

Reprinted with permission from *Louisiana Bar Journal* (Vol. 62, No. 2, August/September 2014), published by the Louisiana State Bar Association.

MEDIATION IS MAKING A DIFFERENCE IN DETROIT

Municipal bankruptcy proceeding can be very contentious. They can last several years and involve intense courtroom battles. However, the use of mediation in Detroit's municipal bankruptcy has put the city on a faster road to recovery. Confidential mediation sessions convened by Chief U.S. District Judge Gerald Rosen have produced positive results. Judge Rosen was appointed by U.S. Bankruptcy Judge Steven Rhodes to lead mediations between Detroit and its creditors. Breakthroughs in Detroit's bankruptcy process include an agreement to set aside \$800 million of private and state money to rescue the city's pension fund. Mediation agreements have also helped to significantly reduce the city's debt and long-term liabilities and assisted in restructuring the city's government. Legal experts credit much of the progress in Detroit's bankruptcy proceedings to the use of quick rulings and aggressive mediation. Some legal experts project, based on the timetable set by Judge Rhodes, that Detroit could resolve its bankruptcy approximately one year after it filed for protection from creditors, which would be a significant accomplishment. In comparison, it took Orange County, California 1 year and 6 months to emerge from its 1996 declaration, which at the time was the largest municipal bankruptcy in U.S. history.

Municipal bankruptcies rarely involve mediation. However, the estimated \$18 to \$20 billion dollars of debt at issue in Detroit's bankruptcy called for a unique solution. Detroit's bankruptcy is now the highest valued municipal bankruptcy in United States history. Detroit's problems were not created by a single debt issue, but rather by extensive infrastructure issues, insolvent pension plans, and many other difficulties. Patton Hahn, an attorney who worked on the municipal bankruptcy of Jefferson County, Alabama, believes that the use of mediation has given the bankruptcy court in Detroit the resources it needs to move Detroit's bankruptcy case along. *Tresa Baldas, Matt Helms and Alisa Priddle, How mediation has put Detroit bankruptcy on the road to resolution, (February 2, 2014), <http://www.freep.com/article/20140202/NEWS01/302020063/Orr-Snyder-Rosen-Detroit-bankruptcy>.*

While Detroit's use of mediation is expediting the bankruptcy process overall, the process is considerably more confidential than the average municipal bankruptcy. All mediation proceedings are confidential and only the terms of the settlement are presented to the bankruptcy court for approval. *Bathon, Michael (August 13, 2013). "Detroit Judge Rosen Named Mediator in City's Bankruptcy". Bloomberg Business Week. Retrieved August 13, 2013.* Patton Hahn noted that the mediation process could rub some taxpayers the wrong way because "Detroit is a public entity. Its true stakeholders are its citizens, and there's a clash between the goals of mediation — which is to simply get to a result — and the public interest, which is to know the content of [negotiations]." *Tresa Baldas, Matt Helms and Alisa Priddle.* Additionally, the high legal fees for attorney's representing parties in the bankruptcy process could cause citizens to ask exactly what they are paying for, which could intensify the demand for disclosure in the mediation process.

Detroit's emergency manager, Kevyn Orr, allocated \$62.5 million to pay the fees and expenses of Detroit's consultants and lawyers. Law firms and consultants could earn up to \$36 million in legal fees for just the last quarter of 2013. *Matt Helms, Detroit bankruptcy costs hit \$36M in 2013, expected to soar in 2014 (May 7, 2014), <http://www.freep.com/article/20140507/NEWS01/305070141/detroit-bankruptcy-expenses-cost>.* The Jones Day Law

Firm submitted more than \$16.6 million in fees and nearly \$734,000 in other expenses as of December 2013. *Id.* The Dentons Law Firm, hired to represent the official committee for Detroit's retirees, billed \$4.4 million in fees and \$185,550 in expenses. *Id.* The city's restructuring consultant, Conway MacKenzie, billed \$5.3 million in fees and almost \$17,000 in expenses. *Id.* These costs are high even though many of the law firms and consultants have agreed to discount their hourly rates. For example, court appointed fee examiner Robert Fishman has agreed to reduce his typical hourly rate of \$675 to \$600 an hour. *Id.* Overall, experts expect final legal costs to exceed \$100 million.

While the price tag may be high, the use of mediation may be restraining even higher costs. Many people questioned Detroit's ability to modify any of its pension obligations in a bankruptcy process. There were 109 filed objections to Detroit's eligibility for Chapter 9 bankruptcy protection. "*Order Regarding Eligibility Objections Notices of Hearings And Certifications Pursuant to 28 U.S.C. § 2403(a) & (b)*". U.S. Bankruptcy Court for the Eastern District of Michigan. August 26, 2013. Retrieved September 4, 2013. The use of mediation brought Detroit past those concerns and also brought about substantive progress. For example, on May 2, 2014, the Board of Directors of the Detroit Retired City Employees Association (DRCEA) supported a 4.5 percent cut in pension benefits for retired city workers as well as a reduction of their Cost of Living Allowance (COLA). DRCEA's loss of COLA can be restored depending upon the performance of the General Retirement System under the Plan of Adjustment that must be presented to the Bankruptcy Court. *Associated Press, Detroit Retired City Employees Association supports bankruptcy plan*, <http://www.myfoxdetroit.com/story/25415548/detroit-retired-city-employees-association-supports-bankruptcy-plan#ixzz333EzYnbb>. This type of successful mediation result may encourage remaining parties to re-double their efforts to reach agreements on other issues that can be incorporated into a fair, balanced, and fully agreed-upon Plan of Adjustment to be presented to the Bankruptcy Court for confirmation.

Submitted by William Wratee, graduate of LSU's Paul M. Hebert Law Center and Student Mediator in LSU's Civil Mediation Clinic, under the supervision of Paul W. Breaux, LSU Adjunct Clinical Professor and Chair, LSBA Alternative Dispute Resolution Section Chair, 16643 S. Fulwar Skipwith Road, Baton Rouge, Louisiana