



AMERICAN
BANKRUPTCY
INSTITUTE

2017 Mid-Atlantic Bankruptcy Workshop

A Unique Peek Inside Municipal Bankruptcy Cases

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American Bankruptcy Institute
2017 Mid-Atlantic Bankruptcy Workshop
Hershey, Pennsylvania
August 4, 2017

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Chapter 9: Primer on Chapter 9 and How Mediation May Play an Important Role¹

I. Overview - Chapter 9² is different than other chapters of the Bankruptcy Code.

A. States have a primary gatekeeping function in deciding whether municipalities within the state may utilize chapter 9. This helps satisfy the constitutional limitations on federal infringement on state sovereignty. The Tenth Amendment restricts the ability of the federal government to interfere with state sovereignty. See Ass’n of Retired Employees of the City of Stockton v. City of Stockton (In re City of Stockton), 478 B.R. 8 (Bankr. E.D. Cal. 2012) (explaining restrictions).

B. The Bankruptcy Code carefully balances the constitutional protections of states, separation of powers, and federal preemption. The power of the bankruptcy court is limited in Chapter 9 to achieve the necessary balance. Limitations include:

1. §903 - the Bankruptcy Code “does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise”

2. §904 - the bankruptcy court cannot, without the consent of the debtor or pursuant to a provision in a confirmed plan, interfere with

(a) “any of the political or governmental powers of the debtor;” or

(b) “any of the property or revenues of the debtor;” or

(c) “the debtor’s use or enjoyment of any income-producing property.”

§904(1)-(3).

3. §901(a) - the bankruptcy court cannot control the debtor’s use, sale, or lease of property during the case. In other bankruptcy chapters, §363 gives the court that control; §363 does not apply in Chapter 9.

¹ Adapted from an outline originally authored by the Honorable Elizabeth L. Perris, United States Bankruptcy Judge (Retired).

² Unless otherwise noted, chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§101-1330, and rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

4. §902(5); 926(a) - the court cannot appoint a trustee to administer the estate, except for the limited purpose of pursuing avoidance actions if the debtor refuses to pursue those actions.

5. §901(a) - the bankruptcy court does not have any direct control over employment of professionals or their fees, as it does in other bankruptcy chapters through §§327-331. However, the court has a role, because plan confirmation requires that “all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable[.]” §943(b)(3).

C. It is important to remember, however, that once a state authorizes a municipality to file Chapter 9, the state is limited in its ability to avoid the impact of the Bankruptcy Code. See City of Vallejo, 403 B.R. 72, 76-77 (Bankr. E.D. Ca. 2009), aff’d, 432 B.R. 262 (E.D. Ca. 2010).

D. Chapter 9 incorporates many other sections of the Bankruptcy Code, § 901, but not all of them. It borrows from Chapter 11, but has some provisions that uniquely apply in Chapter 9 cases.

II. Usual course of Chapter 9 case and major litigation points.

A. Usual course of proceeding.

1. Municipality files the case and must demonstrate eligibility before an order for relief is entered.

2. No bankruptcy estate is created in Chapter 9. This is unlike other bankruptcy chapters, in which the filing of a bankruptcy petition creates a bankruptcy estate, which is made up of all legal and equitable interests of the debtor in property as of the commencement of the case, §541(a). Instead, when the Bankruptcy Code refers to “property of the estate,” in the context of Chapter 9 that means “property of the debtor.” §902(1).

The municipality is free to continue to pay creditors and perform its governmental functions without oversight from the bankruptcy court. Municipalities usually continue paying trade creditors and employees. Other creditors may be paid during the case at the discretion of the municipality. Because there is no estate and §363 does not apply in Chapter 9, the municipality does not need to obtain a cash collateral order as it does in many Chapter 11 cases. The automatic stay (§362) prevents creditors from seeking to enforce debts if the municipality fails to pay as agreed.

3. If a municipality wants to borrow money or obtain credit on a secured or superpriority basis, the municipality must comply with the bankruptcy requirements of notice and, if the court so requires, a hearing. §901(a) incorporating §364(c)-(f); Rule 4001(c).

4. After the order for relief, and before confirmation, various matters which are discussed below may arise including rejection or modification of collective bargaining agreements, use of bankruptcy avoidance powers, assumption or rejection of executory contracts, and impairment of retiree obligations.

