UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: City of Detroit, Michigan, Debtor.	Bankruptcy Case No. 13-53846 Honorable Thomas J. Tucker Chapter 9
The Police and Fire Retirement System of the City of Detroit, Plaintiff v. Investment Committee of the Police and Fire Retirement System of the City of Detroit, Defendant	Adv. Proc. No. 20-04042

CITY OF DETROIT'S MOTION FOR IMMEDIATE FACILITATION

City of Detroit (City), pursuant to L.B.R. 7016-2, states as follow for its motion asking the Court to Order immediate facilitation of the dispute evidenced by the filing of the above-referenced adversary proceeding. The City submits that the dispute should be sent to facilitation in an effort to promptly resolve the dispute without acrimonious and expensive litigation and disruption of operations for the reasons set forth in the attached brief attached as Exhibit 3.

The City sought the consent of plaintiff and defendant to the relief requested in this motion. Defendant Investment Committee has concurred in the motion's request for prompt appointment of a facilitator, but does not concur in the supporting brief. Plaintiff, PFRS, has advised it does not concur.

The City respectfully requests that the Court enter an order in substantially the same form as the one attached as Exhibit 1 granting the motion and sending this dispute to facilitation.

Dated: February 11, 2020

CITY OF DETROIT LAW DEPARTMENT

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EXHIBIT LIST

Exhibit 1 Proposed Order

Exhibit 2 Notice

Exhibit 3 Brief

Exhibit 4 Certificate of Service

Exhibit 5 None

Exhibit 6 None

EXHIBIT 1 – PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
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ORDER GRANTING CITY OF DETROIT'S MOTION FOR IMMEDIATE FACILITATION

THE COURT ORDERS THAT:

1. The Motion is granted.

2. Under E.D. Mich. LBR 7016-2(a), the plaintiff and the defendant in the above captioned adversary proceeding must engage in mediation.

3. No later than February 21, 2020, the plaintiff, defendant and the City shall file a stipulation and order with this court either (a) identifying the mediator that they have agreed upon or (b) stating that they could not agree upon the selection of a mediator. If the parties and City are unable to agree on the selection

of a mediator, this Court will appoint a mediator and file notice of such appointment on the docket in this adversary proceeding.

4. The mediation must be completed by March 16, 2020.

5. The matters to be mediated are the issues presented in the above captioned adversary proceeding and any directly related issues.

EXHIBIT 2 – NOTICE

UNITED STATES BANKRUPTCY COURT
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NOTICE OF OPPORTUNITY TO RESPOND TO CITY OF DETROIT'S MOTION FOR IMMEDIATE FACILITATION

The City of Detroit has filed its Motion for Immediate Facilitation.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney.

If you do not want the Court to enter an Order granting the City of Detroit's Motion for Immediate Facilitation, within 14 days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:[1]

[1] Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e).

United States Bankruptcy Court

211 W. Fort St., Suite 1900

Detroit, Michigan 48226

If you mail your response to the court for filing, you must mail it early enough so that the court will **receive** it on or before the date stated above. You must also mail a copy to:

Miller, Canfield, Paddock & Stone, PLC

Attn: Marc N. Swanson

150 West Jefferson, Suite 2500

Detroit, Michigan 48226

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time, and location of that hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

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

By: /s/ Marc N. Swanson

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Dated: February 11, 2020

EXHIBIT 3 – BRIEF

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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BRIEF IN SUPPORT OF CITY OF DETROIT'S MOTION FOR IMMEDIATE FACILITATION

The City submits that the dispute should be sent to facilitation in an effort to promptly resolve the dispute without acrimonious and expensive litigation and disruption of operations. To assist the Court in understanding the City's interest in avoiding such litigation, the City sets out below some background information about the City's legacy pension plans.

I. Background

A. Treatment of the City's "legacy" pension plans under the POA.

The just filed adversary proceeding relates to the operations of the City's Police and Fire Retirement System (PFRS). PFRS is a legacy plan that was frozen

in the 2014 Plan of Adjustment (POA). However, PFRS is obligated to pay benefits many years into the future to thousands of public safety employees who were employed or retired from the City prior to the plan being frozen in the POA.

The POA dealt with the PFRS and General Retirement System (GRS) plans by (1) freezing them, (2) reducing benefits by eliminating cost of living adjustments entirely for GRS and by 55% for PFS, and reducing GRS benefits by 4.5%, (3) providing for $816 million in funding by the state of Michigan, charitable foundations and other entities, primarily from 2014-2024, as part of the "grand bargain" (4) specifying an assumed investment rate of return of 6.75%. The POA provided that the City would make nominal contributions prior to 2024, at which time, under estimates made in the POA, the City would need to make an estimated $111 million contribution from its General Fund.

Judge Stephen Rhodes, in approving the POA, stated:

> "Because of the outside money committed as part of the Grand Bargain, the City will have little responsibility for funding the GRS and the PFRS through June 2023. During that time period, the PFRS will be funded exclusively from contributions from the DIA, the DIA Funders, the Foundation Funders and the State under the Grand Bargain, as described previously.

In re City of Detroit, 524 B.R. 147, 179-180 (2014), (hereafter "Supp Op").

