

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

CITY OF CHESTER, PENNSYLVANIA,

Debtor.

Chapter 9

Case No. 22-13032

Judge Ashely M. Chan

**MOTION OF OFFICIAL RETIREE COMMITTEE FOR AN ORDER
DIRECTING THE CITY OF CHESTER, PENNSYLVANIA TO COMPLY WITH
THE COURT’S ORDER ESTABLISHING PROCEDURES FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR PROFESSIONALS PAID BY THE CITY**

The Official Retiree Committee (the “**Retiree Committee**”) of the City of Chester, Pennsylvania (the “**City**”) submits this motion (“**Motion**”) for entry an order, substantially in the form attached hereto as **Exhibit A**, directing the City and its Receiver, Michael Doweary (the “**Receiver**”), to comply with the compensation procedures established in the Court’s *Order Establishing Procedures for Compensation and Reimbursement of Expenses for Professionals Paid by the City* [Dkt. 380] (the “**Compensation Procedures Order**”) and granting such other and further relief as is just and proper. In support of this Motion, the Retiree Committee respectfully states:

PRELIMINARY STATEMENT

1. Bankruptcy and the benefits it confers on a reorganizing debtor are not free. A debtor that seeks the protection and benefits of the Bankruptcy Code must bear the costs of the process, including the reasonable fees of professionals retained by a statutory committee. In this case, the City seeks to achieve a financial restructuring that may affect hundreds of millions of dollars in pension and retiree healthcare obligations, but it has recently advised the Retiree Committee—the statutory committee charged with representing and protecting the interests of the

City’s retired police, firefighters, city engineers, and other employees of all categories, as well as their families and beneficiaries¹—that it is purportedly unable to pay the fees of the Retiree Committee’s attorneys and advisors. Oddly, this assertion by the City comes just fifteen days after the Court entered the Compensation Procedures Order—on motion and request of the City—approving compensation procedures for the professionals employed by the Retiree Committee (the “**Retiree Committee Professionals**”) and certain other professionals in this case. In an abrupt and drastic change of position, the City now states that it can pay only a small fraction of the Professionals’ fees and expenses that have accrued since February 2023 while the City works to revise its 2023 budget.

2. The City’s position is untenable for many reasons. *First*, the City already committed to the Retiree Committee and the Court that it would pay the Retiree Committee Professionals’ fees. The Compensation Procedures Order—drafted by the City—does not condition payment of Retiree Committee Professional fees on the City’s budgetary processes. It provides that the City shall promptly pay any Retiree Committee Professional fees as to which the Receiver has not objected. The City, while reserving its right to interpose any objections it may have at a later juncture in the case, has not objected to the Professionals’ invoices in accordance with the timeline and procedures in the Compensation Procedures Order, and as such, it has no basis to refuse to pay them.

3. *Second*, before filing the motion seeking the Compensation Procedures Order (the “**Compensation Procedures Motion**”) [Dkt. 313], the Receiver represented to the Retiree Committee that the City could pay the fees and expenses of the Retiree Committee’s professionals

¹ There are approximately 480 active and retired employees receiving or eligible for future pension and health benefits, plus another 100 dependents of retirees receiving health benefits.

and, implicitly, made the same representation to the Court by filing the Compensation Procedures Motion. The Committee and the Court relied upon this representation, only to find that the Receiver is completely changing his position 50 days after filing the motion and 15 days after entry of the Compensation Procedures Order. To indicate *now*—only after seeking and obtaining entry of the Compensation Procedures Order—that virtually all monies in the budget are spoken for and there simply are no funds for the Retiree Committee would seem to reflect a cynical ploy to misdirect the Retiree Committee and, ultimately, starve it of resources as the Receiver prosecutes this bankruptcy case. The Receiver was undoubtedly aware of what the City’s 2023 budget provided for when the Receiver filed the Compensation Procedures Motion. Whatever constraints there may be in that budget, these are not new developments. Therefore, the City’s bait-and-switch should be prohibited under the doctrine of judicial estoppel, as well as equitable estoppel and similar doctrines.

