Chapter 9 Bankruptcy Cases Filed Since 2008

In re San Bernardino California, Case No. 12-28006, pending before the United States Bankruptcy Court for the Central District of California, Riverside Division. The case was filed on August 1, 2012 after the City's finance department completed the "San Bernardino Budgetary Analysis and Recommendations for Budget Stabilization." (Docket No. 46). The City was facing an approximately $45.8 million deficit, and did not have sufficient cash to pay its financial obligations. (Docket No. 46). The City adopted a resolution by a majority vote of its governing board to file the Chapter 9 petition, which purportedly complied with the California Government Code. (Docket No. 124). The City filed its Motion for Entry of an Order (I) Directing and Approving Form of Notice; (II) Setting Deadline for Filing Objections to Petition; Memorandum of Points and Authorities in Support Thereof, which requested that the Court set a deadline for creditors to object to the Chapter 9 petition, because Chapter 9 only contemplates the possibility of objecting to a Chapter 9 petition, but does not provide any deadline to do so. The Court approved the Debtor's Notice process, and set the deadline to object to the Chapter 9 petition for October 24, 2012. (Docket No. 111). The City's largest creditor, the California Public Employee's Retirement System (Calpers), has opposed the City's request to become a Chapter 9 debtor. Calpers is America's largest retirement system. The Bankrutpcy Court has ordered the City to produce additional financial disclosures to Calpers and its other creditors. A status hearing on the voluntary petition is scheduled for March 5, 2013. In the interim since the petition date, several of the Debtor's creditors have filed Motions for Relief from the Automatic Stay to continue Actions in a Non-Bankruptcy Forum.

In re City of Vallejo California, Case No. 08-26813, pending before the United States Bankruptcy Court for the Eastern District of California, Sacramento Division. This case was filed on May 23, 2008. The Bankruptcy Court entered the Order for Relief on September 5, 2008. (Docket No. 255). An official unsecured creditors committee of City of Vallejo Retirees was formed. The Debtor received several extensions of time to assume or reject leases pursuant to 11 U.S.C. § 365. On January 18, 2011, the Debtor filed its Chapter 9 Plan of Reorganization and its Disclosure Statement. The creditors committee filed an objection to the Disclosure Statement. In March 2011, the Debtor filed its Amended Chapter 9 Plan and Disclosure Statement, and a corrected first amended plan in early April. The International Association of Firefighters, Local 1186, International Brotherhood of Electrical Workers, Local 2376 filed an objection to the First Amended Plan. On May 31, 2011, the Court entered it Order approving the Disclosure Statement. The Retired Firefighters, Retired Police Officers filed a conditional non-opposition to the First Amended Plan. The Confirmation Hearing was held on July 28, 2011. However, subsequently, the Debtor filed a Second Amended Plan on August 2, 2011. The Court entered its Order Confirming the Second Amended Chapter 9 Plan on August 4, 2011. Since Plan Confirmation, Vallejo has cut its police and fire departments, and has passed a budget that is balanced. CNBC News, http://www.cnbc.com/id/43932782/A_New_Chapter_for_Vallejo. The City is now trying to attract residents, develop business, and provide opportunities. Huffington Post, Hannah Dreier, July 22, 2012, http://www.huffingtonpost.com/2012/07/23/vallejo-bankruptcy_n_1693863.html.

In re City of Stockton California, Case No. 12-32118, pending before the United States Bankruptcy Court for the Eastern District of California, Sacramento Division. This case was filed on June 28, 2012. On July 10, 2012, the Association of Retired Employees of the City of Stockton and named individuals filed an adversary proceeding seeking injunctive relief against the debtor. Also on July 10, 2012, the Court set August 9, 2012, as the deadline to object to the Chapter 9 petition. On August 31, 2012, the court entered a scheduling order for discovery relevant to the city's eligibility to be a debtor. A status conference on the city's Chapter 9 petition is scheduled for March 6, 2013. No order for relief has been entered to date. (Case summary from Bankruptcy Court Decisions attached.)

In re Town of Mammoth Lakes California, Case No. 12-32463, in the Eastern District of California, Sacramento Division. The Debtor filed bankruptcy on July 3, 2012. The Debtor was dismissed on November 16, 2012. The debtor filed its Disclosure Statement and Plan on the petition date. While in bankruptcy, the debtor was able to settle a lawsuit with Mammoth Lakes Land Acquisition, which caused the bankruptcy. Once the lawsuit was settled, the Debtor was able to have the bankruptcy dismissed.

In re Natchez Regional Medical Center, Case No. 09-00477, pends before the United States Bankruptcy Court for the Southern District of Mississippi, Jackson Division. This Chapter 9 bankruptcy was filed on February 12, 2009. Prior to the bankruptcy, Natchez Regional Medical Center obtained permission from the state to become a debtor under Chapter 9. The Debtor filed its Chapter 9 Plan and Disclosure Statement on the Petition Date. The Court entered its Final Order to use Cash Collateral, Obtain Credit, Modify the Automatic Stay, and Granting of post-petition Liens on March 13, 2009. The Order for Relief was entered on Match 17, 2009. On March 25, 2009, the trustee appointed a Chapter 9 Unsecured Creditors' Committee. The Committee objected to the Disclosure Statement on June 18, 2009. In November 2009, the Debtor filed an Amended Chapter 9 Plan and the Court approved the Debtor's Disclosure Statement. On December 17, 2009, an Agreed Order Confirming the Chapter 9 Plan was entered.

In re Sanitary and Improvement District 452 of Douglas County, Nebraska, Case No. 09-80404, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This Chapter 9 was filed on February 24, 2009. The Court extended the time for the Debtor to file its Plan several times. The last action taken in the case was an order approving a stipulation for payment of bond expenses between the Debtor and the Committee in December 2012.

In re Sanitary and Improvement District 251 of Sarpy County, Nebraska, Case No. 09-81825, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This case was filed on July 13, 2009. The Debtor filed its plan and disclosure statement on the petition date. The Chapter 9 Plan was pre-approved. The Trustee appointed a Creditor's Committee on August 5, 2009. On November 5, 2009, the Court confirmed the Chapter 9 Plan.

In re Sanitary and Improvement District 509 of Douglas County, Nebraska, Case No. 09-83145, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This case was filed on November 19, 2009. The Debtor filed its plan and disclosure statement on the Petition Date. No creditor's committee was appointed because there were an insufficient

number of creditors who expressed an interest in serving on the committee. The case has not been terminated to date.

In re Sanitary and Improvement District 507 of Douglas County, Nebraska, Case No. 10-82794, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This case was filed on September 28, 2010. The Debtor filed its plan and disclosure statement on the Petition Date. The Court confirmed the Chapter 9 Plan on December 10, 2010. On March 6, 2012, the Court entered its Order Granting the Motion for Final Decree.