Judge Rhodes and the Court appointed expert expressed serious concerns about the feasibility of the plan – even with the assumption that the City would only be responsible for nominal pension contributions until 2024:

> "In this case, examining the feasibility of the plan is difficult for a number of reasons. The City's debt is enormous and the City proposes to pay most of its creditors over a long period of time. As the Court discusses below, the City's revenue and expense projections extend forty years into the future.
>
> "Second, the feasibility of the plan depends upon the City's ability to fix and maintain its broken governmental operations. This is significant because the chapter 9 feasibility inquiry requires an analysis of whether the City can reasonably provide sustainable municipal services, as the court found in *In re Mount Carbon.* * * *
>
> "As the City itself succinctly states in its pretrial brief in support of plan confirmation, "[T]he City was—and remains today — enmeshed in a financial crisis of unsurpassed proportions and complexity." * * *Despite efforts from both the City and the State of Michigan, "the City is trapped in a vicious circle of cash crises, general fund deficits, crushing long-term liabilities and tumbling credit ratings exacerbated by the City's bureaucratic structure and frequent deviations from established budgets."

Supp Op, pp. 220-221.

Martha Kopacz, the Court's appointed feasibility expert, explained that the POA left "little space of the continuum of feasibility":

> "I want to emphasize, however, that there is little space remaining on the continuum of [feasibility]. The recent settlements and corresponding amendments to the Plan of Adjustment have served the laudable goals of efficiently resolving disputes and garnering additional support for the Plan of Adjustment. Conversely, they have imposed additional financial obligations on the City. I have already expressed concerns regarding the level of contingency provided for in the Plan of Adjustment. The financial obligations associated with the recent settlements only intensify this concern."

Supp Op p. 219.

In its discussion of feasibility, the Court stated as follows regarding the pension liabilities:

> "However, at the end of FY2023, the GRS and PFRS will remain significantly underfunded. Using the assumptions from the global pension settlement, including the 6.75% discount rate, the City projects that the PFRS will only achieve 78% funding, leaving a UAAL [unfunded accrued actuarial liability] of $681 million. Ex. 793 at 2. For the GRS, the City projects a 70% funded status by the end of FY2023, leaving a UAAL of $695 million. *Id.* The City will then amortize the remaining UAAL for both plans over the next thirty years at an interest rate of 6.75%. *Id.* * * *.
>
> "The plan greatly reduces the City's pension obligations, thanks to the State Contribution Agreement, the Grand Bargain funding, and the modification of the City's obligations to its current retirees. * * *"

Supp Op, pp. 231-232.

B. Almost immediately after the POA was confirmed, actuaries for GRS and PFRS advised that the analyses used for the POA were severely flawed and grossly understated UAAL because, among other things, the actuaries had relied on outdated mortality tables.

The actuarial analyses underlying the POA projected that at the end of fiscal year 2023, the total unfunded accrued actuarial liability (UAAL) for both plans would be approximately $1.4 billion.

Revised analyses by GRS/PFRS actuaries issued shortly after the POA was confirmed resulted in the UAAL being increased by 34% or $500 million, making the revised UAAL $1.9 billion. The sharp increase was due in significant part to the actuaries who were involved in preparing the plan of adjustment, in conjunction with their clients, using outdated mortality tables in preparing the estimates used in the POA.

The sharp increase in UAAL was not in any way the fault of the City, nor was it the result of a bad economy or stock market. It was the direct result of improper actuarial assumptions in the preparation of the POA. Neither the City's Mayor, or Chief Financial Officer, or any other City official, were involved with or had any knowledge of the improper actuarial assumptions until GRS/PFRS actuaries so advised shortly after confirmation of the POA.

To deal with this enormous new, unexpected liability, the City has established a "Retiree Protection Trust Fund." The City has contributed $170 million to date into the Fund. The City currently plans to contribute an additional $165 million over the next 3 fiscal years, to bring the overall total contributed to at least $335 million by the end of 2023.

The funds deposited into the Retiree Protection Trust Fund come from the City's general fund. Those are monies that are not available for public safety, blight removal, or other City priorities which led the Court to conclude the POA was feasible.

II. ARGUMENT

The dispute underlying the adversary proceeding is whether the PFRS Investment Committee (PFRS IC) has authority, independent of the PFRS Board, to engage professionals and decide on their compensation.

The dispute is complicated by the many voluminous documents that are potentially relevant to the issue. These documents were prepared under time pressure in connection with the POA. The undersigned has been dealing with such documents for the past five years and can advise with certainty that many of them are less than a model of clarity.

The City believes that an experienced facilitator, with knowledge and understanding of commercial disputes, would be able to independently analyze the dispute and speak frankly with the opposing sides about a realistic and appropriate resolution.

The City also believes that distrust and acrimony has come between the parties to the adversary proceeding. That has made it all but impossible for the parties to calmly approach this dispute in a cooperative and business like fashion.

As shown above, PFRS and the City have much "bigger fish to fry" than what is at issue in the dispute. All parties need to work together cooperatively to address the significant issues faced by PFRS and the City.

The PFRS Board has historically had a General Counsel to advise the Board on legal issues. Currently, PFRS' General Counsel is Ron King of the Clark Hill Firm.

After the dispute arose, the PFRS engaged the Couzens Lansky firm as special bankruptcy counsel to prosecute this dispute. Four Couzens Lansky lawyers are named in the signature block of the complaint.

The PFRS IC has never before had separate legal counsel. After the dispute arose, the PFRS IC hired (i) attorney Valerie Brader as its "general counsel" and (ii) the Bodman firm as its bankruptcy counsel.

So there are now four law firms representing the parties to the dispute. The dispute is spiraling out-of-control and threatens to take on a life of its own.

III. CONCLUSION

For the reasons set forth above, before this matter proceeds any further, the City respectfully asks the Court to Order the matter to facilitation.

Dated: February 11, 2020

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EXHIBIT 4 – CERTIFICATE OF SERVICE

UNITED STATES BANKRUPTCY COURT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 11, 2020 the foregoing City of Detroit's Motion for Immediate Facilitation was filed and served via the Court's electronic case filing and notice system and served upon counsel as listed below, via first class mail and electronic mail:

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DATED: February 11, 2020

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