5. Unlike cases filed under the other bankruptcy chapters, the municipality does not file schedules, Rule 1007(b)(1), and there is no §341 meeting of creditors. §901(a), Rule 2003(a).

6. Confirmation. The municipality develops and proposes a plan. The municipality must obtain court approval of a disclosure statement before creditors vote on the plan. A confirmed plan binds the municipality and the creditors. §944.

7. Discharge. Upon confirmation, the debtor is discharged from all pre-confirmation debts except debts that are “excepted from discharge by the plan or order confirming the plan,” or that are “owed to an entity that” did not have “notice or actual knowledge of the case.” §944(b)-(c).

B. Major litigation points.

1. Eligibility. The eligibility requirements raise the prospect of expensive litigation early in the case.

2. Confirmation. The court ultimately has only two choices: to confirm the plan of adjustment proposed by the municipality or dismiss the case. §§921(c)-(d); 930; 943.

3. Dismissal as an alternative to confirmation. The court may dismiss a case “for cause.” The statute contains a non-exclusive list of causes. §930.

C. The role of the US Trustee is much more limited than in Chapter 11 cases. It is limited to appointment of committees once there is an order for relief. Unlike in Chapter 11, the US Trustee does not have general supervisory responsibility, there is no §341 meeting to conduct, and there are no Rule 2015 financial reports.

III. Eligibility.

Section 109(c) sets out eligibility requirements for Chapter 9:

A. The debtor “is a municipality” §109(c)(1), a term that is defined in §101(40) as a “political subdivision or public agency or instrumentality of a State.”

B. The Chapter 9 filing is specifically authorized by state law. §109(c)(2).

C. The municipality is insolvent. §109(c)(3). “Insolvency” is defined as “financial condition such that the municipality is” either “generally not paying its debts as they become due

unless such debts are the subject of a bona fide dispute” or “unable to pay its debts as they become due.” §101(32)(C). The phrase “unable to pay its debts as they become due” has been interpreted to refer to the short term. Insolvency is not determined by the balance-sheet test (whether the sum of the debts exceed all assets, at fair valuation).

D. The municipality “desires to effect a plan to adjust” its debts. §109(c)(4).

E. The municipality either:

(1) “has obtained 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;”

(2) “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;”

(3) was “unable to negotiate with creditors because such negotiation is impracticable;” or

(4) “reasonably believes that a creditor may attempt to may attempt to obtain” a preferential transfer. §109(c)(5).

F. Consequence if the municipality fails to prove eligibility - the court may dismiss the petition.

G. Key Cases on Eligibility:

1. In re City of Stockton, 493 B.R. 772 (Bankr. E.D. Cal. 2013)

2. In re City of Detroit, 504 B.R. 97 (Bankr. E.D. Mich. 2013)

3. In re City of Vallejo, 408 B.R. 280 (B.A.P. 9th Cir. 2009)

IV. Automatic stay.

A. The filing of a Chapter 9 petition automatically operates as a stay that, among other things, stays collection efforts by creditors and stops prepetition litigation. §362(a).

B. The automatic stay also protects the Chapter 9 debtor’s officers and inhabitants and stays “the enforcement of a lien on or arising out of taxes or assessments owed to the debtor.” §922(a)(1), (2).

C. The automatic stay does not apply to “application of pledged special revenues” to payment of debts secured by those revenues. §922(d).

D. The automatic stay has exceptions (§362(b)) and the bankruptcy court has the power to grant relief from the automatic stay (§362(d)).

E. Cases discussing Automatic Stay Issues:

1. In re Jefferson Cnty, Ala., 474 B.R. 228 (Bankr. N.D. Ala. 2012)

V. Plan of Adjustment.

A. In a Chapter 9 case, only the debtor can propose a plan. §941. In Chapter 11, the debtor has a limited amount of time to propose and obtain approval of a plan. After that time, creditors or other parties in interest may propose a plan. §1121.

B. In Chapter 9, like Chapter 11, the municipality prepares a disclosure statement describing the plan and the alternatives. The disclosure statement must be approved by the court as containing “adequate information.” It is then sent to all creditors holding claims in impaired classes along with ballots the creditors can use to vote on the plan. §1125(b).

