

The Detroit Bankruptcy

David G. Heiman
Jones Day; Cleveland



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City of Detroit Chapter 9 Bankruptcy

2015 Midwestern Bankruptcy Institute

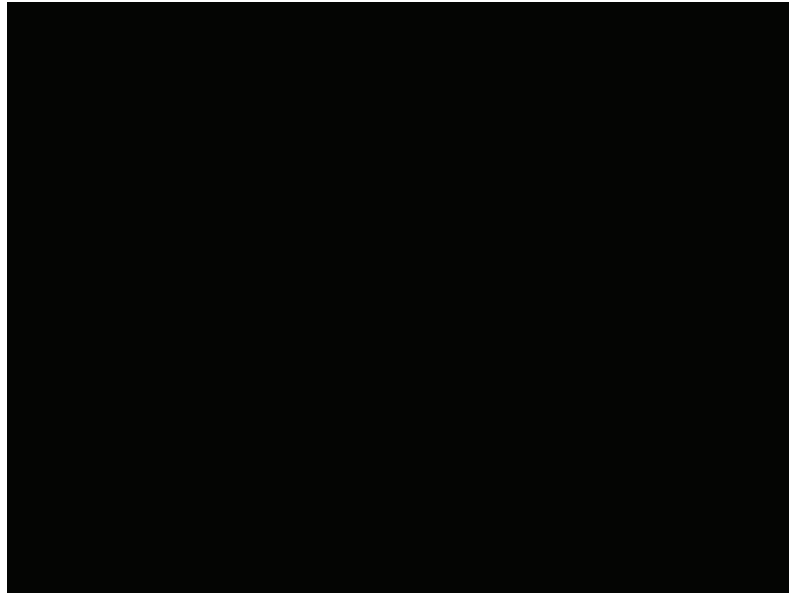
October 16, 2015

David Heiman

THIS

IS

DETROIT



**Can This Happen
In America?**

6

“What happened in Detroit must never happen again.”



— Bankruptcy Judge Steven W. Rhodes, Oral Opinion on the Record (Nov. 7, 2014).

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“It is heartbreaking, maddening and sad. No one should have to endure, day in and day out, the damage to the human spirit that can result from living in those surroundings....Detroit deserves better.”

— Rhodes Confirmation Opinion

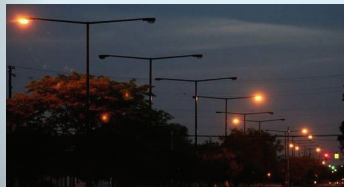
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The Decline of a Great City

9



- 144,000 blighted residences and parcels of land.

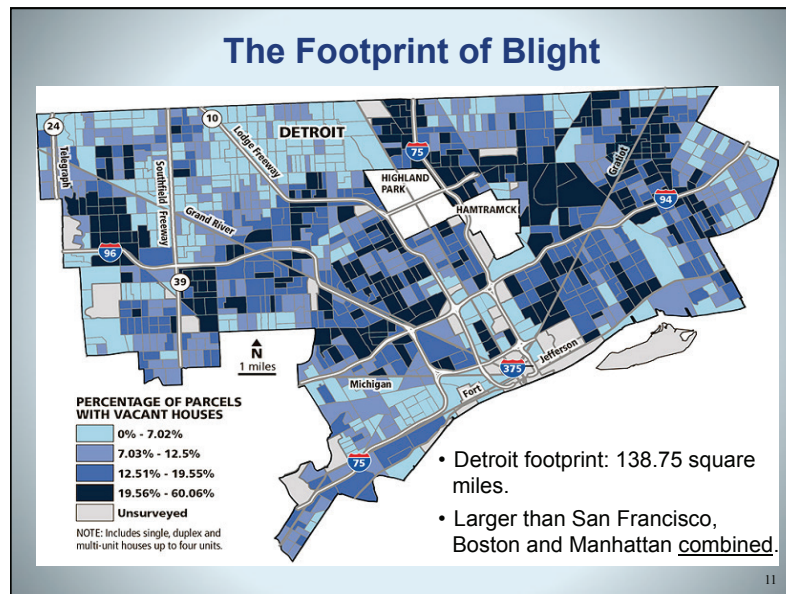


- 40% of 88,000 streetlights non-functioning.



