Judge Thomas J. Tucker Chapter 9</p>
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CITY OF DETROIT’S STATUS REPORT ON BANKRUPTCY CASE

On June 7, 2024, the Court entered its *Order Requiring the City to File a Further Status Report by December 9, 2024* (“Order,” Doc. No. 13907). The Order provided that the City of Detroit (“City”) must file a further status report by December 9, 2024, updating the June 3, 2024, status report (Doc. No. 13906), and “discussing whether this Chapter 9 bankruptcy case then should be closed, and if not, why not, and if not, when the City contends that the case will be ready to be closed.” Order. The City files this Report in accordance with the Order, respectfully stating as follows.

I. INTRODUCTION

The bankruptcy case may be closed when case administration is complete, subject to the retained jurisdiction of the Court over the case for as long as necessary for the successful implementation of the Plan. 11 U.S.C. § 945. The City continues to make progress in this case, but still must distribute New B Notes¹ to the Holders

¹ Terms that are capitalized but not defined in this Report have the meanings ascribed to them in the City’s *Eighth Amended Plan for the Adjustment of Debts of the City*



of Allowed Class 14 Other Unsecured Claims before case administration can be considered complete. On May 20, 2022, the Court entered an order approving the first and final distribution to Holders of Allowed Class 14 Other Unsecured Claims (“Distribution Order”) [Doc. No. 13570]. The City is prepared to make this distribution following final resolution of matters filed by Richard Wershe, Jr., described in greater detail below. Further, as detailed below, the City also intends to file two motions in the near future regarding the deferred retirement option program and potential changes to the Combined Plan for the Police and Fire Retirement System. Thus, rather than close this bankruptcy case, the City instead asks that the Court require that the City file a status report in six months so that the Court can evaluate the status of the case at that time.

The City is available and willing to address any questions the Court may have regarding this Report or the continuing administration of this case.

II. BACKGROUND

A. The Distribution Process

1. On September 17, 2019, the City filed the *City of Detroit’s Motion to Implement Distributions of B Notes to Holders of Allowed Class 14 Claims Under the City’s Confirmed Plan of Adjustment* [Doc. No. 13126] (“Brokerage Motion”)

of Detroit (“Plan of Adjustment”), as filed as Docket Number 8045 and confirmed with minor modifications by this Court’s order filed at Docket Number 8272.

to establish procedures for the *pro rata* distribution of New B Notes to Holders of Allowed Class 14 Claims.

2. The Court approved the Brokerage Motion, entering its *Order Granting the City of Detroit's Motion to Implement Distributions of B Notes to Holders of Allowed Class 14 Claims Under the City's Confirmed Plan of Adjustment* [Doc. No. 13173] ("Brokerage Order"). The Brokerage Order approved certain forms and required Claimholders to return these forms properly filled out in order to participate in Distributions on claims against the City. Brokerage Order, ¶¶ 2, 6.

3. On November 24, 2021, the City filed its *Motion to Establish Procedures for Distribution of New B Notes to Holders of Allowed Class 14 Claims Under the City's Plan of Adjustment* [Doc. No. 13476] ("Procedures Motion"). The Procedures Motion was filed to establish procedures if a distribution to a Claimholder failed. On December 22, 2021, this Court entered an order granting the Procedures Motion. [Doc. No. 13488.]

4. On March 16, 2022, the City filed its *Motion for an Order (A) Approving First and Final Distribution of New B Notes to Holders of Allowed Class 14 Claims Under the City's Plan of Adjustment and (B) Granting Other Related Relief* [Doc. No. 13521] ("Distribution Motion"). The Distribution Motion provided "interested parties the opportunity to review the planned Distribution and to timely raise any concerns they may have or be permanently and forever barred,

estopped, and enjoined from raising any objection to the proposed first and final Distribution or asserting any Class 14 Claim against the City or any of its property.” Distribution Motion, p. 3. The Distribution Motion included, as Exhibit 6-B, a list of all Holders of Allowed Class 14 Claims whom the City believed were entitled to receive a distribution under the Plan.