C. Many provisions of §§1123 and 1129, which set out what may be included in a plan and what must be included in a Chapter 11 plan, apply to a Chapter 9 plan of adjustment. §901(a).

1. A municipality’s plan must:

i. Designate classes of claims. §1123(a)(1).

ii. Specify which classes are not impaired. §1123(a)(2).

iii. Specify treatment of impaired classes. §1123(a)(3).

iv. Provide that each claim in a class be treated the same, unless a claim holder agrees to different, less favorable treatment. §1123(a)(4).

v. Provide an adequate means for implementing the plan. §1123(a)(5).

2. A municipality’s plan may:

i. “[I]mpair or leave unimpaired any class of claims.” §1123(b)(1).

ii. “[P]rovide for the assumption, rejection, or assignment of” executory contracts or unexpired leases, subject to §365 (relating to assumption or rejection of executory contracts or unexpired leases). §1123(b)(2). Rejection of a burdensome executory contract or lease serves as a breach of the contract or lease, damages for which are treated as a general unsecured claim.

iii. Provide for settlement or adjustment or retention and enforcement of any claim belonging to the debtor. §1123(b)(3).

iv. Provide for the sale of property of the debtor and distribution of proceeds to creditors. §1123(b)(4).

v. The plan may modify the rights of secured or unsecured claims, or leave those rights unaffected. §1123(b)(5).

vi. The plan may “include any other appropriate provision not inconsistent with” the Bankruptcy Code. §1123(b)(6).

D. Any proposal to cure a default through the plan must accord with the underlying agreement and applicable nonbankruptcy law. §1123(d).

E. Standards for confirmation are similar to Chapter 11 confirmation standards. §§901(a), 943(b).

1. The plan must comply with applicable provisions of the Bankruptcy Code. §1129(a)(2).

2. The plan must be “proposed in good faith and not by any means forbidden by law.” §1129(a)(3). Courts may use a totality of the circumstances test to determine a Chapter 9 municipality’s good faith. See In re Mount Carbon Metro Dist., 242 B.R. 18, 39 (Bankr. D. Colo. 1999).

3. Any rate changes included in the plan must have been approved by the pertinent governmental commission or plan confirmation is conditioned on such approval. §1129(a)(6).

4. All classes of impaired claims have accepted the plan, §1129(a)(8), or the cram-down requirements must be satisfied with respect to the non-accepting class.

5. If there is an impaired class of claims, at least one impaired class has voted to accept the plan. §1129(a)(10).

6. If all classes of impaired claims do not accept the plan, the cram-down provisions of Chapter 11 apply. They require that, with respect to an impaired, non-accepting class, the plan does not discriminate unfairly and is fair and equitable. §§901(a); 1129(b)(1); 1129(b)(2)(A)-(B).

i. In Chapter 11, the “fair and equitable” requirement is referred to as the absolute priority rule, which means that no class of creditors will receive a distribution under the plan unless all senior classes are paid in full.

ii. In Chapter 9, there are no equity interests and the valuation of the debtor's assets can be impossible. For example, how does one value a fire station or park? Thus, in Chapter 9 the "fair and equitable" requirement has been held to have a different meaning - that the dissenting class will receive "all they can reasonably expect to receive under the circumstances." 6 COLLIER ON BANKRUPTCY ¶ 943.03[1][f][i][B] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010).

F. Special requirements for confirmation under Chapter 9 - §943:

1. The plan complies with the Bankruptcy Code provisions made applicable to Chapter 9 cases;

2. The plan complies with the provisions of Chapter 9;

3. Amounts to be paid for services or expenses in the case or incident to the plan have been publicly disclosed and are reasonable;

4. The law does not prohibit the debtor from taking any action needed to carry out the plan;

5. Administrative claims will receive an amount equal to the allowed amount of the claim, unless the holder of the claim consents to different treatment;

6. "[A]ny regulatory or electoral approval necessary under applicable nonbankruptcy law in order to carry out any provision of the plan has been obtained" or the plan is conditioned on such approval; and

7. "[T]he plan is in the best interests of creditors and is feasible."

i. In a Chapter 11, the "best interests of creditors" test means that creditors will receive more under the plan than they would receive in a liquidation. §1129(a)(7).

ii. A municipality cannot be liquidated. Therefore, the meaning of "best interests of creditors" is different in Chapter 9, and has been held to mean that the creditors will be better off under a confirmed plan than they would be under state law if the case were dismissed. §943(b)(1)-(7).

