

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

IN RE: . Case No. 1:11-bk-13105 (FJB)
THE CITY OF CENTRAL .
FALLS, RHODE ISLAND, . 380 Westminster Mall
Debtor. . Providence, RI 02903
. September 9, 2013
. 9:44 a.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE HONORABLE FRANK J. BAILEY
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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Rhode Island: By: THEODORE ORSON, ESQ.
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For City of Central
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1 COURTROOM DEPUTY: All rise. Please be seated. This
2 is the City of Central Falls, Rhode Island. Would counsel
3 please identify themselves for the record?

4 MS. CURLEY: Good morning, Your Honor. Christine
5 Curley for the City of Central Falls.

6 MR. ORSON: Theodore Orson for the State of Rhode
7 Island.

8 MS. SLOAN: And Linda Rekas Sloan for the retirees.

9 MR. GURSKY: Marc Gursky for the firefighters.

10 MS. CURLEY: Your Honor, Mr. Goldberg was intending
11 to appear and he was downstairs stuck behind the postal truck.

12 THE COURT: Oh, okay.

13 MS. CURLEY: So I -- he was waiting. I anticipate
14 that he will be --

15 THE COURT: All right. Well, why don't we --

16 MS. CURLEY: -- making his way up here.

17 THE COURT: Well, I think we should let him -- give
18 him the time to get up here.

19 MS. CURLEY: Otherwise he said he was going to say
20 that there was a due process issue, so --

21 (Laughter)

22 THE COURT: All right. Well, let's avoid that. I
23 guess I'll step off for a moment then and you'll let someone
24 out here know when he arrives. Thank you.

25 MS. CURLEY: Sorry, Your Honor.

1 THE COURT: No problem.

2 (Off the record)

3 COURTROOM DEPUTY: Please be seated. Recalling the
4 City of Central Falls, Rhode Island. Mr. Goldberg, if you
5 could come forward. All other counsel have noted their
6 appearances. If you could just do the same, that will be
7 great. Thank you.

8 MR. GOLDBERG: I am Lawrence Goldberg, special
9 counsel to three members of the Central Falls City Council.

10 THE COURT: All right. Good morning.

11 UNIDENTIFIED ATTORNEY: Good morning, Your Honor.

12 THE COURT: The only counsel whose name I didn't get
13 who identified himself I believe was counsel to the one of the
14 unions.

15 MR. GURSKY: For the firefighters, Your Honor, Marc
16 Gursky.

17 THE COURT: Oh, sure. Okay, Mr. Gursky. All right.
18 So we're here for a status conference, the annual status
19 conference in this confirmed Chapter 9 case and I had issued an
20 order in early July listing a series of issues that I thought
21 it would make sense to inquire into today and we can work our
22 way through that list. I think maybe it would be useful to go
23 a little out of order there.

24 We may have already done this, but Item 5 in
25 Paragraph 3 of that order was a -- an issue of clarification of

1 whether the attorneys who have appeared as counsel to the
2 receivers in this case are continuing as counsel to the City
3 after the termination of the receivership. Can -- maybe, Ms.
4 Curley, can you elaborate on that, so I'm -- so that we're
5 clear on the record as to who's in this case now for whom?

6 MS. CURLEY: Yes, Your Honor. The receivership ended
7 in -- on April 16th and the administrator finance officer was
8 appointed who is Mr. Leonard Morganis who's with me today. At
9 that point, I was appointed special bankruptcy counsel for the
10 City of Central Falls. Ted Orson is continuing to represent
11 the State of Rhode Island to the extent that they need to be
12 represented. I will also be representing the Mayor and the
13 City Council.

14 I'd also like to put on the record today who's with
15 me, Mayor James Diossa, the new Mayor of the City of Central
16 Falls, and also the City Solicitor, Richard Kirby.

17 THE COURT: Okay. Welcome. Good morning. All
18 right. So I understand then Mr. Orson's role is now as counsel
19 to the State of Rhode Island, exclusively.

20 MR. ORSON: That is correct, Your Honor.

21 THE COURT: All right.

22 MR. ORSON: Your Honor, just to be more clear. I am
23 also, pursuant to the terms of the plan, counsel to the trustee
24 appointed under the plan, Allan M. Shine. So I'm representing,
25 in different capacities, Allan M. Shine and the State of Rhode

1 Island.

2 THE COURT: All right. Well, why don't we then --
3 thank you for that clarification. Why don't we then work
4 through this, the agenda, if you will, Ms. Curley. That's --
5 we'll start with the status of claims objections.