5. The City received informal objections to the Distribution Motion, which resulted in a few Claims being added to Exhibit 6-B. A revised Exhibit 6-B, reflecting these changes, was attached to the City’s certification to the Court that no timely formal objections were received to the Distribution Motion and that all informal objections had been resolved. [Doc. No. 13568.]

6. The Court approved the Distribution Motion by entering the Distribution Order. In the Distribution Order, the Court found that the revised Exhibit 6-B contains a complete and exhaustive list of Allowed Class 14 Claims and that only claims on the revised Exhibit 6-B will receive Distributions under Class 14 of the Plan. Distribution Order, ¶ 2. The Distribution Order further states that “no other alleged Holder of a Class 14 Claim will be entitled to a Distribution under the Plan, and each such other alleged Holder of a Class 14 Claim will be permanently estopped, barred, and enjoined from seeking a Distribution or any other relief from the City or any of its property.” *Id.*, ¶ 8.

7. Since then, the City has entered into additional stipulations, each approved by order of this Court, with each effecting minor adjustments to the planned distribution. [Doc. Nos. 13621, 13622, 13650, 13654.]

8. The City has also responded, and continues to respond, to questions from Holders who have asserted that the brokerage account initially indicated on their Brokerage Account Form had closed due to inactivity.

9. The City is prepared to make its first and final distribution to Holders of Allowed Class 14 Claims upon full and final resolution of the Wershe Cases and Wershe Filings (defined below).

B. Outstanding Motions and Issues

1. Motion to Enforce Against Richard Wershe and Richard Wershe's Motion to File a Late Claim

10. On July 20, 2021, more than seven years after the bar date, Richard Wershe Jr. filed case number 4:21-cv-11686-FKB-KGA (“City Wershe Case”) against the City in the District Court for the Eastern District of Michigan (“District Court”), seeking monetary damages on account of events he alleged occurred a decade or more before the City filed for bankruptcy. Wershe also filed case number 4:22-cv-12596-FKB-KGA against the United States (“US Wershe Case,” and with the City Wershe Case, the “Wershe Cases”) in the District Court.

11. On January 4, 2022, the City filed its *Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Richard Wershe Jr.* [Doc. No. 13491] (“Wershe Motion to Enforce”).

12. On May 9, 2022, Wershe filed *Richard Wershe, Jr’s Motion for Entry of Notice of Claim After Bar Date* [Doc. No. 13560] (“Motion to File Late Claim,” and with the Wershe Motion to Enforce, the “Wershe Filings”), seeking leave to file a \$100 million unsecured claim against the City over eight years after the bar date.

13. The City and Mr. Wershe filed additional related papers as directed by the Court. [Doc. Nos. 13572, 13643, 13655.]

14. On September 18, 2023, the District Court dismissed both Wershe Cases. Mr. Wershe promptly appealed (the “Wershe Appeal”).

15. Shortly thereafter, this Court entered an order permitting the City and Wershe to file briefs discussing what effect dismissal of the Wershe Cases should have on the Wershe Filings. [Doc. No. 13742.] The City and Wershe filed the permitted briefs. [Doc. Nos. 13756, 13791.]

16. On April 19, 2024, the Court issued two opinions and two orders. In the first opinion, the Court found that the District Court’s dismissal of the Wershe Cases conclusively determined that Mr. Wershe had no claim against the City. [Doc. No. 13900.] Collateral estoppel thus prevented Mr. Wershe from filing a claim in

the City's bankruptcy case, mandating denial of the Motion to File Late Claim. *Id.* The Court's order was consistent with that opinion. [Doc. No. 13901.]

17. In the second opinion, the Court noted that the Wershe Motion to Enforce was partly, but not entirely, mooted by the District Court's actions. [Doc. No. 13902.] The Court found that it would be more practical to wait for the Sixth Circuit to determine the merits of the Wershe Appeal than to require Mr. Wershe to dismiss it. *Id.* The Court thus denied the Wershe Motion to Enforce as well. The Court's order was consistent with that opinion. [Doc. No. 13903.]

