

U.S.

Heated Start in the Trial on Detroit's Fiscal Future

By **BILL VLASIC** OCT. 23, 2013

DETROIT — The trial over Detroit's eligibility for bankruptcy started Wednesday with starkly different interpretations of the events leading up to the city's historic Chapter 9 filing in July.

On one side were lawyers for the debt-ridden city, who argued that unions and retirees stonewalled out-of-court negotiations that might have saved Detroit from going bankrupt.

But according to the unions and retirees, the bankruptcy filing was nothing more than the final step in a concerted effort by Michigan's governor to take control of the state's largest city.

The court session on Wednesday initiated a legal battle that will determine whether Detroit becomes the nation's largest city to reorganize its debts in United States Bankruptcy Court.

Judge Steven W. Rhodes has to decide if Detroit has met federal eligibility requirements for a bankruptcy filing before anything can be done to reduce its

estimated \$18 billion in long-term debt and improve its woeful city services.

And if the first day was any indication, the trial promises to be a complicated and contentious process that pits city workers and pensioners against Gov. Rick Snyder of Michigan and his handpicked emergency manager for Detroit, Kevyn Orr.

In an unexpected development, a lawyer for Mr. Snyder said Wednesday that the governor had agreed to testify at the trial, most likely next week. His presence on the witness stand will underscore the size and scope of the case, and its potential impact on Detroit's 700,000 residents.

Emotions are already raw in the city. Hundreds of protesters circled the downtown courthouse on Wednesday for the opening of the trial, many carrying banners and signs that attacked Mr. Snyder as favoring bondholders and banks over the city's employees and its 23,000 retirees.

Lawyers representing the city and the state tried in their opening arguments to portray Detroit as so dysfunctional that it could not pay its bills, make interest payments on its debts or provide adequate police protection for its citizens.

The lead attorney for the city, Bruce Bennett, said efforts to negotiate concessions with unions and retiree groups this summer were fruitless, making a bankruptcy filing the only viable option for Mr. Snyder and Mr. Orr to pursue.

Consultants retained by the city will present a "mountain of evidence" during the trial that Detroit is insolvent, Mr. Bennett said.

"The city had run out of cash," he said, adding that there was no way for Detroit to raise desperately needed revenue through additional taxes or asset sales.

He said that trying to negotiate settlements with Detroit's vast number of

bondholders would have been “pointless,” and that an initial effort in June to discuss concessions with unions and retirees was met with stiff resistance. “We received no concrete proposal or feedback,” he said of the meeting. “What we got was ‘no.’ ”

But lawyers for the unions and retiree groups challenged Mr. Bennett’s assertion that the city had made a so-called good-faith effort to reach a deal with workers and retirees. They argued that Mr. Orr’s presentation in June called for significant cuts in employee pensions and health care without offering the unions an opportunity to bargain on the issue.

“The city announced at that meeting that these were not negotiations,” said Sharon Levine, a lawyer for the local council of the American Federation of State, County and Municipal Employees.

By the time the unions had formally responded that they were willing to bargain, Mr. Orr was already preparing to recommend a bankruptcy filing to Mr. Snyder, Ms. Levine said.

“It takes a little bit more than that” to establish a record of good-faith bargaining, she said.

Proof of insolvency and evidence of good-faith negotiations with creditors are two of the biggest criteria Detroit must meet to be eligible for bankruptcy.

James E. Spiotto, a municipal bankruptcy expert at the law firm Chapman and Cutler in Chicago, said a good-faith effort does not mean there has to be movement on either side in a negotiation, but that reasonable attempts to bargain have been made.

“Just because people posture or position doesn’t mean it was in bad faith,” he said.

Opponents of the bankruptcy filing are trying to show that Mr. Orr was predisposed to take Detroit into Chapter 9, starting when his law firm, Jones

Day, sought to be retained as the city's legal counsel early this year

After the city hired Jones Day to represent it, Mr. Snyder picked Mr. Orr to become Detroit's emergency manager.

Jennifer Green, a lawyer for some city pension funds, said e-mails and documents showed that it was a "foregone conclusion" that Jones Day would pursue a Chapter 9 filing as a way to circumvent a provision in the Michigan Constitution that protects public employee pensions.

She also accused Mr. Orr of rushing to make the Chapter 9 filing on July 18 only after learning that retirees were about to get a restraining order that would protect pensions.

The city will continue to make its case for bankruptcy eligibility for the rest of this week. Several outside consultants, as well as Mr. Orr and the city's new police chief, James Craig, are expected to testify.

But Mr. Snyder's testimony, expected on Monday, is likely to be the most sensational moment of the trial. He was subpoenaed by the United Auto Workers union, which represents some city workers in the case.

"The governor wants to be as cooperative as possible," said Matthew Schneider, Mr. Snyder's lawyer.

Mr. Snyder will be questioned closely about his support of state legislation empowering him to appoint emergency managers to fix troubled cities. The legislation was passed in December — just weeks after Michigan voters had repealed a similar law.

Judge Rhodes has already said he wants more information on why the legislation was passed as an appropriations bill, which makes it immune from a referendum to repeal it.

Steven Yaccino contributed reporting from Chicago.

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