6 MS. CURLEY: Yes, Your Honor. Since the plan was
7 confirmed in September of last year, as Your Honor is aware, we
8 worked through many of the disputed claims, filed objections,
9 and many of them were either resolved or the objections were
10 sustained. Since that time, there were five claims that
11 remained outstanding.

12 As Your Honor may recall, there was a group of four
13 claimants that we referred to as the Shannahan claims which
14 were Claims 54, 55, 56 and 57 involving Thomas Shannahan,
15 Thomas Wilson, Donald Twohig and the estate of Donald Twohig,
16 Sr.

17 As Your Honor may recall, we had filed substantive
18 objections and then after some discussion and negotiation with
19 claimants' counsel, it was determined that this Court would
20 order a motion for relief from stay in order to allow those
21 claimants to go to the Rhode Island Superior Court and obtain a
22 substitution order such that the Rhode Island Interlocal Risk
23 Management Trust would be substituted for all the City
24 defendants.

25 This Court also entered an order sustaining the

1 City's objections to Claims Number 54, 55, 56 and 57 which
2 would be effective upon the filing of a notice that the order,
3 regarding the substitution of the Rhode Island Interlocal Trust
4 was entered by the Rhode Island Superior Court.

5 I'm pleased to inform the Court that that consent
6 order was entered on Thursday and I have filed with the Court
7 on Friday, a notice that the order of substitution has been
8 granted.

9 It was put -- placed on the record on a formal and
10 special cause calendar, the Rhode Island Superior Court
11 understanding that with this motion for substitution the
12 individual claims against the -- claims against former Mayor
13 Moreau in his individual capacity were also dismissed in full.
14 And the claimants and the plaintiffs in that case acknowledged
15 in open court that they no longer have any extant claims
16 against the City of Central Falls.

17 THE COURT: Great.

18 MS. CURLEY: The fifth claim that is remaining
19 outstanding, is the claim brought by Kevin Guindon which has to
20 do with past due pension amounts. That -- with respect to that
21 claim, we have -- the City has an objection that must be filed
22 by September 30th of 2013. We are still working through the
23 issues whether or not John Hancock, in fact, has these monies
24 that are due. I anticipate that we will have -- we will either
25 have a resolution of that issue or a resolution of the claim in

1 the bankruptcy court pending the more detailed resolution with
2 John Hancock. So I hope to have that accomplished within the
3 next couple weeks, Your Honor.

4 With respect to all other claims, the Class 16 -- 17
5 claims which are the convenience claims have been paid in full.
6 The first payment to the Class 16 creditors has been made which
7 was the residue of what was left after the Class 17 payments
8 were made. The next payment for the Class 16 will be due some
9 time in this new fiscal year '14.

10 I will also -- pleased to report to the Court that
11 because we were able to negotiate, resolve or dismiss a large
12 number of claims, it -- each of the Class 16 creditors will get
13 the maximum 45 percent of their claim, which we hope to do
14 under the plan. And also that those -- because the numbers
15 were reduced, we will be able to probably pay those claims
16 within the next three years, rather than the full five years of
17 the plan.

18 THE COURT: All right. That's great news. As far as
19 the Shannahan claims, I'll ask this, are -- is any further
20 action required by us, by the Court at this time?

21 MS. CURLEY: I don't believe so, Your Honor, because
22 your order said that it would become effective upon filing of
23 the notice, and the notice was, in fact, filed on Friday.

24 THE COURT: Okay. All right. And as far as the
25 Hancock related, we'll hear from you in short order as to

1 whether any further action is required.

2 MS. CURLEY: Yes, I anticipate that we will either
3 work out an amount for the claim to have it allowed. What my
4 thoughts are right now, Your Honor, is because the John Hancock
5 issue is very muddy because it has to do with waiting for an
6 IRS determination, I would like to try to work out something
7 where the claim is allowed and then there's an agreement that,
8 if the monies eventually come from John Hancock, the monies
9 would be returned to the City.