18. In both opinions, the Court noted if the Wershe Appeal should be successful in whole or part, then the parties may resume litigation as to whether Mr. Wershe should be permitted to file a claim. If, however, the Sixth Circuit were to affirm the District Court in the Wershe Appeal, then the matter would be conclusively resolved.

19. On August 8, 2024, the Sixth Circuit issued an opinion affirming the District Court and resolving the Wershe Appeal. Sixth Circuit Case Nos. 23-1902, 23-1903.

20. On November 6, 2024, Mr. Wershe filed a petition for certiorari with the United States Supreme Court, which petition was docketed on November 14, 2024, as Case No. 24-545. The petition remains pending as of the date of this Report.

21. Thus, the City awaits the Supreme Court's determination of the petition. If the petition is denied, as the City expects, the City expects to commence distributions on the Class 14 Claims as soon as practicable thereafter, following the procedures previously established by this Court. Should the Supreme Court choose to grant the petition, however, distributions will continue to be delayed until the Supreme Court hears and decides the matter.

C. Motions that the City Intends to File in the Near Future

22. The City intends to file two motions in the near future.

23. First, the City intends to file a motion requesting that this Court approve an extension of the Deferred Retirement Option Plan for the Detroit Police Command Officers Association ("DPCOA") from five to ten years. The Court has granted similar requests on four different occasions. *See* Doc. Nos. 12935, 13053, 13442, and 13913. In that regard, on October 29, 2024, the City and the DPCOA entered into a memorandum of understanding which provides that the City shall use reasonable efforts to obtain Bankruptcy Court approval of the proposed change to the DROP program for the DPCOA. Consequently, the City intends to file a motion with this Court seeking such approval.

24. Second, in November, 2024, the City and each of DPCOA, the Detroit Police Officers Association and Detroit Police Lieutenants and Sergeants Association, and the Detroit Fire Firefighters Association executed separate

memorandums of understanding regarding certain potential changes to the Combined Plan for the Police and Fire Retirement System (“Combined PFRS Plan”). One of the conditions to effectiveness of each of the memorandum of understandings is the approval by the Bankruptcy Court of the memorandum of understanding and the proposed changes to the Combined PFRS Plan. Consequently, the City intends to file a motion with this Court seeking such approval.

D. Matters Resolved Since Last Report

1. Motion to Enforce Against the PFRS

25. In November 2021, the PFRS officially adopted a drastic acceleration of the amortization of the unfunded actuarial accrued liability (“UAAL”) of the PFRS Component II (legacy) plan. This action violated the Plan of Adjustment and threatened the City’s full and successful implementation of the Plan of Adjustment.

26. The City filed a motion with this Court to enforce the Plan of Adjustment against the PFRS [“UAAL Motion,” Doc. No. 13602]. A response and a reply were filed [Doc. Nos. 13634, 13663] along with additional related filings [Doc. Nos. 13677, 13678, 13681.] A hearing was held on March 15, 2023.

27. On June 26, 2023, the Court granted the City’s UAAL Motion. [Doc. Nos. 13704-06.] The PFRS moved this Court for reconsideration on July 10, 2023. [Doc. No. 13707.] The Court ordered the City to file a response, which the City did. [Doc. Nos. 13709, 13715.] The PFRS moved for leave to reply. [Doc. No. 13723.]

28. On November 22, 2023, the Court entered an order granting the PFRS's motion for leave to reply and denying its motion for reconsideration, along with an opinion explaining its reasoning. [Doc. No. 13831, 13832.]

29. The PFRS filed a notice of appeal. [Doc. Nos. 13838, 13840, 13842, 13845, 13846, 13849, 13851, 13853.] On March 11, 2024, the PFRS filed its appellant brief. On May 6, 2024, the City filed an appellee brief. On May 20, 2024, the PFRS filed a reply brief.