4. *Third*, failure to timely pay the Retiree Committee Professionals would create a severe and impermissible imbalance between the City and its retirees. The City’s professionals (with limited exceptions) are being compensated directly by the Commonwealth of Pennsylvania (the “**Commonwealth**”), an eminently solvent entity, while the City suggests that the Committee’s professionals shoulder the risk and burden of carrying their fees for an indefinite period of time, hoping that the financially-challenged City will ultimately pay them. This results in a two-tiered compensation structure that disadvantages the professionals of a statutory committee relative to the debtor, creating an uneven playing field that unfairly exposes the rights of retirees who, absent the active representation of their interests by the Retiree Committee, do not have the economic ability to hire counsel and protect themselves individually. This circumstance is antithetical to

fundamental concepts of fairness and due process underpinning the Bankruptcy Code and should not be countenanced by the Court.

5. *Fourth*, for the avoidance of doubt, the Retiree Committee is not suggesting that the City forgo funding any essential services and is not suggesting on a line-item basis how the City should manage its budget. In this regard, it bears noting that the City is, for purposes of a chapter 9 bankruptcy case, simply a political subdivision of the Commonwealth. If the City itself indeed lacks the liquidity to finance the costs of its bankruptcy case as those costs are incurred, then it is incumbent upon the Commonwealth-appointed and Commonwealth-funded Receiver to secure adequate resources from the Commonwealth. It is unacceptable for the Commonwealth to avail itself of the benefits of chapter 9 for its political subdivision, pay the costs of the Receiver's professionals to prosecute the case, but step back and claim no responsibility for ensuring a proper and level playing field in the bankruptcy case. Either there is a level playing field or the case should not proceed.

6. It is unfortunate that the Retiree Committee is compelled to file this Motion. The Retiree Committee offered reasonable solutions to the Receiver on July 27, 2023, *see* ¶ 25 below, and to the Commonwealth via the Receiver, *see* ¶ 42 below. The Receiver and the Commonwealth, however, seem intent upon tilting the playing field in their favor. But that is not the process envisioned by Congress under the Bankruptcy Code, and the Court should not tolerate such gamesmanship.

7. Accordingly, the Court should direct the Receiver and the City to comply with the Compensation Procedures Order that the City itself requested and promptly pay the undisputed fees and actual and necessary expenses of the Retiree Committee Professionals.

JURISDICTION

8. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference from the United States District Court for the Eastern District of Pennsylvania, dated July 25, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is Bankruptcy Code section 105(a).

BACKGROUND

9. On November 10, 2022, the City, through its counsel Ballard Spahr LLP (“**Ballard Spahr**”), filed a petition in this Court commencing this case and seeking protection under chapter 9 of the Bankruptcy Code [Dkt. 1]. A stated primary purpose of this chapter 9 bankruptcy case is to address the City’s approximately \$127 million in unfunded pension obligations (*see List of Creditors Holding 20 Largest Unsecured Claims* at 1-3 [Dkt. 1-2]; *Declaration of Vijay Kapoor* ¶ 17 [Dkt. 6] (the “**Kapoor Declaration**”)), and over \$232 million in unfunded retiree healthcare benefits. (Kapoor Decl. ¶ 18.) The Retirees are, by far, the largest creditor constituency in this case.

10. On February 6, 2023, the U.S. Trustee for Regions 3 and 9 appointed the Retiree Committee. [Dkt. 215.]²

11. On February 7, 2023, the Retiree Committee selected Jenner & Block LLP (“**Jenner & Block**”) as its counsel and Flaster/Greenberg P.C. (“**Flaster/Greenberg**”) as its local co-counsel.

² On March 17, 2023, the U.S. Trustee for Regions 3 and 9 filed an Amended Notice of Appointment to Retiree Committee, appointing two additional members. [Dkt. 271.]

12. On February 8, 2023, Jenner & Block and Flaster/Greenberg entered their appearances as counsel to the Retiree Committee. [Dkts. 220, 221, 222, 224.]

13. Shortly thereafter, Jenner & Block and Flaster/Greenberg sought discussions with the City's counsel at Ballard Spahr about appropriate compensation procedures in the case. In the absence of a proposed compensation procedures motion from the City, the Retiree Committee prepared and shared with the City a draft motion and order for compensation procedures that would apply equally to both the City's professionals and the Retiree Committee Professionals.