In re Sanitary and Improvement District 528 of Douglas County, Nebraska, Case No. 10-83596, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This case was filed on December 14, 2010. The Debtor filed its plan and disclosure statement on the Petition Date. The Court confirmed the Chapter 9 Plan on February 10, 2011.

In re Sanitary and Improvement District 517 of Douglas County, Nebraska, Case No. 11- 80953, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This case was filed April 15, 2011. The Debtor filed its plan and disclosure statement on the Petition Date. The Court confirmed the Chapter 9 Plan on June 7, 2011.

In re Sanitary and Improvement District 258 of Saropy County, Nebraska, Case No. 11- 82460, pends before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This case was filed September 29, 2011. The Debtor filed its plan and disclosure statement on the Petition Date. No creditor's committee was appointed because there were an insufficient number of creditors who expressed an interest in serving on the committee. The Court confirmed the Chapter 9 Plan on December 9, 2011. On July 25, 2012, the Court Granted the Motion for a Final Decree and Final Accounting, and the case was closed.

In re Sanitary and Improvement District 513 of Douglas County, Nebraska, Case No. 11-82482, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This case was filed September 30, 2011. The Debtor filed its plan and disclosure statement on the Petition Date. The Court confirmed the Chapter 9 Plan on February 6, 2012. On December 19, 2012, the Court Granted the Motion for a Final Decree and Final Accounting.

In re Sanitary and Improvement District 268 of Sarpy County, Nebraska, Case No. 12-80115, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This Chapter 9 case was filed on January 23, 2012.

In re Sanitary and Improvement District 523 of Douglas County, Nebraska, Case No. 12-81249, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. This case was filed on June 5, 2012. The Plan and Disclosure Statement were filed on June 6, 2012. The Court entered orders denying the Debtor's disclosure statement and confirmation on July 11, 2012. Eventually on December 6, 2012, the Court issued its Order Confirming the Chapter 9 Plan.

In re Sanitary and Improvement District 512 of Douglas County, Nebraska, Case No. 11-82739, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office.

The Debtor filed this case on November 1, 2011. The Debtor filed its plan and disclosure statement on the Petition Date. The Court confirmed the Chapter 9 Plan on February 10, 2012.

In re Sanitary and Improvement District 270 of Sarpy County, Nebraska, Case No. 12-81926, pending before the United States Bankruptcy Court for the District of Nebraska, Omaha Office. The Debtor filed this case on August 28, 2012. The Debtor filed its plan and disclosure statement on August 30, 2012. The Court approved the debtor's disclosure statement on September 28, 2012. On October 11, 2012, the Court granted an extension of time for filing resistances to the Petition. However, on November 28, 2012, the Court confirmed the Chapter 9 Plan.

In re Suffolk Regional Off-Track Betting Corporation, Case No. 11-42250, pending before the United States Bankruptcy Court for the Eastern District of New York. The case was originally filed on March 18, 2011, under Case No. 8:11-bk-71699, but was transferred within the district. On Dec. 2, 2011, the court entered a lengthy Decision dismissing the case pursuant to section 921(c) because the filing was not authorized pursuant to section 109(c)(2) and the debtor was ineligible to be a Chapter 9 debtor. Churchill Downs, a creditor and party to an executory contract with the Debtor, objected to the petition, arguing Suffolk County Legislature did not have authority to authorize the Debtor's bankruptcy filing. The court held that Churchill Downs had standing to object to the petition as a party to an executory contract. It went on to interpret New York State law and found that the Suffolk County Legislature did not have authority to authorize Debtor's bankruptcy filing. The case was dismissed on December 2, 2011. The Decision was appealed but the Second Circuit issued a mandate on May 9, 2012, stating that immediate appeal was unwarranted. The Debtor promptly refiled a new bankruptcy case.

In re Suffolk Regional Off-Track Betting Corporation, Case No. 12-43503, pending before the United States Bankruptcy Court for the Eastern District of New York. The case was originally filed on May 11, 2012, under Case No. 8:12-bk-73029, but was transferred within the district. After the Debtor's initial bankruptcy filing was rejected, the New York State Legislature changed the state's laws to allow the Debtor to file for bankruptcy. This time the court found that the Debtor was authorized to file bankruptcy and entered the order for relief on July 19, 2012. The Debtor, which manages six branches, reported a $5.1 million net operating loss for 2011. The case is still pending.

In re New York City Off-Track Betting Corporation, Case No. 09-17121, pending before the United States Bankruptcy Court for the Southern District of New York. This case was filed on December 3, 2009. On Mar 22, 2010, the court overruled the objections to the filing of the Chapter 9 petition and ruled that the Debtor was eligible to file a Chapter 9 petition. The Debtor filed several versions of a plan and disclosure statement then filed a motion to dismiss the case under sections 923 and 930 and Rules 1017 and 2002. The motion to dismiss was opposed a motion to appoint a trustee pursuant to section 926(a) was filed. At that time, the Debtor was merely a corporate shell with a Board of Directors. All day-to-day and wind down operations had ceased, all employees had been terminated, all cash had been disbursed with the exception of an account reserved to honor un-cashed checks and all officers had resigned. Under these circumstances, the court found that dismissal was proper and the appointment of a trustee was therefore unnecessary. The case was dismissed on January 25, 2011.

In re Town of Moffett, Case No. 09-81814, pending before the United States Bankruptcy Court for the Eastern District of Oklahoma. This case was filed on October 22, 2009. After multiple extensions of time, the Debtor filed a plan and disclosure statement on September 1, 2011. The plan was two pages long and merely identified the classes and stated their treatment. The Plan was confirmed on Dec. 9, 2011, and a final decree was entered on April 23, 2012.

In re Rural Water District No. 1, Cherokee County, Oklahoma, Case No. 12-80061, pending before the United States Bankruptcy Court for the Eastern District of Oklahoma. This case was filed on January 23, 2012. Less than one month after filing, a creditor filed a motion to dismiss the case, but this motion was later withdrawn and an order for relief under section 921(e) was entered on June 1, 2012. The plan and disclosure statement are currently due on April 29, 2013. The case is still pending.

In re Westfall Township, Case No. 09-02736, pending before the United States Bankruptcy Court for the Middle District of Pennsylvania. The Debtor filed on April 10, 2009, after losing a lawsuit. A plan was confirmed on March 2, 2010. A final decree was entered on June 4, 2010.