G. Discharge. Unlike in Chapter 11, there is no prohibition on having the discharge of a debt of the debtor affect the liability of any other entity or property of another entity for that debt. §524(e), which includes that prohibition, does not apply in Chapter 9.

H. Key Cases on Plan Confirmation:

1. In re City of Colorado Springs Spring Creek General Improvement District, 187 B.R. 683 (Bankr. D. Co. 1995)
2. In re City of Detroit, 524 B.R. 147 (Bankr. E.D. Mich. 2014)
3. In re City of Stockton, 542 B.R. 261 (B.A.P. 9th Cir. 2015)

VI. Plan of Adjustment and Impairment of Debts.

A. The U.S. Constitution provides that “No State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]” U.S. Const., art. I, §10, cl. 1.

B. The Bankruptcy Clause of the U.S. Constitution gives Congress the power to establish uniform laws of bankruptcy. U.S. Const., art. I, §8, cl. 4.

C. The Constitution and laws of the United States are supreme over the laws of the states. U.S. Const., art. VI, cl. 2.

D. Although states could not provide for the adjustment of debts that impair contracts, contracts may be impaired through use of the Bankruptcy Code.

E. When a state authorizes the use of Chapter 9 for bankruptcies of its municipalities, the impairment of contracts comes not from the state but from the application of the federal bankruptcy law.

F. If a state does not want to allow contracts of its municipalities to be impaired, it can withhold consent to municipal bankruptcy filings. See United States v. Bekins, 304 U.S. 27 (1938).

VII. Treatment of Particular Types of Obligations in Chapter 9.

A. Labor and retirees.

1. Unlike in Chapter 11, §1113 and §1114 do not apply in Chapter 9. §901(a).

(i) Section 1113 protects the rights of employees of Chapter 11 debtors who are covered by collective bargaining agreements, prohibiting rejection of those agreements without complying with certain procedural requirements.

(ii) Section 1114 protects the rights of retirees to continue to receive certain benefits despite Chapter 11.

2. Collective bargaining agreements therefore can be rejected in Chapter 9 as executory contracts under §365. In deciding whether to approve rejection, the court must

consider whether the agreement was burdensome, whether the balance of equities favor rejection, and whether the debtor made reasonable efforts to negotiate a modification of the collecting bargaining agreement. See In re City of Vallejo, 432 B.R. 262, 270 (E.D. Cal. 2010) (applying standard set out in NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984)); See also In re City of San Bernardino, 530 B.R. 489 (C.D. Cal. 2015)(citing In re City of Vallejo); In re Stockton, 478 B.R. 8 (Bankr. E.D. Cal. 2012).

3. Similarly, a municipality can use Chapter 9 to impair obligations to provide retirees with certain benefits, including health insurance. Other post-employment benefit obligations (OPEB) can be suspended during the Chapter 9 and modified by the Chapter 9 plan.

4. Retirees (and in the Stockton, California case, CalPERS) have argued that state constitutional provisions prohibit public entities from impairing retirement benefits. In Detroit, there is a dispute whether the Michigan state Constitutional provision that protects public pension obligations from impairment trumps the Bankruptcy Code, which allows such impairment. The bankruptcy court in the Detroit case has ruled that federal bankruptcy law trumps the state constitutional provision. In re City of Detroit, Michigan, Case No. 13-53846 (Bankr. E.D. Mich. December 5, 2013).

The argument against applying the state constitutional protection is: State law protects all contract obligations from impairment, whether through statute or constitution. However, the Bankruptcy Clause of the U.S. Constitution allows impairment of contractual obligations. Although states may prevent impairment of pension obligations by denying municipalities the authority to file Chapter 9, once the state authorizes Chapter 9, federal law preempts state law.

5. If employment, pension, and other benefits are set by statute instead of by agreement, the municipality's ability to adjust those obligations is reduced if not eliminated, because §§903 and 904 and the U.S. Constitution limit the Bankruptcy Code's and the court's ability to interfere with state sovereignty.

6. Claims for rejection or modification of pension rights and benefits are general unsecured claims. Pension funds have argued that their claims have priority over general unsecured claims. This is an issue that has not been resolved.

