

Emergency manager, Michigan governor testify in Detroit bankruptcy case

By Thomas Gaist and Jerry White
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Detroit's emergency manager Kevyn Orr and Michigan Governor Rick Snyder testified on day four of the bankruptcy proceedings Monday. US Judge Steven Rhodes is expected to rule next week on whether the city's emergency manager met legal requirements prerequisites when he filed the largest municipal bankruptcy in US history.

Even within the constrained framework of the courtroom, the testimony by Orr and Snyder revealed beyond a shadow of a doubt that the Republican governor—working closely with state and city Democrats—planned to throw the city into bankruptcy for months, if not years, before Orr made the formal filing in July.

From the beginning, Snyder followed almost to the tee the blueprint laid out by the bankruptcy firm Jones Day to use Chapter 9 to evade Michigan's constitutional protection of retiree pension benefits. Orr served as a partner at Jones Day for more 12 years until he resigned after being installed as emergency manager in March 2013.

What was most striking about their testimony is how brazen Snyder and Orr were in defying constitutional and other legal obstacles to gut pensions, tear up labor agreements and clear the way for the selloff of the city's assets to pay off the banks and big bondholders.

During the morning session an attorney representing a committee of retirees presented slides from a January 2013 "pitch book," which Jones Day representatives showed city officials before they were hired by Detroit Mayor David Bing as the city's "restructuring counsel." The document outlined the "advantages" to be gained from the imposition of an emergency manager and the filing of Chapter 9 bankruptcy, citing in particular, reducing accrued pension benefits.

Slide items read: "Can create Negotiating Leverage

(Negotiating with the backdrop of bankruptcy) and "Creditors understand that a troubled municipality has greater leverage in a Chapter 9 case" and "Viable Threat of Chapter 9 is Critical."

Orr confirmed that plans to file for bankruptcy and "significant pension reductions" were concluded months prior to the bankruptcy filing. Asked whether he had already decided to cut vested pension benefits as of Spring 2013, Orr replied, "I think that is a fair characterization."

These admissions further expose the absurd claims that Snyder and Orr were desperately seeking to avoid bankruptcy and reach a settlement with the unions, pensioners and other creditors before having to take a measure of "last resort." Orr maintained this fiction during his testimony saying bankruptcy was only a "contingency," adding, however, "You pray for peace, but prepare for war."

The timing of the filing, he made clear, was driven by lawsuits filed by pensioners and others seeking to block bankruptcy on the grounds that its only purpose was to carry out an unconstitutional attack on pensions. Referring to these legal challenges, he said, "The situation seemed to be growing precarious and somewhat out of control," saying the lawsuits advanced "strong philosophical positions" that "you can't touch pension rights."

In his testimony—the first by a sitting Michigan governor in the post-war period—Snyder tried to dodge questions probing what he had discussed with Orr, state treasurer Andy Dillon and others about bankruptcy and pensions. He said, "I do not recall" several times and repeatedly asserted "attorney-client privilege" when it came to revealing the content of his discussions with Orr and others. Judge Rhodes made the dubious ruling that attorney-client privilege applied to any

conversations Snyder had where attorneys from the city were present.

The governor repeated the claim that he decided to authorize bankruptcy only after a painstaking review of the city's financial situation. He claimed cutting pensions was not the aim of installing the emergency manager or declaring bankruptcy, and that whether or not this occurred in the future was not his decision but would be determined by the "adjustment plan" emerging from the bankruptcy proceedings.

Snyder acknowledged he had the power to implant a "contingency clause" in the bankruptcy authorization to protect pensions—as was suggested by his own legal counsel—but that he declined to do so because "We were in a crisis mode and this would add more complexities." He added that the situation in Detroit was of "national importance" and had been "accumulating for 60 years without being resolved."

The four days of testimony thus far have provided damning evidence of the anti-democratic conspiracy conducted by Snyder, Dillon and Jones Day. One document filed by attorneys for city unions substantiates this in particular.

In August 2011, the *Emory Bankruptcy Developments Journal* published an article by Jeffrey B. Ellman and Daniel J. Merrett, from Jones Day's Business Restructuring and Reorganization office in Atlanta, Georgia, entitled, "Pensions and Chapter 9: Can municipalities use bankruptcy to solve their pension woes?"

The 49-page article spells out a strategy for city officials to overcome constitutional and legal obstacles existing in several states, including Michigan, to the destruction of pension benefits. In it the authors declare, "As a general matter, modifying a public employer's pension obligations outside of bankruptcy is fraught with difficulties" noting that "any attempt to terminate or reduce promised benefits can be expected to be met with significant resistance, potentially involving coordinated media campaigns, picket lines, and other methods of exerting political pressure."

Even "if political pressure can be overcome," they continue, "the law in many states considers public pension benefits to be constitutionally protected, which creates impediments to any cost-saving modifications to the applicable plans. This constitutional protection is referred to as the "vested rights" doctrine. Thus,

municipalities seeking to reduce or fully terminate retirement benefits outside of bankruptcy face daunting, potentially insurmountable obstacles."

While Chapter 9 bankruptcy does not offer a "silver bullet," to "eradicate a struggling municipality's pension obligations" in "one shot," they write, it "does provide a debtor with a toolbox that is unavailable outside of bankruptcy." This includes creating leverage to reach a "consensual agreement on pension modifications," court-ordered stays on additional payments in pension funds and the power to reject contracts. Finally, the implementation of an "adjustment plan," could allow for the reduction of pension benefits despite state constitutional restrictions.

It notes that much of this still had to be tested out in the courts. This makes clear that the bankruptcy of Detroit is being used as a model for nationwide assault on public employees' wage, health care and pension benefits. That is why Obama's Justice Department has intervened to sanction this legal sham.

If this conspiracy has gotten this far it is because the trade unions, including the American Federation of State, County and Municipal Employees and the United Auto Workers have done nothing to mobilize the resistance of the working class. On the contrary, they have been complicit in imposing concession after concession, and collaborating with the Democratic Party, which has overseen the impoverishment of Detroit workers for decades.

In her cross-examination of Snyder, the attorney for AFSCME asked the governor why the city had not approved a concessions deal agreed to by a coalition of 30 unions that would have saved more than \$100 million before filing for bankruptcy.

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