14. In response, the City indicated that it would prefer to seek compensation procedures governing only those professionals who are not being paid by the Commonwealth. When counsel for the Retiree Committee raised concerns about the potential under that scenario for disparate treatment of the Retiree Committee Professionals vis-à-vis the City's professionals receiving compensation from the Commonwealth, counsel for the City stated the belief that the City had the wherewithal to pay the fees of the Retiree Committee Professionals.

15. Accordingly, on May 10, 2023, the City filed the Compensation Procedures Motion to establish procedures (the "**Compensation Procedures**") for the City to pay the fees and expenses of Jenner & Block, Flaster/Greenberg, FTI Consulting, Inc. ("**FTI Consulting**") (financial advisor to the Retiree Committee), The Segal Group (actuary and healthcare benefits consultant to the Retiree Committee) ("**Segal**," and together with Jenner & Block, Flaster/Greenberg, FTI Consulting, the "**Retiree Committee Professionals**"), the Receiver's conflicts counsel Hangley Aronchick Segal Pudlin & Schiller ("**Hangley Aronchick**"), and claims and noticing agent Donlin, Recano & Company. According to the Compensation Procedures Motion, certain of the Receiver's professionals, including Ballard Spahr, Kapoor & Co., PFM Financial Advisors ("**PFM**"), and Herbert, Rowland & Grubic, Inc. ("**HRG**"), are not covered by

the Compensation Procedures because they are being paid by the Commonwealth under the Financially Distressed Municipalities Act, Act of 1987, P.L. 246, No. 47, 53 Pa. Stat. §§ 11701.101–11701.712 (“**Act 47**”).

16. On May 11, 2023, the Retiree Committee and the Retiree Committee Professionals filed the *Statement and Reservation of Rights of the Official Retiree Committee of the City of Chester, Pennsylvania and its Professionals Concerning Procedures for Compensation and Reimbursement of Expenses of the Official Retiree Committee’s Professionals* [Dkt. 328]. The Retiree Committee stated that if the City’s proposed procedures proved not viable or otherwise inadequate to properly compensate the Committee’s Professionals, they reserved their right to seek an appropriate remedy.

17. Also on May 11, 2023, the Retiree Committee filed applications to employ the Retiree Committee Professionals. *See Application of the Official Retiree Committee of the City of Chester, Pennsylvania for an Order Approving the Employment of Jenner & Block LLP as Attorneys Effective as of February 7, 2023* [Dkt. 316]; *Application of the Official Retiree Committee of the City of Chester, Pennsylvania for an Order Approving the Employment of Flaster/Greenberg P.C. as Attorneys Effective as of February 7, 2023* [Dkt. 326]; *Application of the Official Retiree Committee of the City of Chester, Pennsylvania for an Order Approving the Employment of FTI Consulting, Inc. as Financial Advisor Effective as of March 10, 2023* [Dkt. 320]; and *Application of the Official Retiree Committee of the City of Chester, Pennsylvania for an Order Approving the Employment of The Segal Group, Inc. as Actuary and Retiree Benefits Consultant Effective as of March 10, 2023* [Dkt. 322] (collectively, the “**Retiree Committee Applications**”). Each of the Retiree Committee Applications included the respective

Professional's hourly rate structure and other information regarding the proposed terms of employment. Neither the City nor any other party objected to the Retiree Committee Applications.

18. As of the date of this Motion, Ballard Spahr, Hanglely Aronchick, Kapoor & Co., PFM, and HRG have not filed employment applications in this case.

19. On May 23, 2023, the Court entered orders approving the Committee's employment of the Retiree Committee Professionals. *See Revised Order Authorizing Employment of Jenner & Block LLP as Attorneys to the Official Retiree Committee Effective as of February 7, 2023* [Dkt. 352]; *Revised Order Authorizing Employment of Flaster/Greenberg P.C. as Attorneys to the Official Retiree Committee Effective as of February 7, 2023* [Dkt. 353]; *Revised Order Authorizing Employment of FTI Consulting, Inc. as Financial Advisor to the Official Retiree Committee Effective as of March 10, 2023* [Dkt. 355]; *Revised Order Authorizing Employment of The Segal Group, Inc. as Actuary and Retiree Benefits Consultant to the Official Retiree Committee Effective as of March 10, 2023* [Dkt. 354].