- 210 of 317 City parks closed.

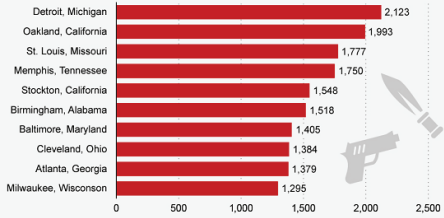
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An Unsafe City

Detroit is America's Most Dangerous City

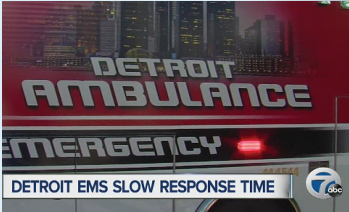
The violent crime rate per 100,000 residents in U.S. cities in 2013



- Violent crime five times the national average.
- More murders than Cleveland, Pittsburgh, St. Louis and Milwaukee combined.

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Service Delivery Insolvency



- Extremely low crime clearance rates.
- Extremely slow EMS & DFS response times.
- Outdated and dilapidated public safety fleet.
- Reliant on donations for basic maintenance.
- Over 50% of ambulances out of service.

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Drowning In Debt

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The City Was Broke . . .

- Owed \$18.5 billion
- Annual revenue = \$1 billion
 - Retiree costs were 39% of revenue, rising to 65%
- Cumulative deficit = \$700 million



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...Yet Creditors Demanded Payment in Full

Secured

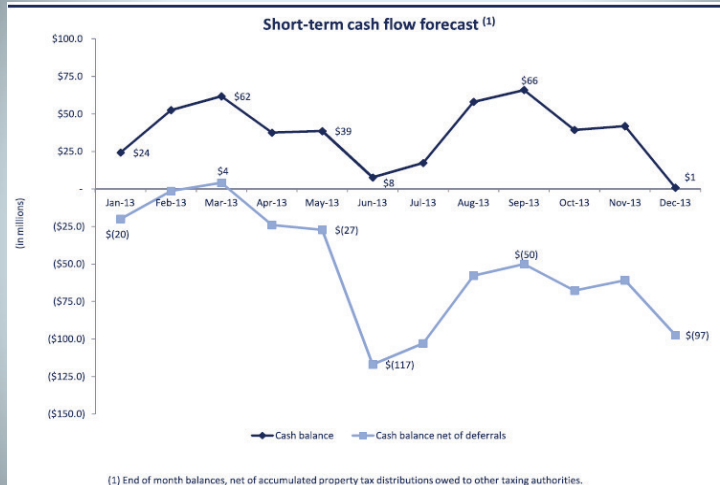
	(Billions)
Bonds:	\$6.2
Swaps:	.29

Unsecured

Pension:	3.5
Health Coverage	5.7
Unlimited Tax Bonds	.38
Limited Tax Bonds	.16
Special/COPs:	1.4
Other:	.87
Total:	\$18.5 billion



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9/10/15

Detroit's Only Course: Bankruptcy

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A Race to the Courthouse

July 3

- Retirees file complaints attacking Governor and EM authority

July 16

- Orr requests Governor's approval to file (anticipated July 19)

July 18

- 2 p.m.: Detroit Free Press: filing imminent
- 3 p.m.: Retiree groups seek TRO to block filing
- 3:50 p.m.: Governor authorizes filing



Page 4 of 4

July 18, 2013

Contingencies

2013 PA 436 provides that my approval of the recommendation to commence a Chapter 9 proceeding may place contingencies on such a filing. MCL 141.1556(1). I am choosing not to impose any such contingencies today. Federal law already contains the most important contingency – a requirement that the plan be legally recordable. 11 USC 943(b)(4).