B. Bonds. Although there are many different bond terms, there are two broad categories of bonds - general obligation bonds backed by the general fund and the full faith and credit of the municipality, and special revenue bonds. The preference avoiding powers cannot be used to avoid a bond. §926(b).

1. General obligation bonds are usually just general unsecured claims. As such, post-petition interest is not allowed. §502(b)(2). The holders of such bonds frequently try to induce a municipality to pay more than the municipality is inclined to pay by arguing that doing so will provide better future access to the municipal bond market.

2. Special revenue is a creature of municipal finance. Treatment is often dictated by how good the source of special revenue is and whether the pledge is a gross pledge or a net pledge, although §928(b) provides for payment of operating expenses of the pertinent project even when a gross pledge is involved. These streams of payment must be used to pay the debt to the extent the streams of payment exist and the pledges so require.

(a) Because of the importance of special revenue funding, the bankruptcy code includes special provisions to assure that holders of debts payable from special revenues retain their rights to be paid from such revenues. Special revenues are defined in §902(2). The automatic stay is limited with respect to special revenues. §922(d). Debts payable from special revenues are often non-recourse debts and the Bankruptcy Code continues such non-recourse status notwithstanding §1111(b). §927. The impact of §552 regarding security interests is limited by §928.

(b) Municipalities may also have special revenue streams that, although not pledged for payment of a particular debt, can nonetheless be used to pay that bond or other debt. Because special revenue funds cannot be used for general fund purposes, they are available to pay the debt without any unfairness to other unsecured claims.

VIII. Practical realities of Chapter 9 versus other types of bankruptcy.

A. Municipalities, unlike corporate debtors, cannot be liquidated or forced out of business. They have indefinite existence.

1. The long-term nature of municipalities can be both a help and a challenge in working through disputes.

2. It is helpful to look at the alternative if the Chapter 9 is dismissed. Often state law doesn't provide a practical method to collect from a financially distressed debtor.

B. Partial operational restructuring, such as by creating parking authorities, privatizing some functions, contracting for others, etc. may provide opportunities to off-load some debt and/or free up money to pay creditors.

C. The extreme uncertainty inherent in Chapter 9 is both an advantage and a disadvantage. It will provide the parties with a reason to settle, but it will make it harder to predict outcomes.

D. Many government assets simply are not marketable because of their peculiar nature.

E. Sometimes special funds and other resources can be used to pay general fund obligations, thereby reducing the amounts that have to be paid from the general fund. On the other hand, state municipal law may impact what is possible. The intersection between state

municipal law and bankruptcy law is complex. When helping the parties to explore options, it is useful to have parties involve municipal law experts.

F. Substantively, Chapter 9 is different in many ways than other types of bankruptcy cases.

G. Chapter 9 is a struggle to balance creditors' interests against the need for operational funding. Without the latter the municipality cannot exist, let alone thrive. Taxpayers can speak with their feet.

IX. Mediation challenges and opportunities in Chapter 9 cases.

A. Organizing the mediation. A Chapter 9 case often has very different disputes and issues than other types of bankruptcy cases. The mediator's first task in a Chapter 9 is to inventory the issues to be resolved and work with counsel for the parties to organize the mediation sessions and topics in a logical order.

1. Establish impartiality by involving all counsel in any scheduling and organizational conferences.

2. Help the parties set up a schedule and organize the mediations in a way that recognizes urgency, reflects sensitivity to timing issues, and, if possible, starts to build momentum toward resolving disputes. You will need party help to identify the logical order of, and what parties are involved in, particular disputes. It will not be possible to do everything at once.

a. Sensitivity to resource imbalances. Sometimes timing adjustments can help equalize resource differences.

3. Find out if there is information that needs to be obtained or shared in advance of the mediation so that timing can be adjusted accordingly. Make sure that information is provided.

4. It is often helpful to have at least one of the parties circulate a term sheet in advance of the mediation. This often provides a quick-start to the mediation.

B. Who attends the mediation? Open meeting laws may restrict participation by decision makers. Creditors are often so large that ultimate decision makers may not participate in the mediation. At the first mediation it is good to talk about who makes the final decisions, how input is obtained from those decision makers, and whether there will need to be breaks in the mediation process to brief the decision makers and obtain their input.