In re City of Harrisburg, Pennsylvania, Case No. 11-06938, pending before the United States Bankruptcy Court for the Middle District of Pennsylvania. This case was filed on October 11, 2011. The city filed its Chapter 9 petition with approximately $400 million in debt, much of which was related to a failed waste-to-energy plant. Multiple objections to the Chapter 9 petition were filed, and the court dismissed the case on November 23, 2011, because the city did not qualify as a debtor under section 109(c)(2) because not all necessary branches of the municipal government had authorized the filing of the petition. An appeal was filed and later dismissed for lack of jurisdiction.

In re The City of Central Falls, Rhode Island, Case No. 11-13105, pending before the United States Bankruptcy Court for the District of Rhode Island. This case was filed on August 1, 2011. The city had $21 million in outstanding debt plus unfunded pension liabilities. The city petitioned to be put into receivership in 2010, because Rhode Island does not generally permit Chapter 9 filings. The state appointed receiver assumed all financial responsibilities from the mayor. Rhode Island's receivership law was rewritten to allow the receiver the ability to file a petition for Chapter 9 federal bankruptcy and this bankruptcy was filed. A plan and disclosure statement was filed on Sept. 22, 2011. Police and firefighter retirees and their associations objected to the Debtor's eligibility to file a Chapter 9 petition. The objection was withdrawn and an order for relief was entered on Dec. 1, 2011. On Jan. 10, 2012, the court approved the Debtor's rejection of two collective bargaining agreements with the police and municipal unions.(Pensions have since been cut for retirees.) The plan was confirmed on Sept. 11, 2012. The case is still pending.

In re Bamberg County Memorial Hospital, Case No. 11-03877, pending before the United States Bankruptcy Court for the District of South Carolina. This case was filed on June 20, 2011. A patient care ombudsman was not required. In February 2012, the plan and disclosure statement was filed. The plan was confirmed in May 2012. The case is still pending.

In re Barnwell County Hospital, Case No. 11-06207, pending before the United States Bankruptcy Court for the District of South Carolina. This case was filed on October 5, 2011. A patient care ombudsman was not required. In February 2012, the plan and disclosure statement was filed. The plan was confirmed in May 2012, and the case is still pending. In December 2012, the Debtor filed a motion seeking authority to enter a substitute asset purchase agreement to aid in the implementation of the plan, and that motion is still under advisement. The case is still pending.

In re Connector 2000 Association, Inc., Case No. 10-04467, pending before the United States Bankruptcy Court for the District of South Carolina. This case was filed on June 24, 2010. The Southern Connector Toll Road was built using government loans, but this Chapter 9 bankruptcy was filed when toll collections were less than expected. A plan and disclosure statement was filed on October 22, 2010. The order for relief was entered on January 12, 2011, and the plan was confirmed on April 1, 2011. On Feb. 7, 2011, the Debtor filed its motion seeking authority to supplement the indenture to aid implementation of the plan and seeking approval of bond exchange materials and procedures for term bonds. The motion was approved and a final decree was entered shortly thereafter on August 27, 2012.

In re Grimes County MUD #1 and Official Committee of Bondholders, Case No. 10-31933, pending before the United States Bankruptcy Court for the Southern District of Texas. This case was filed on March 4, 2010. Judge Isgur was designated to preside over the case. An order for relief was entered on May 12, 2010. A creditor's committee was formed. A plan and disclosure statement was filed in February 2011 and they were later amended. Approval of the disclosure statement was initially denied, but the plan was confirmed and the case was closed on May 10, 2011.

In re Pierce County Housing Authority, Case No. 08-45227, pending before the United States Bankruptcy Court for the Western District of Washington. This case was filed on October 13, 2008, because of residents' lawsuits due to mold in properties. An unsecured creditor's committee was appointed. A plan and disclosure statement was filed on May 27, 2009. On August 21, 2009, the court entered a Memorandum Decision holding the Debtor was eligible to be a debtor under Chapter 9; the disclosure statement was approved but the plan as proposed was denied without prejudice. A third amended plan was confirmed in December 2009. Orders granting the Debtor a discharge and closing the case were nearly 3 years later on October 19, 2012.

In re Jefferson County, Case No. 11-05736, filed in the Northern District of Alabama on 11/9/2011. The county filed with over $4 billion in debt, the largest Chapter 9 bankruptcy to date, from sewer revenue bonds tainted by a interest rate swap bribery scandal with JPMorgan and County Commissioner Larry Langford, and bond insurance credit rating collapse in the late-2000s sub-prime mortgage crisis, followed by the occupation tax being declared unlawful in Alabama. The county has laid-off about 500 workers since declaring for bankruptcy in November 2011 including over 200 employees of a county owned hospital. In March of 2012, the bankruptcy court ruled that the bankruptcy was allowed under state law. In April the Alabama Supreme Court ruled on the same issue, granting the City of Prichard the right to file. (See *In re City of Prichard* below). Since the filing, a trustee for the bondholders has filed a

Motion to Lift Stay in order to pursue action against the county in state court. The trustee believes that the County should be increasing sewer rates in order to generate more revenue.

In re City of Prichard, Case No. 09-15000, filed in the Southern District of Alabama. This case was filed on 10/27/2009 and was dismissed on 8/31/2010. The case was filed when the city was unable to pay pensions including state mandated pension increases. City employees who were vested in the pensions moved to dismiss the case. The bankruptcy court granted the motion that was then appealed and certified to the Alabama Supreme Court. In, *City of Prichard v. Balzer,* 11-00950, the Alabama Supreme Ct. ruled that state law does not limit chapter 9 only to municipalities hold certain debt (refunding or funding debt) but to all municipalities organized under state law. (Opinion attached.) The case is now active but no plan has been confirmed.

In re City of Gould, Case No. 08-12413, filed in the Eastern District of Arkansas. This case was filed on 4/21/2008 and was voluntarily dismissed on 5/28/2010. In the Voluntary Motion to Dismiss, counsel for the city stated that the case filed to forestall several lawsuits and now the city was financial back on its feet. In addition, the city did not believe that a plan could be confirmed.

In re Sylmore Valley Water Association Public Facilities Board of Izard County, Case No. 12-12309, pending in the Eastern District of Arkansas. This case was filed on 4/19/2012 and confirmed on 1/25/2013. The plan was filed on 8/16/2012 and one objection to confirmation was filed. The plan was confirmed at the first hearing on confirmation.

In re Benton County Property Owners' Improvement District, 08-72841, filed in the Western District of Arkansas on July 22, 2008. The plan was confirmed on 5/15/2009 and the case was closed on 9/7/2011. The improvement district was established to finance the construction and installation of waterworks, sanitary sewers, streets and drainage facilities, and related infrastructure improvements. Over $3.7 million of bonds were issued to finance construction, which were to be paid by with the proceeds of an annual special tax. A failure to sell lots in line with projections and an inability to collect the special tax led to foreclosures, which resulted in the chapter 9 case filing.