20. On June 15, 2023, the Court entered the Compensation Procedures Order, under which the Retiree Committee Professionals and other relevant professionals "will be paid for the services they provide during the pendency of this chapter 9 case by the City from its general fund and any other resources available to the City pursuant to the Compensation Procedures." *Id.* ¶ 2. The Receiver is granted five business days to review a monthly fee statement ("**Monthly Invoice**") submitted pursuant to the Compensation Procedures. *Id.* ¶ 3(b). Within three business days following the Receiver's review period, the Receiver shall submit the undisputed portions of the Monthly Invoice to the City and "[the] City shall promptly pay the Applicable Professionals the amount requested in the undisputed portions of the applicable Monthly Invoice." *Id.*

21. Between June 23, 2023 and June 27, 2023, pursuant to the Compensation Procedures Order, the Retiree Committee Professionals submitted Monthly Invoices (the “**Initial Monthly Invoices**”) seeking compensation and expense reimbursement from the respective date of each professional’s employment (i.e., February 7, 2023 for Jenner & Block and Flaster/Greenberg and March 10, 2023 for FTI Consulting and Segal) through and including May 31, 2023.

22. On June 30, 2023—just two weeks after the Court entered the Compensation Procedures Order—the City sent letters (the “**Letters**”) to each of the Retiree Committee Professionals, objecting to the invoices filed by each of the Retiree Committee Professionals. In a complete reversal of the City’s position when it filed the Compensation Procedures Motion just 50 days earlier and just 15 days after the Compensation Procedures Order was entered by the Court, the Letters flatly assert that the City simply does not have the ability to pay the Retiree Committee Professionals’ fees in accordance with the Compensation Procedures.³

23. To be clear, the Receiver approved, in full, the Initial Monthly Invoices of the Retiree Committee Professionals for payment (reserving his right to raise certain concerns later in the case) and has forwarded them to the City for payment, in accordance with the Compensation Procedures. *Accordingly, the Initial Monthly Invoices are not subject to objection and are due and payable in full at this time under the Compensation Procedures Order.* However, the Receiver is indicating (again, contrary to the Compensation Procedures Motion that he filed) that the City

³ The Letters were sent to the Retiree Committee Professionals and were designated as confidential settlement discussions under Federal Rule of Evidence 408. However, the Letters were not in fact for settlement purposes and did not propose any settlements, and the Retiree Committee therefore submits that the Letters were not actually confidential. However, out of an abundance of caution, the Retiree Committee does not attach the Letters to this Motion. The Letters also raised certain other general concerns and limited objections to discrete items in the invoices, but the City subsequently indicated that it approved the Initial Monthly Invoices in full, reserving the right to raise all such concerns later in the case.

cannot actually pay the fees and meet the obligations to which the City committed under the Compensation Procedures Order.

24. The aggregate amount requested pursuant to the Initial Monthly Invoices for the months February through May by the four firms constituting the Retiree Committee Professionals is \$517,173.41 in fees and \$1,872.41 in expense reimbursement. The Retiree Committee submits that, in light of the issues in the case and the services rendered to the Retiree Committee (and the fact that *the retirees have \$360 million in retirement benefits at stake*), the requested compensation amount is entirely reasonable and entirely foreseeable by the City and the Receiver. Nevertheless, the reasonableness of the fees is not the issue here because (a) *the Receiver has already approved the fees and submitted them to the City for payment* pursuant to the Compensation Procedures Order, and (b) the Compensation Procedures Order provides that the fees should then be paid. Rather, the issue is that the Receiver now indicates that he did not set aside funds for the Retiree Committee Professionals and does not have the ability to pay those fees promptly per the Compensation Procedures Order, notwithstanding (i) the clear terms of the Compensation Procedures Order and the representations made by the Receiver in the underlying Compensation Procedures Motion, and (ii) the fact that the Receiver has had eight months during this case (and another eight months prior thereto, when he was first authorized by the Commonwealth to commence this case) to plan for and set aside funds for the Retiree Committee Professionals. The Receiver is financially impairing the Retiree Committee's ability to protect the interests of the City's retirees, while his professionals are financed by the Commonwealth.

