

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

In re:	:	Chapter 9
	:	
CITY OF CHESTER, PENNSYLVANIA,	:	Case No. 22-13032
	:	
Debtor.	:	

**MOTION OF DEBTOR FOR THE ENTRY OF AN ORDER (A) SCHEDULING
AN EXPEDITED HEARING ON CERTAIN INITIAL MOTIONS FILED BY DEBTOR,
(B) LIMITING NOTICE OF HEARING, AND (C) APPROVING
FORM AND MANNER OF NOTICE**

The City of Chester (“Chester” or the “City”), as the debtor in the above-captioned chapter 9 case, hereby moves the Court, pursuant Rules 9006(c)(1) and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 5070-1(g) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Local Bankruptcy Rules”), for the entry of an order, substantially in the form attached hereto as Exhibit A, (a) scheduling an expedited hearing on the City’s Initial Motions (as defined below), (b) limiting notice of the Initial Hearing (as defined below); and (c) approving the form and manner of the notice of the Initial Motions and the Initial Hearing in the form attached hereto as Exhibit B. In support of this Motion, the City respectfully represents as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. Venue for this matter is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1408 and 1409.

II. Background

4. Chester is the oldest city in Pennsylvania, and was incorporated as a borough in 1701 and as a city in 1866. The City is a city of the Third Class under Pennsylvania law¹ and operates under a Home Rule Charter.²

5. During World War I and World War II, the City thrived as an industrial and manufacturing community. However, since the mid-1950s, the City has been experiencing economic difficulties and facing several challenges, including, (i) a decreasing population, (ii) declining revenues, and (iii) high municipal expenditures. In 1995, faced with multi-million dollar deficits and past due obligations, the City was designated as a distressed city under the Municipalities Financial Recovery Act of July 10, 1987, P.L. 246, No. 47 (“Act 47”) and subjected to financial oversight by the Commonwealth of Pennsylvania.

6. On April 13, 2020, shortly after the devastating onset of COVID-19, Pennsylvania Governor Thomas Wolf declared a fiscal emergency in the City under Act 47.

7. On June 22, 2020, the Commonwealth Court of Pennsylvania (the “Commonwealth Court”) determined that a fiscal emergency as defined by Section 602(A) of Act 47 continued to exist in the City and put the City in Receivership under Section 702(c)(2) of Act 47. The same

¹ Under Pennsylvania law, there are four classes of cities, the determination of a city’s class is based on its population. Act of June 25, 1895, P.L. 275, No. 188. Third class cities are those “containing a population under two hundred and fifty thousand and which have not elected to become a city of the second class A.” *Id.*

² All Pennsylvania municipalities, except for cities and counties of the first class, can adopt a home rule charter, which is “a written document defining the power, structure, privileges, rights and duties of the municipal government and limitations thereon.” 53 Pa. Cons. Stat. §§ 2901, 2902. The Pennsylvania Constitution also recognizes that “[m]unicipalities shall have the right and power to frame and adopt home rule charters A municipality which has a home rule charter may exercise any power or perform any function not denied by the Constitution, by its home rule charter or by the General Assembly at any time.” Pa. Const. art. IX, §2.

day, the Commonwealth Court appointed Michael Doweary (the “Receiver”) as receiver for the City. Pursuant to an order entered by the Commonwealth Court on December 28, 2021, the City’s Receivership and Receiver’s appointment were extended for up to two years, until December 31, 2023.

8. In August 2020, the Receiver submitted an initial Recovery Plan (the “Recovery Plan”), which was confirmed by the Commonwealth Court on October 19, 2020. The Recovery Plan represented the City’s first steps towards an exit from financial distress and the stable provision of critical services to the City’s residents. On June 7, 2021, the Commonwealth Court approved the Amended Recovery Plan (the “Amended Recovery Plan”) that the Receiver submitted in April 2021. The Receiver worked diligently to implement the Amended Recovery Plan and improve the City’s financial position by taking steps to reduce its expenditures, including making a significant reduction of its workforce, restricting overtime, implementing a hiring freeze and limiting discretionary purchases.

9. Notwithstanding the Receiver’s and the City’s efforts to reduce spending and increase efficiencies, the magnitude of the City’s financial problems caused the Receiver to request authorization to commence a chapter 9 case on behalf of the City on January 14, 2022, from Dennis M. Davin, then the Secretary (the “Secretary”) of the Pennsylvania Department of Community and Economic Development (the “DCED”). By letter dated February 8, 2022, the Secretary provided the Receiver with written authorization to file a municipal debt adjustment action on behalf of the City under title 11 of the United States Code (the “Bankruptcy Code”) and Act 47 (the “Bankruptcy Authorization”).