In re Centerton Municipal Property Owner's Improvement District No. 3 – Vaersailles, Case No. 11-74614, filed in Western District of Arkansas on October 12, 2011. The improvement district incurred over $8M in debt from bonds to develop the neighborhood, complete with roads and infrastructure. The housing bust made it impossible for them to sale the residential lots at the minimum required $20K each. The plan filed on 5/22/2012, proposed to allow them to sale the lots at reduced rates. The plan was confirmed on 7/17/2012 with no objections. The case was closed on 8/1/2012.

In re Siloam Springs Municipal Property Owners' Improvement District No. 1 – Gabriel Park, Case No. 12-73750, pending before the Western District of Arkansas on October 4, 2012. No plan has been filed.

In re Sierra Kings Health Care District, Case No. 09-19728, pending in the Eastern District of California. The Sierra Kings Health Care District filed for bankruptcy after discovering

management had spent $1.7 million of bond funds on operating expenses and misspent other funds.

In re Barry Halajian SS Municiple Corporation, Case No. 12-15132, filed in the Eastern District of California on 6/5/2012 and dismissed for failure to file information on 6/29/2012. The case was filed *pro se* and was probably filed in the wrong chapter. This appears to be a corporation and the Court filed a show cause motion to require the debtor to prove eligibility. The case was dismissed for deficiencies prior to hearing.

In re Mendocino Coast Recreation and Park District, Case No. 11-14625, filed in the Northern District of California on 12/29/2011. The Debtor filed bankruptcy due to the inability to maintain an aquatic center and to reduce its $182,000 annual debt payment on 584 acres it purchased for trails, parks and a golf course. It has been unable to sell the property, which has lost value. The district tried to renegotiate its loan with the lien holder but was unsuccessful. The lien-holder, Westamerica Bank objected to the filing of the petition and lost. The objection was based on 109(c)(5)(B) eligibility and alleged that the Debtor did not attempt to negotiate with the lender in good faith. The court found that a letter sent to the creditor proposing two possible work-out plans and mentioning the possibility of a Chapter 9 filing was sufficient. (Opinion attached.) This issue is now under appeal.

In re Mendocino Coast Health Care District, Case No. 12-12753, pending in the Northern District and filed on 10/17/2012. The Debtor is a government run agency with a small hospital and hospice care program that has over $11M in bond debt. The health care district had already defaulted on the 1996, 2009 and 2010 revenue bonds prior to the bankruptcy filing. Additionally, they were affected by obligations to employees under the current collective bargaining agreement. No plan has been confirmed.

In re Hospital Authority of Charlton County, Case No. 12-50305, filed in the Southern District of Georgia on 4/20/12. The US Trustee moved to dismiss the case arguing that the hospital authority was expressly denied the ability to file a chapter 9 under state law[1]. The Debtor agreed but sought to convert to a chapter 11. The court found that they were ineligible for a chapter 11 because they were a governmental unit. The Motion to Dismiss was granted on July 3, 2012.

In re Lost Rivers District Hospital, Case No. 10-40344 filed in the District of Idaho on 3/10/2010. This case was filed after the IRS threatened to shutdown of the municipality for delinquent payroll taxes. The payroll tax shortfalls occurred because the Federal Social Security Administration discovered that there had been overpayments to the municipality for Medicare

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[1] Georgia State law appears to outlaw all Chapter 9 filings: "[n]o county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state shall be authorized to file a petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities." 1 U.S.C. § 109(c)(2).

reimbursements. The SSA curtailed further Medicare payments until the overpayments had been recouped. During this time the municipality's cash flow was greatly impaired, and it was unable to pay payroll tax deposits to the IRS and the Idaho Tax Commission. The plan was confirmed on 5/25/2011 and the case was closed on 9/28/2011.

In re Boise County, Case No. 11-00481, filed in the District of Idaho on 3/1/2011. The case filed due to a $5.4M judgment against the county for violating the Fair Housing Act. The case was dismissed on 9/8/2011 when the court concluded that the county had sufficient surplus money to satisfy a judgment and continue operations, therefore ruling that the county was not insolvent at the time of filing.

In re Village of Washington Park, Case no. 09-31744, filed in the Southern District of Illinois on 07/06/2009. The case was dismissed on 12/21/2012 after the court ruled that it was ineligible for Chapter 9 relief. This was the second Chapter 9 filing for the village. The village is known for its strip clubs (8 including 1 that became a library and then was turned back into a strip club) and has a history of scandal and financial troubles. Two government employees and 1 resident were indicted for embezzlement and misappropriation in separate incidents. The bankruptcy filing was prompted when, in 2006, a $30K yearly strip club license was invalidated by a lawsuit filed by a club owner, *Joelner v. Village of Washington Park, Illinois*. Upon losing the legal battle, they were ordered to pay $80K in legal fees to the plaintiff. Joelner was listed as a creditor and filed a Motion to Dismiss the case alleging that WP was not eligible to file chapter 9 and the judge agreed, ruling that Washington Park did not qualify for Chapter 9 protection because it was not specifically authorized by an Illinois law, governmental officer or other requisite state-empowered organization to file for such relief. While the case was pending the mayor was shot and killed while working his night job.

In re Lake Lotawana Community Improvement District, Case No. 10-44629, filed in the Western District of Missouri. The Debtor issued over $8M in bonds for the creation of a sewer plant and system. The money ran out when the board failed to collect the intended assessments and mismanaged funds. Only 25 homes were built in the development planned for 352 homes. A plan was confirmed on 10/11/2011

the litigation – some of which went to the circuit level – Jennings should have objectively realized the diminishing returns. Under the lodestar, the court determined that Jennings was entitled to $319,400 for services rendered – only $47,600 less than the negotiated amount. And because Jennings would be entitled to at least $47,600 in expenses, the court's independent review was consistent with the position of the U.S. Trustee that the trustee's proposed resolution was reasonable.

FRAUD-BASED CLAIM AGAINST ARCHDIOCESE NOT TIME-BARRED

Case name: *In re Archdiocese of Milwaukee*, 2013 WL 414205, 57 BCD 139 (Bankr. E.D. Wis. 2013).

Ruling: The U.S. Bankruptcy Court, Eastern District of Wisconsin denied the debtor's motion for summary judgment on its objection to a proof of claim.

What it means: The court stated that "in the battle of affidavits between an attorney who attached reams of publicity about the priest sex abuse scandal and an abuse victim who says he did not know about the cover-up and never saw the list of abusive priests, the court sides with the claimant as having raised a disputed fact about whether he should have discovered the debtor's alleged fraud."