25. On July 12, 2023, the Retiree Committee's Professionals met via video conference with Ballard Spahr and Vijay Kapoor of Kapoor & Co. (the Receiver's chief of staff) to discuss the issues raised in the Letters. On July 20, 2023, lead counsel for the City and the Retiree

Committee further discussed via telephone the issues. On July 27, 2023, the lead financial advisor to the Retiree Committee further discussed the issues with Mr. Kapoor and proposed a potential solution. To date, the Receiver has not responded to the proposal.

RELIEF REQUESTED

26. By this Motion, the Retiree Committee requests entry of an order pursuant to section 105(a) of the Bankruptcy Code, substantially in the form attached hereto as **Exhibit A**, directing the City to comply with the Compensation Procedures Order.

BASIS FOR REQUESTED RELIEF

27. A bankruptcy court has the power to enforce its own orders. Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

“A bankruptcy court’s authority under § 105 to enforce its own orders cannot be reasonably questioned.” *In re Cano*, 410 B.R. 506, 540 (Bankr. S.D. Tex. 2009) (collecting cases). Bankruptcy courts are also empowered to enforce their own orders through their inherent authority. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (“Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence and submission to their lawful mandates.”).

28. Here, the City is failing to comply with its obligations under the Compensation Procedures Order, an order that the City itself requested. Consistent with the doctrine of judicial estoppel, enforcement of the Compensation Procedures Order is also essential to prevent parties from taking entirely different positions before the Court at different junctures in the case,

undermining the integrity of the Court process. *See New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (“[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895))). Moreover, the City’s failure to comply threatens to undermine the adversarial process that is a fundamental pillar of the bankruptcy process. Enforcing the Compensation Procedures Order is necessary to preserve the policy underlying the Bankruptcy Code of maintaining a fair and level playing field for all constituents. *See In re Hungry Horse, LLC*, 574 B.R. 740, 748 & n.3 (Bankr. D.N.M. 2017).

A. The Compensation Procedures Order Requires the City to Pay the Retiree Committee’s Professional Fees and Expenses.

29. The Compensation Procedures Order is clear and unambiguous: the Receiver must submit all undisputed portions of a Retiree Committee Professional’s invoice to the City for payment within three business days following the Receiver’s review period, and the City “shall promptly pay” those amounts. *Id.* ¶ 3.c. The Court relied on these representations in entering the Compensation Order. *See id.*

30. Contrary to the City’s own Compensation Procedures Motion and the Compensation Procedures Order, the City now contends that it is unable to compensate the Retiree Committee Professionals and offers no means to do so. The Receiver’s team has indicated that it might propose a solution for compensating the Retiree Committee Professionals after it finishes revising its 2023 budget, but that this process may not be completed until November 2023. On its face, proposing an undetermined solution in November 2023 for payment of fees submitted in June 2023 does not constitute prompt payment. Moreover, budgetary processes that were certainly underway or anticipated by the City when it filed the Compensation Procedures Motion do not

provide a basis for not making prompt payments to the Retiree Committee Professionals under the plain language of the Compensation Procedures Order.

31. Accordingly, pursuant to section 105(a) of the Bankruptcy Code and this Court's inherent authority, the Court can and should enforce its own Compensation Procedures Order and direct the City to promptly pay the reasonable fees and expenses of the Retiree Committee Professionals.

B. The City is Judicially Estopped from Challenging the Compensation Procedures Order.

32. The doctrine of judicial estoppel also precludes the City's refusal to pay the Retiree Committee Professionals. The doctrine "uphold[s] the integrity of the courts by preventing parties from abusing the judicial process by changing positions as the moment requires." *In re Butko*, 584 B.R. 97, 105 (Bankr. W.D. Pa. 2018). While "there is no rigid test" for applying judicial estoppel, courts in the Third Circuit will evaluate three factors: (1) "irreconcilably inconsistent positions"; (2) bad faith; and (3) "a showing that estoppel addresses the harm and no lesser sanction is sufficient." *Id.* (citing *Chao v. Roy's Const., Inc.*, 517 F.3d 180, 186 n.5 (3d Cir. 2008)) (cleaned up).

33. The City is judicially estopped from its attempted change of course. The first and third factors are easily satisfied. The City's current position—that it cannot promptly pay the Retiree Committee Professionals—is "irreconcilably inconsistent" with its representation in the Compensation Procedures Motion. Moreover, no "lesser sanction" is sufficient—prompt payment of the Retiree Committee Professionals reasonable fees and expenses is the only mechanism to redress the harm. This is underscored by the fact that the Receiver's professionals are being paid by the Commonwealth, creating an unacceptable asymmetrical structure for compensating the City's professionals and the Retiree Committee Professionals, as discussed in more detail below.

