

The Detroit Bankruptcy Case

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A US federal court heard closing arguments from both sides (November 8) in the Detroit bankruptcy case. Judge Stephen Rhodes is now set to make a decision as to whether the bankruptcy can proceed.

The two sides reiterated their main arguments in closing the hearings. The city, representing Emergency Manager Kevyn Orr, insisted that the bankruptcy was necessary. With the backing of the entire political establishment at the local, state and federal level, Orr is seeking to use the courts to assist in the attack on pensions and health care, and the sell-off of city assets, including artwork from the Detroit Institute of Arts.

The nominal opposition in the hearings, led by city unions and union-affiliated organizations, argued that the bankruptcy was not necessary, and that Orr and other officials did not negotiate in “good faith” with the unions to impose concessions. The unions accept the entire premise of the bankruptcy, namely that the working class must pay for a crisis they did not create.

Chief attorney for the state, Matthew Schneider, based his closing arguments around an extended metaphor comparing the economic crisis in Detroit to a natural disaster. “Years ago, people started to know that a ‘terrible storm’ was headed to Detroit,” said Schneider. After coming to office, Governor Snyder began reading “weather reports” in the form of revenue data.

“The storm is not getting better, it is getting worse...Throughout this whole process, the state and the city are working together in a partnership to survive this storm.” Schneider said.

The effort to present the city’s bankruptcy filing as inevitable is aimed at obscuring the real social and political background to the present crisis. The long-term decline of Detroit is a product of a definite class policy of deindustrialization that has been pursued for decades, presided over by both Democrats and Republicans. As a result, Detroit has been transformed from a city with the highest per capital income in the country to the poorest large city in the US.

At the same time, references to a natural disaster are aimed at covering up for the fact that the decision to file for bankruptcy was a very calculated move, a political decision that was worked out behind the backs of the population. Responding to criticisms that the city and state began consulting with firms, including Orr’s former employer Jones Day and Miller Buckfire, months and years prior to the Chapter 9 filing, Schneider compared this to approaching “weather experts” and “buying a raincoat.”

“When you have a storm of this magnitude, you want all the help you can get... Ultimately the storm arrives, and the governor says ‘this is the last rest, the people are suffering.’ He authorizes the city to file for Chapter 9 protection.”

The moves toward bankruptcy have been consciously planned by leading figures in both the Democratic and Republican parties as a means of circumventing constitutional protections of worker pensions and health care. In doing so, the ruling class hopes to establish a precedent that can be used in the assault on the working class in other major cities.

In their own arguments, the representatives of the unions reiterated their insistence that the bankruptcy process was not necessary. They said that the city had not engaged in “good faith” negotiations with the unions, which were willing to accept major concessions. The unions are presently involved in discussions with a federal mediator aimed at reaching an agreement over the restructuring of the city.

UAW attorney Thomas Ciantra’s remarks highlighted the anti-working class perspective of the union bureaucracy. “The Detroit financial crisis was well-known for years,” Ciantra said. He added, “The unions have a history of coalitions for concessions.”

During his own closing arguments, attorney for the city Bruce Bennet responded to the complaints of the unions by arguing that negotiations were “impracticable,” while simultaneously claiming that they had been carried out in “good faith.” This contradictory line of reasoning prompted Judge Rhodes to query, “Is it possible that it was impracticable, yet the negotiations were held in ‘good faith’?”

Bennett responded, “In your head, you know it’s nearly impossible, but you hate to say it’s impossible...You can believe in your head, this is never going to work, but you’re going to try anyway.”

Responding to Bennett’s claim that bankruptcy was a last resort, attorney Claude Montgomery, representing a union-sponsored retiree organization, argued the filing emerged from a long-term plan. He said that Orr was chosen by Snyder as the right man to “lead a march” into bankruptcy. Montgomery said the filing was a political decision, and pointed to the fact that Jones Day attorneys pushed for the bankruptcy.

Text from page 40 of the Jones Day “pitch book” corroborated these arguments, Montgomery said. “Everyone knew this. Orr, the governor, the advisors said that if you want to use Chapter 9,” that July was the best time to do it. “They knew they had to get the Chapter 9 in by July. The financial people all understood the cash flow issue...The logical time is to file in July.”

Concerns were raised near the end of the session by Judge Steven Rhodes over apparent lies told by Orr during the lead up to the filing. Rhodes asked city attorney Bruce Bennett if Orr had lied to retirees during a video-taped statement in which he said their pensions were “sacrosanct.”

“At a maximum, there was a three- or four-day period where there was misinformation,” said Bennett, referring to the period that elapsed between Orr’s comment and his June 14 restructuring proposal, which including pension cuts.

Rhodes also challenged Bennett about Orr’s assertion in June that there was only a 50-50 percent chance that the city would file for bankruptcy. This claim has been exposed as

completely false during the hearings, as city officials were discussing how to declare bankruptcy for many months prior to the actual filing.

Rhodes also expressed concern over the way that the most recent iteration of the emergency manager law—Public Act 436, which paved the way for the appointment of Orr—was passed in the state legislature. PA 436 was included in an appropriations bill, which prevents it from being overturned in a referendum, as had happened with a previous emergency manager law.

Earlier this week, Rhodes threw out a separate challenged to the constitutionality of the emergency manager law, effectively arguing that he had the right to decide on its legality.

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