Summary: The Archdiocese of Milwaukee filed for Chapter 11 relief in 2011. The claimant filed a proof of claim alleging that Father Franklyn Becker sexually abused him in 1971 when the claimant was 13 years old and Becker was a parish priest in Milwaukee. The debtor moved for summary judgment on the basis that the claim was time-barred under Wisconsin's statute of limitations. One of the debtor's attorneys filed an affidavit containing voluminous copies of newspaper articles about the priest sex abuse scandal in general and articles detailing specific allegations concerning Milwaukee priests, including Widera, Effinger and Hanser. None of the articles mentioned Becker, whose name was on the July 8, 2004 list of priests against whom the debtor received one credible report of abuse. The claimant filed an affidavit averring that he did not know that the debtor had posted a list of priests accused of abuse until after the Chapter 11 petition was filed. The claimant further averred that not until 2010 or 2011 did he suspect that the debtor knew that Becker was a child abuser prior to the alleged 1971 abuse. The claimant asserted that he did not have any idea that the debtor may have defrauded him until that time. The court denied the debtor's summary judgment motion. A question of fact remained on whether the claimant's fraud-based claim was barred by the state's six-year statute of limitations for fraud.

Under the discovery rule, the claim would not accrue until the claimant's discovery of the facts constituting the fraud. The discovery rule has subjective and objective components. The court quoted *In re Archdiocese of Milwaukee*, 482 B.R. 792 (E.D. Wis. 2012) – "The focus of the subjective component is on what a particular plaintiff knew, such that an objectively reasonable inquiry would then lead to the fraud being discovered. ... In other words, the objective component does not come into play until a plaintiff has enough information to be chargeable with notice of all facts to which a diligent inquiry might have led."

Here, the debtor contended that the general publicity about the abuse scandal sufficed to bring home the information to the claimant, and the claimant was chargeable with knowledge of the purported fraud in covering up the scandal and transferring Becker to an unsuspecting parish where he could abuse the claimant.

"But none of the priest sex abuse articles attached to [the attorney's] affidavit mention Becker. Although Becker's name was on the list published by the debtor, the claimant did not know about the list. And the claimant's affidavit states that the claimant had no idea that the debtor knew that Becker was an abuser before Becker abused the claimant. Since there is no evidence that any information about the debtor's alleged fraud was brought home to the claimant, it is not reasonable to require him to conduct an investigation," the court said.

CHAPTER 9 DEBTOR NEED NOT OBTAIN COURT APPROVAL UNDER RULE 9019

Case name: *In re City of Stockton, California*, 2012 WL 7017171, 57 BCD 140 (Bankr. E.D. Calif. 2012).

Ruling: The U.S. Bankruptcy Court, Eastern District of California entered an order ruling on the applicability of Rule 9019 in Chapter 9 cases.

What it means: "Section 904 gives a Chapter 9 debtor freedom to decide whether to ignore or to follow the Rule 9019 compromise-approval procedure, but the debtor may need to account for prior compromises during plan confirmation proceedings," the court held.

Summary: The Chapter 9 debtor – the City of Stockton – agreed to settle a damages lawsuit for $55,000. A group of creditors contended that while the settlement would likely pass muster under Rule 9019 under the "fair and equitable" standard, the debtor nevertheless had to move under Rule 9019 for court approval. The debtor filed a motion seeking a ruling that Rule 9019 did not apply in Chapter 9 cases unless the debtor elected to consent to

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judicial scrutiny. Section 904 provides in relevant part that notwithstanding any of the court's powers, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree interfere with – 2) any of the property or revenues of the debtor. The court ruled that Rule 9019 compliance was optional. Any Rule 9019 motion that the debtor might make would be deemed to constitute "consent" for purposes of Section 904, and that would permit the court to assess whether the compromise was fair and equitable under bankruptcy settlement standards. Having so ruled, the court dismissed as moot the remainder of the debtor's motion, which sought approval of the $55,000 compromise only if the court ruled that Rule 9019 approval was mandatory.

"The answer to the question whether a Chapter 9 debtor must obtain court approval of compromises is shrouded in the mists of time," the court said. Under the Bankruptcy Act of 1898, an explicit statutory provision governed settlements, with a rule of procedure clarifying that the statutory provision did not apply to Chapter IX cases.

"The Bankruptcy Code omitted former Bankruptcy Act provisions deemed more procedural than substantive or too well-established as doctrines to warrant repetition, not because the procedures would no longer apply, but because rules of procedure or settled nonstatutory or interpreted doctrines were adequate to the task," the court observed. Bankruptcy settlement doctrine carried forward under the Code. Congress did not indicate a contrary intent regarding settlements. Congress left settlement procedure to a combination of procedural rules and judicial doctrine. It followed that, if judicial scrutiny of compromises was not required in Chapter IX cases, then none was required in Chapter 9 cases. "Hence, Rule 9019 applies in Chapter 9 cases only if the debtor elects to 'consent' per Section 904 to have the court consider approval of a compromise," the court concluded.

Finally, the court addressed the issue that – if courts cannot prevent or disapprove a settlement or compromise by a Chapter 9 debtor – what were the limiting principles. The answer lay in the appreciation of the plan confirmation process and the recognition that overreaching might make it difficult to confirm a plan.

ADMINISTRATIVE CLAIMANT SATISFIES VERTICAL, HORIZONTAL DIMENSIONS TESTS

Case name: *In re Antonio H. Azevedo*, 2013 WL 249929, 57 BCD 141 (Bankr. D. Idaho 2013).

Ruling: The U.S. Bankruptcy Court, District of Idaho granted the creditor's application for allowance of an administrative expense pursuant to Sections 364(a) and 503(b)(1)(A).

What it means: The Chapter 12 debtor's postpetition purchases of livestock feed occurred in the ordinary course of business for purposes of Section 364(a), and thus qualified as an administrative expense. Under the vertical dimensions test, whether a hypothetical creditor was paid immediately, or later in the debtor's business cycle, would not subject that creditor to any extraordinary risk. Also, the testimony of the witness given to establish the horizontal dimensions test was credible and persuasive.

Summary: The debtor filed for Chapter 12 relief on Sept. 20, 2011 and continued to operate his dairy farm business while unsuccessfully attempting to reorganize. The debtor had the case converted to one under Chapter 7 on May 11, 2012. During the pendency of the Chapter 12 case, the debtor bought livestock feed from his longtime supplier Standlee Hay Co. After the conversion to Chapter 7, Standlee filed an administrative claim for $463,363. The Chapter 7 trustee objected. At issue was whether the debtor incurred the unsecured debt in the ordinary course of business within the meaning of Section 364(a). That section provides that if the trustee is authorized to operate the business of the debtor, the trustee may obtained unsecured credit and incur unsecured debt in the ordinary course of business allowable under Section 503(b)(1) as an administrative expense. Standlee provided testimony of its principals that the debtor usually paid for purchases according to invoice terms of 30 days from delivery of product. However, since 2009, the dairy industry suffered economic strain, and many customers began paying their accounts 60 to 90 days after delivery, or even later. Standlee "worked with" dairies in order to retain them as customers, and to insure continued payments. Standlee also provided the testimony of an officer from a large dairy operation that it was now common for dairies to pay for feed purchases 90 to 120 days from delivery. The trustee contended that the debtor's purchases were not in the ordinary course of business under either the vertical or the horizontal dimension tests. The court disagreed and allowed Standlee an administrative expense of $463,363.