34. The City’s change of position also reflects bad faith. It has known for many months (arguably, even as of the commencement of the case) that a Retiree Committee would be formed and that it would hire professionals. If, when the City filed the Compensation Procedures Motion, it was aware of budgetary challenges that would preclude prompt payment of the Retiree Committee Professionals, the Compensation Procedures Motion, which indicated the City would promptly pay these reasonable fees and expenses, was a bad faith misrepresentation of the City’s finances. If, on the other hand, the City was simply unsure of its ability to pay the Retiree Committee Professionals on a timely basis, representing that it would be able to do so betrays a similar misrepresentation to the Court and the Retiree Committee. In either case, the City’s unequivocal representation that it would promptly pay the reasonable fees and expenses of the Retiree Committee Professionals was a breach of the duty of candor to the Court and demonstrates bad faith.

35. To suddenly indicate—only after seeking and obtaining entry of the Compensation Procedures Order—that virtually all monies in the budget are spoken for and there simply are no funds for the Retiree Committee would seem to reflect a cynical ploy to misdirect the Retiree Committee and, ultimately, starve the Retiree Committee of resources as the City prosecutes this bankruptcy case.

36. In sum, the City is attempting to “play[] ‘fast and loose with the court[]’” by asserting a contrary position to what it asserted in the Compensation Procedures Motion. *Butko*, 584 B.R. at 105-06. As such, the Court should direct prompt payment of the Retiree Committee Professionals reasonable fees and expenses under the doctrine of judicial estoppel.

C. The City Must Comply with The Compensation Procedures Order to Ensure Equal Treatment Among Statutory Professionals.

37. The City’s refusal to pay the Retiree Committee professionals’ invoices is improper for another reason: the Commonwealth—an eminently solvent entity—is paying the invoices of the Receiver’s lead counsel and financial advisors, while the City is responsible for paying the invoices of the Retiree Committee Professionals.

38. The bankruptcy process comes with a cost, and a debtor that seeks relief from the bankruptcy system must also bear the costs of that system. A fundamental principle of the bankruptcy process is that a debtor must pay “the price of admission”—including the reasonable fees of professionals employed by a statutory committee in the bankruptcy case. If a debtor does not wish to pay these administrative costs, “it can dismiss the case at any time.” *In re Castle Pines N. Metro. Dist.*, 129 B.R. 233, 235 (Bankr. D. Colo. 1991). “It makes little sense to provide for a committee’s existence but not also provide for its operation which will necessarily involve the [] payment of [those] professionals.” *In re Pauls Valley Hosp. Auth.*, 2013 Bankr. LEXIS 5510, at *14-17 (Bankr. W.D. Okla. July 18, 2013).

39. The Bankruptcy Code contemplates and provides for an adversarial process and level playing field among the debtor and any official committees, which are the “primary negotiating bodies” for their constituents and are tasked with protecting their constituents’ interests. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 235, 401 (1978). That process requires the City’s professionals and Retiree Committee’s Professionals to be compensated in a symmetrical fashion that ensures a level playing field and equal protection of the due process rights of the City’s and the Retiree Committee’s constituents. In *Hungry Horse*, the bankruptcy court required that a fee defense provision in an employment application be made available equally to debtor’s counsel and committee’s counsel “to level the playing field, which otherwise is often tilted against

committee counsel.” 574 B.R. at 748 & n.3.⁴ Likewise, courts have found that using financing to pay one set of professionals without paying another “would skew the conduct of the bankruptcy case [and] destroy the adversary process that contemplates representation by counsel.” *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (finding DIP financing carveouts for both debtor and committee professional fees necessary because “[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced”); *In re Los Angeles Dodgers LLC*, 457 B.R. 308, 314 (Bankr. D. Del. 2011) (denying DIP financing motion that would benefit Debtors’ principal at the expense of other parties in interest).