Conclusion

In conclusion, I find Mr. Orr's Recommendation Letter to be persuasive, especially in conjunction with his prior reports laying out the level of services the City can provide and its financial ability to meet its obligations to creditors. I am also convinced that Mr. Orr has exercised his best efforts to arrive at a restructuring plan with the City's creditors outside of bankruptcy, to no avail. **Given these facts, the only feasible path to sustainability for the City of Detroit is a filing under chapter 9 of the bankruptcy code. Therefore, I hereby approve Mr. Orr's recommendation and authorize the emergency manager to make such a filing on behalf of the City of Detroit and to take all actions that are necessary and appropriate toward that end.**

Sincerely,

Richard D. Snyder
Governor
State of Michigan

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The City Wins the Race


Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair secured position benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX, Section 24 of the Michigan Constitution.

In order to rectify the unconstitutional and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 16, and (2) not authorize any further Chapter 9 filing which threatens to diminish or impair secured position benefits.

A copy of this Order shall be transmitted to President Obama.

It is so Ordered. *Rosemarie E. Aquilina*
Clerk of Court Judge 4-5-7670

- 4 p.m.: attempt to file electronically
- On second attempt, petition filed at 4:06 p.m.
- State court loses jurisdiction
- 4:15 p.m.: Judge Aquilina takes bench and is advised of filing
- Injunction granted at 4:25 pm anyway



Ingham County Circuit Judge Rosemarie Aquilina

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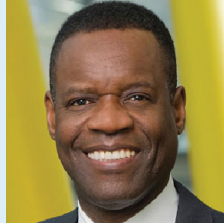
The Players

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Decision Makers



Governor Rick Snyder



E.M. Kevyn D. Orr



Hon. Steven W. Rhodes

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The Mediators

Prof. Gina Torielli
Financial Expert



Hon. David H. Coar (Ret.)
N.D. Illinois
DDC



Hon. Wiley Y. Daniel
D. Colorado
OPEBs



Hon. Gerald E. Rosen
E.D. Michigan
Chief Mediator



Hon. Elizabeth L. Perris
D. Oregon
Borrowed Money & Swaps



Hon. Victoria A. Roberts
E.D. Michigan
Lead Labor Mediator



Eugene Driker, Esq.
Pension



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**Crunching Years
Into Months**

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Chapter 9: What a Difference a Few Provisions Can Make

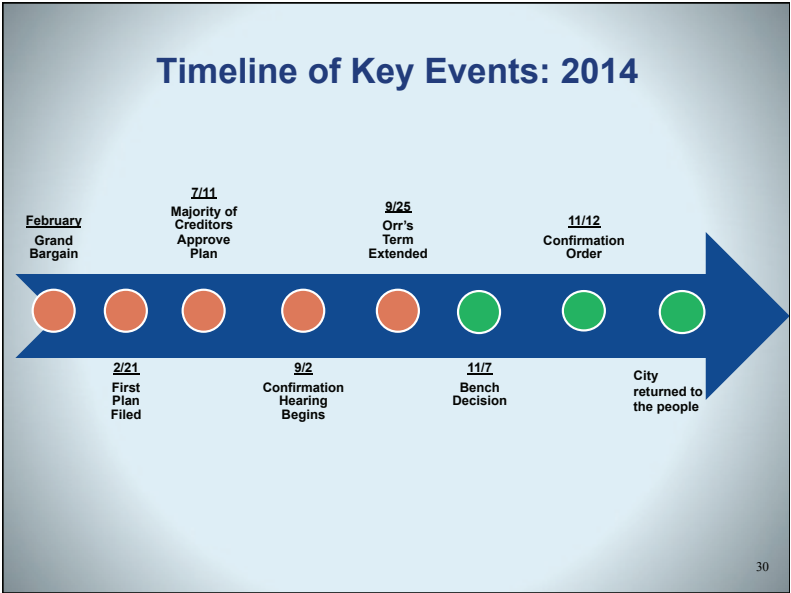
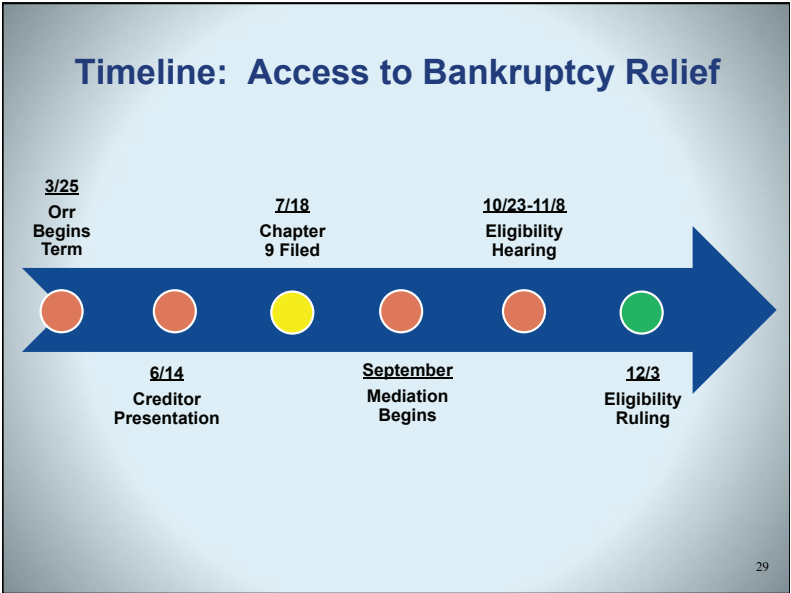
- First step: eligibility
- Court has no authority over City's operations
- No liquidation of City assets
- No creditor access to assets
- Debtor has exclusive right to file plan of adjustment
- No trustee or examiner may be appointed
- Services to residents a priority