With regard to the vertical dimensions test, the trustee argued that Standlee provided excessive amounts of feed on credit during the bankruptcy case. The trustee asserted that the debtor's postpetition lag in payment showed that the transactions were not in the ordinary course of business. The court referred to the trustee's closing argument, noting that the trustee's concern was with the amount of feed that Standlee sold to the debtor

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2011-2012

1100950

City of Prichard

v.

Scott A. Balzer et al.

Certified Question from the United States District Court for the Southern District of Alabama, Southern Division

(No. 1:10-00622-KD-M)

WISE, Justice.

The United States District Court for the Southern District of Alabama, Southern Division ("the federal district

court"), has certified to this Court the following question pursuant to Rule 18, Ala. R. App. P.:

> "Whether Ala. Code § 11-81-3 (1975) (as amended) requires that an Alabama municipality have refunding or funding bond indebtedness as a condition of eligibility to proceed under Chapter 9 of Title 11 of the United States Code?"

We answer this question in the negative.

I. Factual Background

The following background information presented by the federal district court will be helpful to an understanding of this case:

> "On October 9, 2009, the City of Prichard, Alabama filed a bankruptcy petition under Chapter 9 of Title 11 of the United States Code. In order to be a debtor under Chapter 9, a municipality must be 'specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter.' 11 U.S.C. § 109(c)(2).
>
> "Alabama's statute which authorizes a municipality to file bankruptcy provides:
>
> > "'The governing body of any county, city or town, or municipal authority organized under Article 9, Chapter 47 of this title which shall authorize the issuance of refunding or funding bonds may exercise all powers deemed necessary by the governing body for the execution and fulfillment of any plan or agreement for

> the settlement, adjustment, refunding, or funding of the indebtedness of the county, city or town, or municipal authority organized under Article 9, Chapter 47 of this title not inconsistent with the provisions of law relating to the issuance of refunding or funding bonds. Without limiting the generality of any of the foregoing powers, it is expressly declared that the governing body shall have the power to take all steps and proceedings contemplated or permitted by any act of the Congress of the United States relating to the readjustment of municipal indebtedness, and the State of Alabama hereby gives its assent thereto and hereby authorizes each county, city or town, or municipal authority organized under Article 9, Chapter 47 of this title in the state to proceed under the provisions of the acts for the readjustment of its debts.'

"Ala. Code § 11-81-3 (1975) (as amended).

"In response to the bankruptcy petition, a group of the City of Prichard's employees (who are vested in the City's Retirement Plan) sought dismissal of the City of Prichard's petition. The employees allege that the City of Prichard may not be a debtor under Chapter 9 because the City of Prichard is not an entity specifically authorized by State law.

"Specifically, the employees' position is that Ala. Code § 11-81-3 makes the refunding or funding bond indebtedness a threshold requirement under Alabama law for a municipality to file under Chapter 9 and that the City of Prichard does not meet this requirement.[1] The Bankruptcy Court agreed and dismissed the City of Prichard's petition. The City of Prichard appealed to the United States District Court.

"
___

"[1]There is no evidence before the Court that the City of Prichard currently has any debt in the form of refunding or funding bonds."

II. Discussion

The City of Prichard ("the City") and a group of current City employees who are vested in the City's retirement plan ("the employees") have filed opposing briefs asserting their interpretations of § 11-8-3, Ala. Code 1975. Jefferson County has also filed an amicus curiae brief in this case.[1]

___

[1]On July 19, 2011, Jefferson County filed its motion for leave to file an amicus curiae brief in support of the City. In its motion, Jefferson County asserted that it had "an acute interest in the availability of federal bankruptcy relief"; that, although it had debt in the form of warrants, it did not hold any bond debt; and that "this Court's conclusion in this case may have some relevance to whether Jefferson County can, if necessary, commence federal bankruptcy proceedings to reorganize its debt." Subsequently, on November 9, 2011, Jefferson County filed a bankruptcy petition under Chapter 9 of Title 11 of the United States Code. The Bank of New York Mellon, as the indenture trustee for holders of warrants issued by Jefferson County to pay for improvements to, and expansion of, its sewer system, challenged Jefferson County's eligibility to be a debtor pursuant to 11 U.S.C. § 109(c)(2) because it did not have outstanding bond indebtedness. However, on March 4, 2012, the United States Bankruptcy Court for the Northern District of Alabama, Southern Division, entered a memorandum opinion and an order in which it held that Jefferson County was eligible to be a debtor pursuant to 11 U.S.C. § 109(c).

In answering the federal district court's question, we are guided by the following principles of statutory construction:

> "In Archer v. Estate of Archer, 45 So. 3d 1259, 1263 (Ala. 2010), this Court described its responsibilities when construing a statute:
>
>> "'"'[I]t is this Court's responsibility in a case involving statutory construction to give effect to the legislature's intent in enacting a statute when that intent is manifested in the wording of the statute. ... "'"'[I]f the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.'"'" ... In determining the intent of the legislature, we must examine the statute as a whole and, if possible, give effect to each section.'
>
> "'"Ex parte Exxon Mobil Corp., 926 So. 2d 303, 309 (Ala. 2005). Further,

> "'"'when determining legislative intent from the language used in a statute, a court may explain the language, but it may not detract from or add to the statute. ... When the language is clear, there is no room for judicial construction. ...'
>
> "'"Water Works & Sewer Bd. of Selma v. Randolph, 833 So. 2d 604, 607 (Ala. 2002)."'

"(Quoting Ex parte Birmingham Bd. of Educ., 45 So. 3d 764, 767 (Ala. 2009).) Similarly, in Lambert v. Wilcox County Commission, 623 So. 2d 727, 729 (Ala. 1993), the Court stated:

> "'"The fundamental rule of statutory construction is that this Court is to ascertain and effectuate the legislative intent as expressed in the statute. ... In this ascertainment, we must look to the entire Act instead of isolated phrases or clauses ... and words are given their plain and usual meaning. ... Moreover, just as statutes dealing with the same subject are in pari materia and should be construed together, ... parts of the same statute are in pari materia and each part is entitled to equal weight."'