30. Subsequently, the City and the PFRS entered discussions, resulting in an agreement memorialized in a stipulation filed with this Court ["PFRS Stipulation," Doc. No. 13925].

31. The Court approved the PFRS Stipulation. [Doc. No. 13926.] As a result, a dismissal stipulation was filed with the District Court, which the District Court approved. A copy of the District Court's stipulated dismissal order may be found on this Court's docket at Docket Number 13927.

2. Motion to Enforce Against Chancellor

32. On April 8, 2023, the City filed its *City of Detroit's Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Darell Chancellor* ["Chancellor Motion to Enforce," Doc. No. 13691]. The City asserted that lawsuits filed by Chancellor violated the Plan of Adjustment and Bar Date Order.

33. The Court held a hearing and entered an order granting the Chancellor Motion to Enforce on October 4, 2023. [“Chancellor Order,” Doc. No. 13751.]

34. Chancellor filed an amended notice of appeal of this order. [Doc. No. 13777.] Chancellor filed an appellant brief on January 18, 2024. The City filed an appellee brief on February 14, 2024. No reply brief was timely filed.

35. On September 30, 2024, the District Court entered an opinion and order affirming this Court’s Chancellor Order. A copy of the District Court’s opinion and order is entered on this Court’s docket. [Doc. No. 13920.]

36. Chancellor did not appeal the District Court’s opinion and order and the time to do so has passed.

III. THIS CASE HAS NOT BEEN “FULLY ADMINISTERED”

37. In the City’s confirmed Plan of Adjustment, the Court retained jurisdiction to “[e]nter a final decree closing the Chapter 9 Case pursuant to section 945(b) of the Bankruptcy Code[.]” Plan, Art. VII.P (Doc. No. 8045, p. 78 of 82; Doc. No 8272, p. 211 of 225).

38. Section 945(b) states that “Except as provided in subsection (a) of this section, the court shall close the case when administration of the case has been completed.” 11 U.S.C. § 945(b). Subsection (a) states that a bankruptcy court may retain jurisdiction for whatever time is necessary for successful plan implementation. 11 U.S.C. § 945(a).

39. The Bankruptcy Code does not explain when administration of a chapter 9 case is complete and, to the City's knowledge, only one reported decision has addressed the question. *In re Lake Lotawana Cmty. Improvement Dist.*, Case No. 10-44629-can9; 2017 WL 1968282 (Bankr. W.D. Mo. May 11, 2017).

40. The *Lake Lotawana Community Improvement District* court noted that neither the Bankruptcy Code nor the Bankruptcy Rules offer guidance as to when a chapter 9 case has been administered. *Id.* at *2. The court then observed

Returning to § 945(b) then, cannons of statutory construction require that when Congress does not define a term, courts must give it its ordinary meaning. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). Black's Law Dictionary defines "administration" as the "judicial action in which a court undertakes the management and distribution of property." Black's Law Dictionary 49 (9th ed. 2009).

Id. at *3.

41. Thus, the court determined that a case is administered when there is no longer anything for the court to manage in the case. *Id.*

42. In this case, New B Notes must be distributed to Class 14 Claim Holders in accordance with the Distribution Order, which distribution likely must wait until Mr. Wershe's petition for certiorari is resolved by the Supreme Court. This issue prevents the City's bankruptcy case from being closed at this time.

IV. CONCLUSION

43. For the reasons described above, the City respectfully asks that the Court not close this bankruptcy case at this time. Instead, the City requests that the Court require the City to file another status report in six months so that the City and this Court can reevaluate the status of the case then. The City is available and willing to address any questions the Court may have regarding this Report or the continuing administration of this case.

Dated: December 9, 2024

MILLER, CANFIELD, PADDOCK AND
STONE, P.L.C.

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

City of Detroit, Michigan,
Debtor.

Bankruptcy Case No. 13-53846

Judge Thomas J. Tucker

Chapter 9

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2024, I electronically filed the *City of Detroit's Status Report on Bankruptcy Case* with the Clerk of the Court via the Court's ECF electronic filing system which will serve notice to all ECF participants.

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