10 THE COURT: Okay. And you think there will be some
11 developments in this by virtue of your discussions?

12 MS. CURLEY: I have spoken to the attorney who is in
13 charge of the IRS determination letter, and as well as the
14 attorney for Kevin Guindon. And I expect that we should be
15 able to work something out within -- before the September 30th
16 deadline, Your Honor.

17 THE COURT: Okay. All right. Well, we'll look for a
18 report or something from you after September 30th?

19 MS. CURLEY: Yes, Your Honor.

20 THE COURT: All right. Why don't see say we'll pick
21 a date in October for that. Friday, October 4?

22 MS. CURLEY: Yes, Your Honor. You'd just like an
23 updated status report on the objections?

24 THE COURT: That's right. All right, anything else
25 on claims? That sounds like we've dealt with everything.

1 MS. CURLEY: I believe so, Your Honor.

2 THE COURT: Okay. All right. The next item on my
3 agenda is the City's adherence to the budgetary parameters --
4 no, I'm sorry. Number 2 is the quarterly attestations?

5 MS. CURLEY: Yes, Your Honor. The first attestation
6 forms that were filed in June were kind of a hybrid
7 attestation. Two out of the five council members signed onto
8 it, as well as the Mayor and the AFO. Three of the council
9 members did not want to sign onto the attestations forms as
10 drafted because a portion of that quarter was when the receiver
11 was still in place. So they filed a letter with the Court that
12 I believe was accepted by the Court in lieu of the attestation
13 forms. No one objected to that procedure and everyone is in
14 agreement that the budget is being complied with and the terms
15 of the plan are being complied with at this point.

16 There's another set of forms due today.

17 UNIDENTIFIED ATTORNEY: Tonight at -- end of day
18 today.

19 MS. CURLEY: Today, Your Honor, which we anticipate
20 will --

21 THE COURT: Are those the quarterly report or is that
22 an annual?

23 MS. CURLEY: That's the annual after the end of
24 fiscal year '13.

25 And I would like to remark, Your Honor, that fiscal

1 year '13 did come as an unaudited. It does have a surplus of
2 around \$380,000 which was very much unanticipated. As I spoke
3 with the AFO, he has told me that much of that, about 70
4 percent of that, is savings for many of the retirees who
5 elected not to take the City health plan. And also, which is a
6 rousing piece of good news, 30 percent of that is unanticipated
7 tax revenue from back taxes as far back as 2009/2010. So
8 obviously the citizens -- we'd like to presume the citizens of
9 Central Falls are getting excited with our new young mayor and
10 the fact that this bankruptcy plan is apparently working.

11 THE COURT: Great. That's all good news. I do have
12 to raise the question of the three City Councillors that have
13 not filed the form of attestation that is -- that was required
14 by the plan. Is there an intention to do a plan modification?

15 MS. CURLEY: I --

16 THE COURT: Otherwise, it appears to be that they are
17 not in compliance.

18 MS. CURLEY: I would hope, and perhaps Mr. Goldberg
19 could speak to this, that for all of the subsequent ones, they
20 will be filing the requisite forms. We did not feel that it
21 was that far removed from the plan because, when the first
22 forms were due to be filed, the receiver had been in place for
23 that quarter. So the City Council had felt that -- and counsel
24 for the City Council expressed in a letter to us that, since
25 the City had not been handed back to them as yet, they would

1 rely on the attestation and the affirmation by the AFO, but
2 they were not going to say for themselves personally that they
3 had reviewed all of the financial information. So they did
4 file that, based on what the AFO said they agreed that
5 everything was in compliance.

6 THE COURT: All right. Well, maybe we need to hear
7 from Mr. Goldberg on this. Good morning.

8 MR. GOLDBERG: Good morning, Your Honor. I don't
9 know what it is the Court would like to hear.

10 THE COURT: I'd -- well, I guess the first question
11 is, you have a -- there is an obligation on the part of your
12 clients to provide a -- an attestation to the best of their
13 knowledge and information, and they've declined to do that with
14 respect to this quarter. Are they planning on doing it with
15 respect to the annual which is due later today, apparently?

16 MR. GOLDBERG: I haven't received -- my office hasn't
17 received any plan, any requests, any proposed attestation, so I
18 haven't seen such a thing.