"(Quoting Darks Dairy, Inc. v. Alabama Dairy Comm'n, 367 So. 2d 1378, 1380-81 (Ala. 1979).)"

First Union Nat'l Bank of Florida v. Lee Cnty. Comm'n, 75 So. 3d 105, 111-12 (Ala. 2011).

> "When interpreting a statute, a court must first give effect to the intent of the legislature. BP Exploration & Oil, Inc. v. Hopkins, 678 So. 2d 1052 (Ala. 1996).
>
> > "'The fundamental rule of statutory construction is that this Court is to ascertain and effectuate the legislative intent as expressed in the statute. League of Women Voters v. Renfro, 292 Ala. 128, 290 So. 2d 167 (1974). In this ascertainment, we must look to the entire Act instead of isolated phrases or clauses; Opinion of the Justices, 264 Ala. 176, 85 So. 2d 391 (1956).'
>
> "Darks Dairy, Inc. v. Alabama Dairy Comm'n, 367 So. 2d 1378, 1380 (Ala. 1979) (emphasis added). To discern the legislative intent, the Court must first look to the language of the statute. If, giving the statutory language its plain and ordinary meaning, we conclude that the language is unambiguous, there is no room for judicial construction. Ex parte Waddail, 827 So. 2d 789, 794 (Ala. 2001)."

City of Bessemer v. McClain, 957 So. 2d 1061, 1074-75 (Ala. 2006).

With regard to Chapter 9 bankruptcies, 11 U.S.C. § 109(c) provides:

> "(c) An entity may be a debtor under chapter 9 of this title if and only if such entity --
>
> > "(1) is a municipality;

"(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;

"(3) is insolvent;

"(4) desires to effect a plan to adjust such debts; and

"(5)(A) has obtained the agreement of creditors holding at least a majority of the claims of each class that such entity intends to impair under such plan in a case under such chapter;

"(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claim of each class that such entity intends to impair under a plan in a case under such chapter;

"(C) is unable to negotiate with creditors because such negotiation is impracticable; or

"(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title."

(Emphasis added.)[2]

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[2]"The term 'municipality' means political subdivision or public agency or instrumentality of a State." 11 U.S.C. § 101(40).

Therefore, to proceed under Chapter 9 of the Bankruptcy Code, a municipality must be authorized by State law to be a debtor under federal bankruptcy law. The statute authorizing Alabama municipalities to be debtors under federal bankruptcy law is § 11-81-3, Ala. Code 1975, which, as noted in the federal district court's certified question, provides:

> "The governing body of any county, city or town, or municipal authority organized under Article 9, Chapter 47 of this title which shall authorize the issuance of refunding or funding bonds may exercise all powers deemed necessary by the governing body for the execution and fulfillment of any plan or agreement for the settlement, adjustment, refunding, or funding of the indebtedness of the county, city or town, or municipal authority organized under Article 9, Chapter 47 of this title not inconsistent with the provisions of law relating to the issuance of refunding or funding bonds. Without limiting the generality of any of the foregoing powers, it is expressly declared that the governing body shall have the power to take all steps and proceedings contemplated or permitted by any act of the Congress of the United States relating to the readjustment of municipal indebtedness, and the State of Alabama hereby gives its assent thereto and hereby authorizes each county, city or town, or municipal authority organized under Article 9, Chapter 47 of this title in the state to proceed under the provisions of the acts for the readjustment of its debts."

In this case, the employees argue that the clause "which shall authorize the issuance of refunding or funding bonds" in the first sentence of § 11-81-3 specifies that only the

governing bodies of those counties, cities, towns, or municipal authorities organized under Article 9, Chapter 47 of Title 11, Ala. Code 1975, that actually have indebtedness issued in the form of refunding or funding bonds have the authority to exercise their powers to execute and fulfill plans to adjust the indebtedness of such counties, cities, towns, or municipal authorities. They also argue that, when the two sentences of the statute are read in pari materia, the second sentence of the statute, which authorizes counties, cities, towns, and municipal authorities to readjust their indebtedness by filing petitions in bankruptcy, is likewise applicable only to those entities that actually have indebtedness in the form of refunding bonds or funding bonds. On the other hand, the City argues that § 11-81-3 is ambiguous and that the legislative history of the statute clearly shows the legislative intent to authorize any county, city, town, or municipal authority organized pursuant to Article 9, Chapter 47 of Title 11, Ala. Code 1975, to file for federal bankruptcy protection.

The language of the statute is unambiguous. The second sentence of § 11-81-3 provides:

> "Without limiting the generality of any of the foregoing powers, it is expressly declared that the governing body shall have the power to take all steps and proceedings contemplated or permitted by any act of the Congress of the United States relating to the readjustment of municipal indebtedness, and the State of Alabama hereby gives its assent thereto and hereby authorizes <u>each county, city or town, or municipal authority</u> organized under Article 9, Chapter 47 of this title in the state to proceed under the provisions of the acts for the readjustment of its debts."

(Emphasis added.) The first part of this sentence speaks in terms of "the governing body," and the employees contend that the phrase "the governing body" as used there refers only to the governing bodies of those counties, cities, towns, or municipal authorities "which [have] authorize[d] the issuance of refunding or funding bonds." However, even such a reading of the sentence does not lead to the result urged by the employees. In this part of the second sentence, the legislature was merely expressing its intent that not only can the governing bodies referred to in the first sentence of § 11-81-3 readjust the indebtedness of the entities they govern as provided in the first sentence, but they can also proceed under federal law relating to the readjustment of municipal indebtedness. However, the second clause of the second sentence of § 11-81-3 does not speak in terms of governing

bodies. Rather, it clearly states that the State of Alabama authorizes "each county, city or town, or municipal authority organized under Article 9, Chapter 47 of [Title 11]" to file for federal bankruptcy protection. Therefore, even if the phrase "which shall authorize the issuance of refunding or funding bonds" in the first sentence was intended to specify which governing bodies were authorized to readjust the indebtedness of a particular entity, no such limitation was inserted in the second clause of the second sentence, which provides the State's general assent to and authorization for counties, cities, towns, and municipal authorities to seek federal bankruptcy protection. Therefore, it is clear that the legislature intended to authorize every county, city, town, or municipal authority organized under Article 9, Chapter 47 of Title 11, Ala. Code 1975, to proceed under the federal bankruptcy provisions. To adopt the interpretation of § 11-81-3 urged by the employees in this case would fly in the face of the clear legislative intent.

III. Conclusion

It is clear that the legislature intended to authorize every county, city, town, and municipal authority organized

pursuant to Article 9, Chapter 47 of Title 11, Ala. Code 1975, to file for federal bankruptcy protection. Therefore, § 11-81-3 does not require that an Alabama municipality have indebtedness in the form of refunding bonds or funding bonds as a condition to eligibility to proceed under Chapter 9 of Title 11 of the United States Code. Accordingly, we answer the question certified by the federal district court in the negative.