10. In accordance with the Bankruptcy Authorization on November 10, 2022 (the “Petition Date”), the City commenced a case under chapter 9 of the Bankruptcy Code. Additional

details regarding the City and the events leading to the commencement of this chapter 9 case are set forth in the *Declaration of Michael Doweary in Support of the City of Chester, Pennsylvania's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* (the "Doweary Declaration") and the *Declaration of Vijay Kapoor in Support of the City of Chester, Pennsylvania's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* (the "Kapoor Declaration"), filed contemporaneously herewith.

III. Relief Requested

11. By this Motion, the City seeks an order of the Court: (a) scheduling an expedited hearing, in person (the "Initial Hearing") to be held on November 15, 2022 at 2:00 p.m. (ET), on certain motions filed by the City (collectively, the "Initial Motions"); (b) limiting notice of the Initial Hearing; and (c) approving the form and manner of the notice of the Initial Motions and the Initial Hearing.

12. The Initial Motions consist of the following motions, each filed on the Petition Date:

- a. Motion of Debtor for Entry of an Order (A) Directing and Approving Form of Notice of Commencement of Case and Manner of Service and Publication of Notice, (B) Establishing a Deadline for Objections to Eligibility, and (C) Granting Related Relief [Docket No. 8] (the "Eligibility Scheduling and Notice Motion");
- b. Motion of Debtor for Entry of an Order Appointing Donlin, Recano & Company, Inc. as Claims and Noticing Agent Pursuant to 28 U.S.C. § 156(c), Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 2002 [Docket No. 9] (the "Claims Agent Motion"); and
- c. Motion for an Order Finding that 11 U.S.C. § 362 Does Not Operate as a Stay of the Receiver's Modification of Recovery Plan Pending Before the Commonwealth Court of Pennsylvania, or Alternatively, for Relief from the Automatic Stay [Docket No. 10] (the "Stay Clarification Motion").

IV. Basis for Relief

13. Bankruptcy Rule 9006(c)(1) provides that “when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of the court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.” [Fed. R. Bankr. P. 9006\(c\)\(1\)](#).

14. In addition, pursuant to Bankruptcy Rule 9007, “[w]hen notice is to be given under the [Bankruptcy Rules], the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.” [Fed. R. Bankr. P. 9007](#).

15. Together, these rules provide the Court with the authority to (a) enter an order scheduling the Initial Hearing on shortened notice and (b) approve the manner of notice of such Initial Hearing.

16. Expedited consideration of each of the Initial Motions is necessary to allow the City to provide required notice to creditors and parties in interest, set this case on a path for prompt resolution of the City’s eligibility to commence this case, provide proper notice of the commencement of this case to creditors and parties in interest, and allow the Receiver to obtain clarifying relief from the Commonwealth Court necessary to insure the City properly functions and operates in bankruptcy.

17. First, through the Eligibility Scheduling and Notice Motion, the City seeks approval of a deadline and procedures for parties in interest to assert objections to the City’s eligibility to be a debtor under chapter 9 of the Bankruptcy Code, as well as the form and procedures for service and publication of the notice of commencement and eligibility objection deadline. Unlike in a chapter 11 case, the petition does not serve as an order for relief in a chapter 9 case, and the City must demonstrate that it is eligible to file a chapter 9 case before an order for relief can be entered.

The City has made its initial showing of eligibility through the filing of the City's *Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code*, the Doweary Declaration, the Kapoor Declaration, and the City's *Memorandum of Law in Support of Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code*, and through the Motion, seeks to establish a deadline of December 16, 2022 for creditors and parties in interest to file objections contesting the City's eligibility. The City also seeks to have the Court conduct a status conference on December 20, 21, or 22, after objections are filed, to establish a discovery schedule with respect to any objections.

18. Further, pursuant to Section 923 of the Bankruptcy Code, the City is required to publish notice at least once a week for three successive weeks in at least one newspaper of general circulation published within this and in a newspaper having a general circulation among bond dealers and bondholders. [11 U.S.C. § 923](#). The City would like to complete publication notice two weeks before the deadline for objections to eligibility but the cost of such publication will exceed \$40,000. As a result, the City believes it is prudent to have the Court to first review and approve the proposed publication notice and other notice of commencement of the case the City intends to provide before proceeding with the same.

19. If expedited consideration of the Eligibility Scheduling and Notice Motion is not granted, the eligibility objection deadline will likely not be until early to mid-January 2023, delaying resolution of the eligibility issue by more than a month beyond what could be achieved if expedited consideration is granted. This will delay the trajectory of the entire case which must move expeditiously because of the material costs to the City of being in bankruptcy and the fact the Receiver's term currently ends in December 2023.