19 THE COURT: All right. Well, let -- hold on. So the
20 plan -- I'll address Ms. Curley on this. The plan requires
21 that the Mayor and City Council -- and I'm referring to 2.1 of
22 the confirmation order -- requires that the Mayor and City
23 Council receive notice of the obligation to file these
24 affirmations. Have they been given, have these three
25 individuals been given those --

1 MS. CURLEY: Yes, Your Honor.

2 THE COURT: -- affirmation forms?

3 MS. CURLEY: Do you know what date?

4 UNIDENTIFIED ATTORNEY: The day it was due, sir.

5 MS. CURLEY: It was some time in mid-August.

6 UNIDENTIFIED ATTORNEY: August 23rd, I believe --

7 MS. CURLEY: So --

8 UNIDENTIFIED ATTORNEY: -- the date they were due.

9 MS. CURLEY: So they were given --

10 UNIDENTIFIED ATTORNEY: City Council members and the
11 -- all the elected officials were registered copies --

12 THE COURT: Okay.

13 UNIDENTIFIED ATTORNEY: -- the City Clerk and the
14 Council members and the Mayor.

15 THE COURT: All right.

16 MS. CURLEY: And the Mayor and the other new council
17 members have signed.

18 UNIDENTIFIED ATTORNEY: The Mayor and the other two
19 council members have signed.

20 MS. CURLEY: Right. And as far as the annual
21 attestations that are due today, have they been provided to
22 these -- to all of -- the Mayor and all of the City Councilmen?

23 UNIDENTIFIED ATTORNEY: Yes, sir.

24 THE COURT: Council persons?

25 UNIDENTIFIED ATTORNEY: Yes, sir.

1 THE COURT: They have been?

2 UNIDENTIFIED ATTORNEY: Yes, sir.

3 THE COURT: Okay. So that clears that up. They've
4 got them.

5 MR. GOLDBERG: They may have, Judge. They haven't
6 been sent to me, and I haven't seen them.

7 THE COURT: All right. So you can't answer my
8 question about whether or not they intend to comply with the
9 confirmation order?

10 MR. GOLDBERG: No, I can't.

11 THE COURT: All right. Well, you can, I hope, can
12 answer my question as to why they declined to comply with the
13 confirmation order with respect to this quarterly attestation.

14 MR. GOLDBERG: Well, I would respond to that question
15 without binding my clients or making any admission, purely for
16 informational purposes that I would respectfully suggest to the
17 Court, first that there being no motion filed against my
18 clients, I don't -- I am not gainsaying by what I say what
19 their defenses would be to such a motion. In that context, I
20 would respectfully offer to the Court that, first, my clients,
21 not in an official or in a personal capacity, were consulted or
22 agreed to the plan, that is first.

23 Secondly, with respect to reporting, or representing
24 or accounting to anyone as to what the financial activities of
25 a particular entity were in which they were of no control, and

1 in fact pointedly disregarded as to what -- how they felt
2 things ought to be done or what decisions ought to be made,
3 they would be incapable, as well as reluctant, to making any
4 such certification beyond what was offered when they offered
5 their acceptance of what the AFO represented.

6 Just may be a minor point, but what Attorney Curley
7 represented about a portion of their -- the time period not
8 being within their authority, the entire time period was not
9 within their authority. It was exclusively the province of the
10 State of Rhode Island, and I would suggest that the State of
11 Rhode Island, however they chose to run the City, is entirely
12 responsible for that time period.

13 Certainly, when I see what is specifically being
14 requested of my clients or my clients consult me regarding the
15 -- whatever has been sent to them because it hasn't been sent
16 to me, I'll certainly take it up with my clients.

17 THE COURT: By the way, are your clients here in the
18 courtroom today?

19 MR. GOLDBERG: No, they are not, Judge.

20 THE COURT: Were they aware of my order, that they be
21 present in the courtroom today? This would have been something
22 served on your as their counsel. It was issued on July 2nd and
23 it orders that the City's Mayor and the City Councillors appear
24 in the -- at this hearing.

25 MR. GOLDBERG: You know, Judge, I will concede, I

1 will admit that I did receive that, and I did not give due
2 regard to the fact that their physical presence was required in
3 the courtroom today.

4 THE COURT: Well, given that they don't appear to be
5 in compliance with the -- my confirmation order in this case,
6 their presence would have been, and may be, useful, especially
7 where you don't know answers to fundamental questions that I'm
8 asking you.