40. The Receiver’s professionals and Retiree Committee Professionals must be compensated in a symmetrical fashion that ensures a level playing field and equal protection of the due process rights of the City’s and the Retiree Committee’s constituents. If the City seeks to use bankruptcy to achieve a financial restructuring that may affect hundreds of millions of dollars in retiree pension and healthcare benefits, it must ensure that the retirees are adequately represented and their due process rights protected, including specifically by ensuring that the Retiree Committee can retain and compensate the professionals it requires to assist it, as contemplated under section 1103(a) of the Bankruptcy Code. It cannot be the case that the City’s professionals

⁴ The need for an even playing field abounds in other contexts. *See, e.g., In re Celsius Network LLC*, 642 B.R. 497, 503 (Bankr. S.D.N.Y. 2022) (“The automatic stay levels the playing field and ensures that creditors need not rush to other forums to preserve their rights.”); *In re Friedman’s Inc.*, No. 09-10161 CSS, 2011 WL 5975283, at *4 (Bankr. D. Del. Nov. 30, 2011) (“the purpose of the preference law-to reduce damaging, pre-petition opt out behavior and to level the pre-bankruptcy playing field for all creditors”); *In re Pub. Serv. Co. of New Hampshire*, 160 B.R. 404, 455 (Bankr. D.N.H. 1993) (“The policy behind bankruptcy auctions, and auctions generally, is that all bidders be on equal footing on a level playing field.”); *In re Cottonwood Water & Sanitation Dist., Douglas Cnty., Colo.*, 138 B.R. 973, 979 (Bankr. D. Colo. 1992) (“[t]he “creditor protection” provided by section 109(c)(5), as interpreted by this Court, insures that the creditors have an opportunity to negotiate concerning a plan on a level playing field with the debtor”); *cf. In re Mid-State Raceway, Inc.*, 323 B.R. 63 (Bankr. N.D.N.Y. 2005) (noting termination of exclusive periods to file a plan “returns parties to level playing field after the period of debtor control intended by Congress has expired”).

are compensated in this case by the Commonwealth in full and on a regular basis while the Retiree Committee Professionals are exposed to the possibility of resistance or true inability of the City to provide similar timely and full compensation. Such a scenario is antithetical to the level playing field contemplated under the Bankruptcy Code, as well as concepts of due process and any sense of equity. *See, e.g., In re Hungry Horse, LLC*, 574 B.R. at 748 & n.3; *Ames Dep't Stores.*, 115 B.R. at 38.

41. If the City itself indeed lacks the resources to finance the costs of its bankruptcy case as those costs are incurred, then it is incumbent upon the Commonwealth-appointed and Commonwealth-funded Receiver to secure those resources from the Commonwealth. The Commonwealth effectively commenced this chapter 9 case via Act 47, and to avail itself of the benefits of chapter 9, it must provide for a fair and workable process. If the City cannot fund the chapter 9 process, it must look to the Commonwealth to meet its obligations in this case. The Commonwealth cannot properly avail itself and the City of the benefits of chapter 9 bankruptcy while simultaneously failing to provide for the payment of the professionals who have been administering this case for the benefit of the City's stakeholders. Either there is a level playing field or the case should not proceed.

42. In this regard, the Retiree Committee had suggested to the Receiver early on that if it had any liquidity concerns, one solution might be to have the Commonwealth extend the maturity date on the \$5 million Tax Revenue Anticipation Note issued to the City in December 2022 and due in December 2023 and the remaining balance of the 2017 Tax Revenue Anticipation Note and have those maturities linked to the time when a liquidity or monetization event occurs with respect to the City's water and sewer assets—paying those notes, with interest, out of the proceeds of such event. This would seem to be a simple way to create liquidity and a relatively simple request to the

Commonwealth, akin to providing debtor-in-possession financing. Initially, the Receiver refused to even broach the subject with the Commonwealth, opting instead to file the Compensation Procedures Motion. Upon information and belief, in July 2023, the Receiver finally discussed this concept with the Commonwealth's Department of Community and Economic Development ("DCED"). It is unclear how enthusiastically the Receiver advocated for this concept (neither the Retiree Committee nor its Professionals were invited to participate in that discussion), but the DCED flatly rejected the proposal without offering any other solutions.