QUESTION ANSWERED.

Malone, C.J., and Woodall, Stuart, Bolin, Parker, Murdock, Shaw, and Main, JJ., concur.

Entered on Docket
April 24, 2012
GLORIA L. FRANKLIN, CLERK
U.S BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

MENDOCINO COAST RECREATIONAL AND PARK DISTRICT

No. 11-14625

Debtor(s).

______________________________/

Memorandum re Chapter 9 Eligibility

Debtor Mendocino Coast Recreational and Park District filed its Chapter 9 bankruptcy petition on December 29, 2011. Its principal creditor is Westamerica Bank, which has the rights of a long-term lessor as to the District's regional park property pursuant to its financing of a lease-and-leaseback transaction involving the Municipal Finance Corporation. The Bank objects to entry of an order for relief, arguing that the District does not meet the eligibility requirements for a Chapter 9 debtor.

The issue before the court is whether the District complied with § 109(c)(5)(B), which provides that in order to be eligible for Chapter 9 a debtor must show that it "has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that [the debtor] intends to impair under a plan in a case under [Chapter 9]."

On November 17, 2011, counsel for the District sent a lengthy letter to counsel for the Bank. The letter specifically stated that "The District hopes to avoid filing a bankruptcy petition but if it is

1 unable to work out a satisfactory resolution with Westamerica Bank, the District will file a Chapter 9
2 petition." The letter specifically discussed provisions of the Bankruptcy Code and informed counsel
3 for the Bank that "[T]he District will file a Chapter 9 before January 1, 2012 if it is unable to reach a
4 resolution with the Bank." The Bank declined to respond.

5 The language of § 109(c)(5)(B) has been recognized as being somewhat "inconclusive." *In re*
6 *Cottonwood Water and Sanitation Dist.*, 138 B.R. 973, 975 (Bkrtcy. D. Colo. 1992). Some bankruptcy
7 courts, including the court in that case, have concluded that it is not enough for the debtor to have
8 negotiated and failed to obtain the agreement of creditors, but must that the negotiations had to be
9 "concerning the possible terms of a plan to be effected pursuant to section 941 of the Bankruptcy
10 Code." *Id.* at 979. The editors of *Collier* disagree, reciting the history of the provision and concluding
11 that the *Cottonwood* approach is "an overly restrictive view of the requirement of section 109(c)(5)(B),
12 which, in contrast to its predecessor provision under the 1976 Act, does not make reference to
13 negotiations with respect to any specific plan of adjustment." 2 *Collier on Bankruptcy* (16th Ed.), ¶
14 109.04[3][e][ii], p. 109-33. The Bank relies on language in *In re City of Vallejo*, 408 B.R. 280, 297
15 (9th Cir. BAP 2009), supporting the more restrictive view. The District points out that since the
16 Appellate Panel found eligibility for Vallejo on alternative grounds its statements on this issue were
17 *dicta.*[1]

18 Nonetheless, the District's attempt to negotiate with the Bank met the requirements for
19 eligibility regardless of which interpretation of § 109(c)(5)(B) is applied. A formal, complete plan is
20

21

[1]Regardless of whether it is bound to do so, this court always follows rulings of the Bankruptcy
22 Appellate Panel. *In re Muskin,* 151 B.R. 252, 255 (Bkrtcy.N.D.Cal. 1993). Technically, the language
23 in *City of Vallejo* regarding § 109(c)(5)(B) may be dicta, in that eligibility was found on other grounds. However, the BAP has adopted the rule of the Circuit that a subsequent panel is bound by the
24 reasoned pronouncement of a prior panel even if it was not necessary to the outcome of the case. *In re Tippett,* 338 B.R. 82, 88 - 89 (9th Cir. BAP 2006). Since the court here finds that the District meets the
25 requirements set forth in *City of Vallejo,* it need not grapple with whether a lower court which
26 considers itself bound by holdings of the BAP is also bound by its dicta, even though litigants may opt for review by the district court.

not required to meet the requirements of the section. *In re New York City Off-Track Betting Corp.,* 427 B.R. 256, 274 (Bkrtcy.S.D.N.Y. 2010). The Appellate Panel stated in *City of Vallejo* that the section "requires negotiations with creditors revolving around a proposed plan, *at least in concept*." *Id.* (Emphasis added). The letter sent by counsel for the District specifically discussed a Chapter 9 filing and did more than just ask for forbearance or discuss resolution in general terms; it proposed two possible plans in concept.

The letter discussed three specific accommodations the District might make with the Bank. One, a suggestion of forbearance, was a method of avoiding bankruptcy. However, the other two were quite specific:

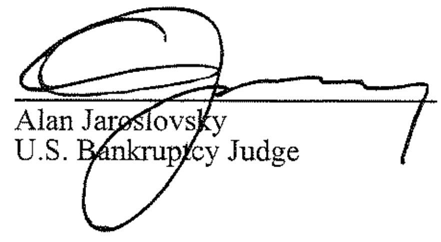
> 1. The District would transfer the 586-acre regional park site to the Bank in full satisfaction of the lease obligation. The District has a recent appraisal placing the value at $1.8 million.
>
> 2. The Bank would accept $1.1 million in full satisfaction of the lease obligation. The District believes that there may be an entity willing to purchase the property for $1.1 million and the District would direct all of the purchase proceeds, less the costs of sale, to the lease obligation.

Section 901 of the Bankruptcy Code specifies those sections of the Code applicable to other chapters which also apply to Chapter 9. Among them is § 1129(b)(2)(A), dealing with the minimum treatment under a plan which must be afforded to a secured creditor. Without deciding if the Bank has such rights - that is another issue for another day - the letter of the District's counsel clearly assumed so and was suggesting terms consistent with § 1129(b)(2)(A). This was proposal of a plan in concept. The court does not find the failure to specifically reference the provisions of the Bankruptcy Code to be fatal to the District. It is one thing to blind-side a creditor by failing to mention that a Chapter 9 filing is contemplated, and another thing to specifically address the possibility of such a filing and the contemplated treatment of the creditor if a Chapter 9 were to be filed. The latter meets the requirements of § 109(c)(5)(B), even if the contemplated treatment is not formally stated in terms of a plan; the concept is sufficient.

For the foregoing reasons, the objection of the Bank to the filing will be overruled and an order

for relief will be entered. Counsel for the District shall submit a form of order overruling the objection. The Clerk shall enter an order for relief under Chapter 9 as provided by § 921(d) of the Code.

Dated: April 22, 2012



Alan Jaroslovsky
U.S. Bankruptcy Judge