9 MR. GOLDBERG: I would certainly, if the Court wants
10 me to because that is my error, they got -- they did receive
11 copies of that document, but I will admit that I did not stress
12 to them that it was -- that their appearance was necessary
13 today given that it was a status. I can attempt to get them
14 down here in very short order. One of them, I'm -- one or at
15 least two of them, I'm sure I can have here in ten or 15
16 minutes. The other one works in Massachusetts and she hasn't
17 been in communication with me in some time.

18 THE COURT: All right. Well, continue then. Tell me
19 anything you want to tell me as to why you suggest that they
20 are not required to have complied with the confirmation order
21 of Section 16(b)(1) and 16(d).

22 MR. GOLDBERG: Is the Court asking me this question
23 in the nature of what defense -- defenses I might --

24 THE COURT: No, no, I asked you in plain English. I
25 don't -- I'm not asking about defenses. This is not a lawyerly

1 question, it's a factual question. Why are they not complying
2 with this order?

3 MR. GOLDBERG: Well, I'll do my best to respond to
4 that question, Your Honor.

5 THE COURT: Well, you're the best I have. They're
6 not here.

7 MR. GOLDBERG: They weren't a party to the order.
8 They didn't agree to it. They weren't in control of the City.
9 The evidence would indicate that they are still not in control
10 of the budget of the City or the spending.

11 One of the things, if we're going to address a report
12 that brings us up to currently, one of them did not vote for
13 the budget. And there is no effective or meaningful act that
14 they can undertake to -- by signing such a report or
15 certificate or affirmation that in any way is going to benefit
16 them, either in their official capacities, whatever those are,
17 or in their personal capacities, other than to expose them to
18 additional liability should the things that they certify to
19 ultimate -- which they're not in control of, ultimately prove
20 to be --

21 THE COURT: Have you read this confirmation order?

22 MR. GOLDBERG: Yes, I have, Judge.

23 THE COURT: All right. It says that the Mayor and
24 each City Council member shall state under oath, to the best of
25 his or her knowledge and belief, whether or not the actual

1 performance of the City, during the prior quarter and
2 year-to-date, remains in material conformity, a defined term in
3 the confirmation order, with the terms of the six-year
4 financial projection. That is a duty of inquiry. They have to
5 ask. They are elected officials, they're supposed to ask. Did
6 they not do that?

7 MR. GOLDBERG: (No audible response).

8 THE COURT: Ask whether this City is -- has operated
9 within the budget, that's all they're -- that's all this
10 requires them to do. If you're -- are you telling me that
11 that's beyond their responsibilities as elected officials of
12 the City of Central Falls?

13 MR. GOLDBERG: I -- certainly, Your Honor, I am not
14 suggesting to the Court that that is beyond their ability to
15 do, but I think, they have a number of defenses --

16 THE COURT: I don't know what that means, defenses.

17 MR. GOLDBERG: That they --

18 THE COURT: They're not -- this is not -- they are
19 the subject of an order of the Court. Let's be clear,
20 confirmation order of a bankruptcy court is a federal order,
21 just like any other. This -- in this instance, that order was
22 carefully crafted, as it usually is in bankruptcy in this
23 Chapter 9 case. That confirmation order wasn't something that
24 I sat down and wrote, it was something that I passed on and
25 entered after it was carefully negotiated by the constituent

1 parties in this case. That's what a Chapter 9 is all about.

2 The Section 16(b)(1) and 16(d) of this confirmation
3 order imposes this duty of inquiry on the public officials,
4 namely the identified parties as the City, as the Mayor and
5 City Council. And it was carefully negotiated by all parties
6 in interest, including the retirees whose counsel stood there
7 at that podium and said to me at the confirmation hearing that
8 it was important to the retirees who were receiving a
9 substantial reduction in their retirement benefits that they
10 know that they not be disappointed in the future by decisions
11 made by the public officials of the City of Central Falls.
12 That's who wanted this provision in the confirmation order and
13 plan.