43. It was stated above but bears repeating: it is unfortunate that the Retiree Committee is compelled to file this Motion. The Retiree Committee offered reasonable solutions to the Receiver and to the Commonwealth via the Receiver, but the Receiver and the Commonwealth seem intent upon tilting the playing field in their favor. For all the reasons stated herein, the Court should not tolerate such gamesmanship.

NOTICE

44. Notice of this Motion has been provided to the City, the Commonwealth, and all parties who have filed appearances and requests for service. In light of the nature of the relief requested herein, the Committee submits that no other or further notice is necessary.

(Signature page follows.)

WHEREFORE, based on the foregoing, the Retiree Committee respectfully requests that this Court enter an Order, in the form attached hereto as Exhibit A: (a) directing the City to comply with the Compensation Procedures Order and provide for the prompt compensation of the Retiree Committee Professionals during the pendency of this chapter 9 case in accordance with the Compensation Procedures Order; and (b) granting such other and further relief as is just and proper.

Dated: August 14, 2023

/s/ Robert D. Gordon

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Attorneys for the Official Retiree Committee

Exhibit A
PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

CITY OF CHESTER, PENNSYLVANIA,

Debtor.

Chapter 9

Case No. 22-13032

Judge Ashely M. Chan

**ORDER DIRECTING THE CITY OF CHESTER, PENNSYLVANIA TO
COMPLY WITH THE COURT'S ORDER ESTABLISHING
PROCEDURES FOR COMPENSATION AND REIMBURSEMENT OF
EXPENSES FOR PROFESSIONALS PAID BY THE CITY**

This matter came before the Court on the *Motion of Official Retiree Committee for an Order Directing the City of Chester, Pennsylvania to Comply with the Court's Order Establishing Procedures for Compensation and Reimbursement of Expenses for Professionals Paid by the City* (the "**Motion**") filed by the Official Retiree Committee (the "**Retiree Committee**") of the City of Chester, Pennsylvania (the "**City**") seeking entry of an order pursuant to section 105(a) of title 11 of the United States Code (the "**Bankruptcy Code**") directing the City to comply with the Court's *Order Establishing Procedures for Compensation and Reimbursement of Expenses for Professionals Paid by the City* [Dkt. 380] (the "**Compensation Procedures Order**"); and the Court finds that it has jurisdiction over this matter pursuant to Bankruptcy Code § 105(a), 28 U.S.C. §§ 157 and 1334, and the Court's inherent power to enforce its own orders; and the Court finds that this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and, after due deliberation, the Court having determined the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. The City is directed to comply with the procedures and the City's obligations under the Compensation Procedures Order.

3. The City is directed to pay in full the Initial Monthly Invoices (as defined in the Motion) of the Retiree Committee's professionals, as well as any other amounts requested pursuant to other Monthly Invoices of the Retiree Committee professionals that are currently due and owing, in accordance with the procedures provided in the Compensation Procedures Order, within twenty-one days of the entry of this Order. The City is further directed to promptly pay in full all amounts that become due and owing to the Retiree Committee professionals prospectively during this case pursuant to the Compensation Procedures Order.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

BY THE COURT:

Dated: _____

Honorable Ashely M. Chan
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

CITY OF CHESTER, PENNSYLVANIA,

Debtor.

Chapter 9

Case No. 22-13032

Judge Ashely M. Chan

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of August, 2023, I caused a true and correct copy of the foregoing *Motion of Official Retiree Committee for an Order Directing the City of Chester, Pennsylvania to Comply with the Court's Order Establishing Procedures for Compensation and Reimbursement of Expenses for Professionals Paid by the City* to be served via ECF to parties entitled to electronic notice and regular first-class mail, postage prepaid, upon the parties on the attached list.

Dated: August 14, 2023

/s/ Jennifer Vagnozzi

Jennifer Vagnozzi, Paralegal

Label Matrix for local noticing

0313-2

Case 22-13032-amc

Eastern District of Pennsylvania

Philadelphia

Fri Dec 23 10:58:08 EST 2022

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cert. of service Page 2 of 4

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Internal Revenue Service
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Philadelphia, PA 19106

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(u)Chester Downs and Marina, LLC d/b/a Harrah

(u)Chester Water Authority

(u)County of Chester

(u)Delaware Valley Regional Finance Authority

(u)Pennsylvania-American Water Company

End of Label Matrix
Mailable recipients 67
Bypassed recipients 5
Total 72