1. The number of people who want to attend can make multi-party disputes and mediations involving committees difficult. Large mediations are more challenging to

conduct and can be frustrating for the participants because they feel like they are not getting enough individual attention.

2. To the extent possible, break down the mediations into smaller parts. If there needs to be mediation sessions involving a large number of parties, it can be helpful to ask different groups to designate representatives and then have sessions with the representatives who report back to their larger groups.

C. Length of mediation. Because decision makers are often not at the mediation, the nature of the disputes, and sometimes the required municipal processes, mediating Chapter 9 cases often takes longer than typical mediations. The mediator's optimism and willingness to reconvene the parties at various points even if the initial mediation sessions do not succeed often distinguishes the successful from the failed mediation. It is often helpful to agree on next steps and to check in periodically even if the initial mediation session(s) did not succeed.

D. Role of the mediator. The mediator will use all the tools in the mediator's tool box in helping the parties resolve Chapter 9 cases through the mediation process. Among the tools that are frequently used:

1. Spending the time necessary to understand each party's perspective. This includes making sure that each party feels that its concerns have been heard and are being considered in developing a solution. Giving a party undivided attention during a caucus is helpful in letting the party speak freely and in establishing that the party is being heard.

2. Acting as a sounding board for possible ways to resolve disputes. The mediator probes, asks questions, and serves as "devil's advocate." Subject matter expertise is helpful, but the professionals employed by the parties sometimes educate the mediator sufficiently for the mediator to be an effective sounding board.

3. Helping the parties overcome "bad dynamics" and other relational impediments to resolution. The presence of a neutral is helpful if the party representatives react to one another in ways that impede rather than foster resolution. Communication can be run through the mediator, who can filter and rephrase things in a way that is true to the message without the overlay of reactions to the messenger.

4. Encouraging the parties to think about options to resolve disputes that will meet the needs of both parties. Chapter 9 municipalities are often cash-constrained, but they may be able to provide meaningful creditor recoveries using assets such as real estate.

5. Educating sophisticated creditors about the reality of a debtor's financial situation. Many creditor claims are sizeable and some creditors are specialists in the municipal finance area. They are well equipped to analyze ways to resolve disputes. For a mediator dealing with these creditors, often the challenge is to help the creditor to recognize the limitations on the debtor's ability to pay, even over a long period.

6. Summarizing. Summarizing periodically during the mediation and at the conclusion of the mediation session helps establish that everyone involved has a common understanding.

E. Confidentiality and dealing with the press. Often the mediation is of interest to the press. Leaks are a real problem. The mediator helps the parties craft joint press releases at key points so that there is controlled information release.

F. Political dynamics. There often are political dynamics behind the decisions that are not necessarily logical. The mediator has to be sensitive to those dynamics and be prepared to adjust the process if necessary to take those dynamics into account.

X. The clash of cultures and the impediments to resolution.

A. Mediations in Chapter 9 cases often involve people who have very different perspectives.

1. Municipalities are frequently not used to debtor-creditor relations. They often want to focus on continuing to provide services to their residents rather than how they will pay creditors.

2. Employees and former employees are likewise used to the municipality having sufficient resources. Labor-related issues can be very significant and potentially involve large dollar claims. The power of the bankruptcy court is more limited than in other types of bankruptcy.

3. Bond creditors often have long-term perspectives and are likely to view the municipality's problems as problems of liquidity rather than problems of capacity to pay.

B. Many of the participants in the process are concerned that any decisions will have implications in other similar matters. For instance, a pension system may be concerned about the implications of any decision for other similar pensions. This is often an impediment to decision-making that is rational in the context of the case. It also may mean that the parties are willing to devote resources to litigation well in excess of what is justified by the facts of the case.

XI. Continuing the mediation long enough to get to resolution.

A. The parties sometimes need help in getting from the term sheet to final agreement because of the complexity of many Chapter 9 agreements.

1. The mediator can be helpful to the process by making sure that any memorandum of understanding contains a robust "next steps" section complete with a listing of who is responsible, and the time frame, for each step.

2. If there is much complexity to what needs to be done, the mediator can check in to make sure that the implementation is going as expected and to help the parties if unanticipated impediments develop or a party is slow to perform particular steps.