20. Similarly, through the Claims Agent Motion, the Receiver seeks approval of the City's retention of Donlin, Recano & Company, Inc. (the "Noticing Agent") to serve as its claims and noticing agent in this case. An expedited hearing on the Claims Agent Motion will allow the Noticing Agent to establish and maintain the restructuring website for this case that will allow creditors and parties in interest access free of charge to all filed pleadings, permit the Noticing Agent to coordinate the requisite publication of the notice of commencement and effect service of same on the list of creditors, and provide other administrative services to the City, as described in more detail in the Claims Agent Motion. These services are essential to the City's efforts to insure adequate and proper notice of the commencement of the case and initial deadlines in the case are given and that information is easily accessible for the City's employees and retirees.

21. Finally, the Stay Clarification Motion seeks clarification that the automatic stay does not apply, or, in the alternative, limited relief from the automatic stay solely to extent necessary for the Receiver to continue the action in Commonwealth Court of Pennsylvania seeking modifications to the Amended Recovery Plan necessary to allow the Receiver to efficiently administer this chapter 9 case and to ensure that City residents receive vital and necessary city services during the chapter 9 case.

22. The City believes that an expedited hearing on the Initial Motions is in the best interests of the City, its creditors and all parties in interest in this chapter 9 case because the relief requested in the Initial Motions, which is primarily administrative and limited in nature, will, among other things: (a) establish procedures for the prompt notification of hundreds of potential creditors and other parties in interest of the commencement of this chapter 9 case and other procedures to promote the efficient administration of the City's case; and (b) clarify and confirm the Receiver's ability to pursue a modification of the Amended Recovery Plan to eliminate

potential uncertainty for the City's creditors, employees, vendors, residents, and other parties in interest and thereby minimize potential disruptions to the City's operations and restructuring efforts from the outset of this case.

23. For these reasons, the City submits that cause exists to schedule the Initial Hearing on shortened notice, and respectfully requests that the Court enter an order scheduling the Initial Hearing as soon as reasonably practicable (the "Initial Hearing Order").

24. The City also requests that the Court approve the form of notice of the Initial Motions and the Initial Hearing (the "Notice"). Immediately after the entry of the Initial Hearing Order, the City proposes to serve via e-mail (where able),³ the Notice and a copy of each of the Initial Motions on the following parties (or counsel to these parties where known): (a) the City's largest unsecured creditors as identified on the list filed under Bankruptcy Rule 1007(d), and (b) the Office of the United States Trustee (collectively, the "Initial Notice Parties"). Upon completion of such service, the City will file a certificate of service.

25. As set forth above, the Court has authority to regulate the timing and extent of notices provided to parties in interest. Here, the City seeks Court approval that service of the Notice on the Initial Notice Parties as set forth herein is adequate and appropriate under the circumstances.

V. Consultation

26. In accordance with Local Bankruptcy Rule 5070-1, the City has consulted with, and provided copies of the Initial Motions to the United States Trustee for the Eastern District of Pennsylvania prior to filing the Initial Motions with the Court. Given the nature of the bankruptcy

³ Where e-mail is not available, the City will serve the Initial Notice Parties (as defined below) by hand delivery or overnight courier.

filing, the City was unable to consult with any other parties in interest regarding the substance or timing of a hearing on the Initial Motions, which were filed immediately upon commencement of the bankruptcy case.

VI. Reservation of Rights

27. The City files this Motion without prejudice to or waiver of its rights pursuant to Section 904 of the Bankruptcy Code, and nothing herein is intended as or shall be deemed to constitute the City's consent pursuant to Section 904 of the Bankruptcy Code to this Court's interference with (a) any of the political or governmental powers of the City, (b) any of the property or revenues of the City, or (c) the City's use of enjoyment of any income-producing property.

VII. Notice

28. Notice of this Motion has been given to the following (or their counsel if known): (a) the City's largest unsecured creditors as identified on the list filed under Bankruptcy Rule 1007(d), (b) the Office of the United States Trustee, and (c) any party that has requested notice pursuant to [Federal Rule of Bankruptcy Procedure 2002](#). The City submits that no other or further notice need be provided.

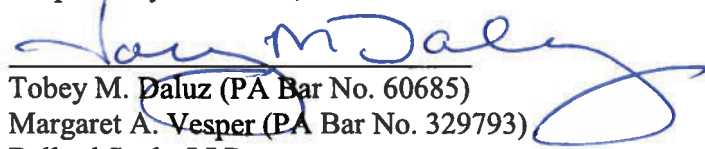
VIII. No Prior Request

29. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, the City respectfully requests that this Court: (a) enter an order substantially in the form attached hereto as [Exhibit A](#), granting the relief sought herein; and (b) grant such other and further relief to the City as the Court may deem proper.

November 10, 2022

Respectfully submitted,



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(**Pro Hac Vice* motions to be submitted)

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