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Eligibility: Detroit Can Impair Pensions

- Detroit Eligible for Ch. 9 (504 B.R. 97 (2013))
 - City insolvent (including "service delivery insolvency")
 - City desires to effect plan of adjustment
 - Out-of-court negotiations impracticable
 - City filed in good faith
- Stern v. Marshall (131 S. Ct. 2594 (2011))
 - State law action independent of bankruptcy law may not be decided by bankruptcy court
 - But bankruptcy court may determine matters that arise under Bankruptcy Code, even if involve state law issues
 - Claim that Michigan Constitution precludes eligibility is a bankruptcy question
- Bankruptcy clause of U.S. Constitution permits impairment of contracts even though state cannot impair

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A City Is Saved. . .

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. . . And Given A Fresh Start . . .

- Largest municipal bankruptcy in history
- Grand Bargain
- Over \$7 billion of debt eliminated
- Pension debt restructured
- Healthcare debt eliminated



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... For A Bright Future

- Art Museum saved
 - \$1.4 Billion invested in Detroit's recovery:
- 



Blight - \$450 Million

Public Safety - \$440 Million

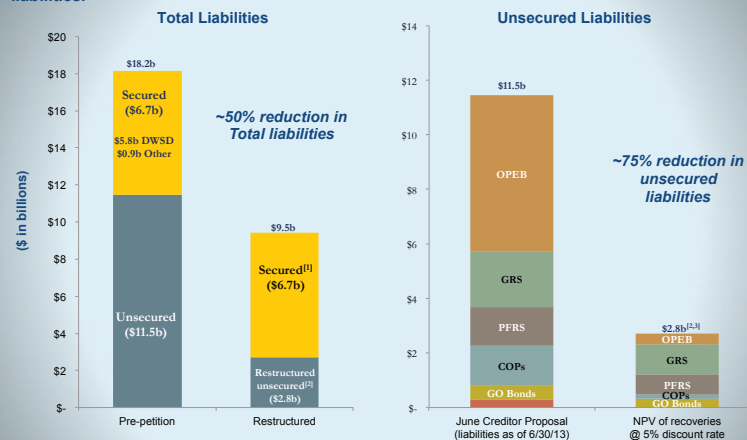


Transportation - \$110 Million

Infrastructure/IT - \$400 Million

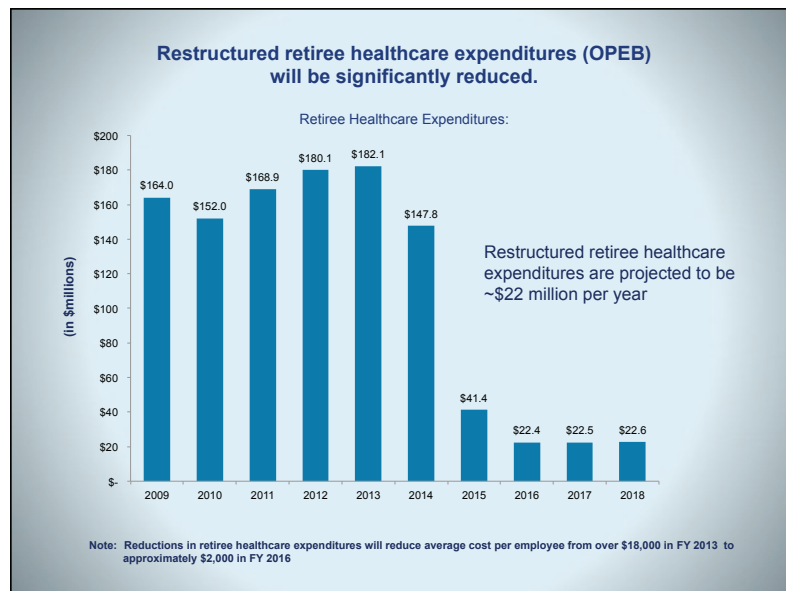
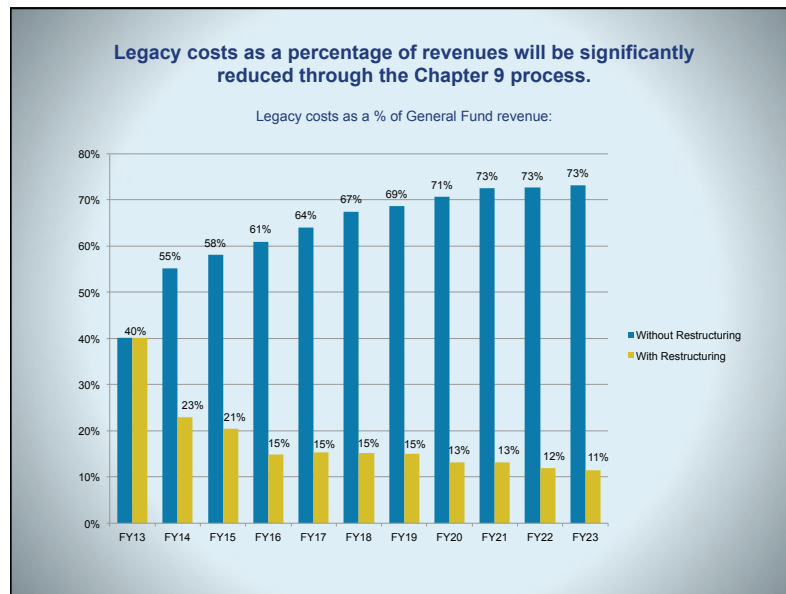


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(1) Prepetition liabilities are based on CAFR and June 14th Creditor Proposal; actual claim amounts may differ. Treatment of DWSD and other secured debt to be determined.

⁽³⁾ Hypothetical treatment of unsecured creditors is subject to on-going discussions and could change materially



“We have used the fitting phrase, the Grand Bargain, to describe the group of agreements that will fix the City’s pension problem. In our nation, we join together in the promise and in the ideal of a much grander bargain. It is the bargain by which we interact with each other and with our government, all for the common good. That grander bargain, enshrined in our Constitution, is democracy. It is now time to restore democracy to the people of the City of Detroit. The Court urges the people of the City of Detroit to participate in that democracy, and hopes that they will soon realize its full, vibrant and everlasting potential.”

— Rhodes Confirmation Opinion



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