14 And so I should add that you and Mr. Benson appeared
15 at the confirmation hearing and objected to confirmation.
16 Although you didn't follow my due process order, my procedural
17 order requiring a written objection in advance, I allowed you
18 to state your objections, to cross examine witnesses and there
19 was no cause shown as a result of that objection that would
20 result in me not confirming the plan and execute and signing
21 the confirmation order. So they -- Mr. Benson, at least,
22 certainly had an opportunity to come in and object, and think
23 he raised these issues and I overruled them. There was no
24 appeal taken. That became a final order.

25 Now, they're here saying, at least Mr. Benson and his

1 -- the other two City Councillors are here saying we're not
2 signing the attestation that was carefully negotiated by
3 constituent parties, including those that perhaps lost the most
4 as a result of this Chapter 9 case, and we are not going to
5 sign attestations that we asked the question. And you come
6 here today and can't tell me whether they're going to continue
7 in this behavior.

8 MR. GOLDBERG: I -- well, I don't want to interrupt
9 the Court.

10 THE COURT: That's a very unsatisfactory spot for me
11 to be in. What do I do next year when other constituents, when
12 other -- the Mayor's here today. He's showing his support for
13 where this City is. He obeyed my order to come here today,
14 which I appreciate. What if he changes his mind next year and
15 decides well, I'm not going to sign that affirmation? What am
16 I to do under those circumstances, let it slide?

17 Anything else.

18 MR. GOLDBERG: I don't know if Your Honor wants me to
19 reply to what the Court said.

20 THE COURT: I do. I'm very anxious. I'm holding my
21 breath to hear what you are going to say as to why your clients
22 have declined to follow the confirmation order.

23 MR. GOLDBERG: As I said, Your Honor, there's no
24 motion to adjudge them in contempt, and I'm not here today --

25 THE COURT: I can rectify that in a second with an

1 order to show cause.

2 MR. GOLDBERG: I understand you can, Your Honor, and
3 should you do so, I will do my very best in representing my
4 clients to respond respectfully and appropriately, but with due
5 regard to what I believe to be their rights.

6 Let me add that the Court referred in this dialogue
7 with me to the constituent parties. My clients were not, in my
8 opinion, constituent parties. They were parties not only that
9 were disregarded and dismissed, but when they attempted to
10 participate in resisting the order that is now being sought to
11 be enforced, they were sent a letter by Mr. Orson and said, if
12 you resist this and you don't do so successfully, you -- we
13 will seek additional counsel fees from you for what you've
14 done.

15 And I expressed to the Court at the time that we were
16 undergoing this and the Court -- I won't say chided --
17 admonished me that I had failed to file an objection to give
18 notice of what I was going to say in a resistance to the plan
19 that the -- my three remaining City Council members were in a
20 very difficult position because they were already at a spot
21 where they were facing roughly a two or \$300,000 judgment
22 against them and the refusal, to this day I might add, for the
23 City to pay their counsel demonstrating that they aren't in
24 control of the finances of the City because they passed an
25 ordinance that their counsel's supposed to be paid. And the

1 person who's writing the checks, and handling the checkbooks,
2 and disbursing the money, and collecting the taxes, no offense
3 to Mr. Morganis, but it is he. It is not my members of the
4 City Council.

5 Furthermore, yes, this is a federal order, Judge.
6 And there has been substantial, I would say, back and forth
7 with the Court as to whether or not the goings on in Central
8 Falls are matters of state law or federal law. And moreover,
9 they -- what now, and I say this rhetorically, is the status of
10 the Council now that the receiver has ultimately -- has
11 temporarily, I should say, departed and left in his stead the
12 administrative and finance officer who really controls the
13 finances.

14 So the bootstrapping, if it is going to be confined
15 to the federal court, and I'm -- Your Honor and I have had
16 discussions similar to this before, both here and up in Boston,
17 where I observed it is not my desire to be uncivil. I am
18 trying to be respective to the -- respectful of the position of
19 the Court with respect to its orders, but there's also a need
20 for me to advise, as by whatever my likes are, to advise my
21 clients as to what their rights, responsibilities and exposure
22 is.

23 Now, if we're going to talk about making an inquiry
24 as to what the receiver did for a time period for which the
25 receiver was in control which we had to file a motion in state

1 court to get the receiver to leave, City Council had to do
2 that, and they finally, the morning of the final hearing,
3 announced they were leaving, those three City Council people
4 weren't in control of anything. And I think it is unjust and
5 inequitable, given the threats that were made to them about the
6 plan, to then say if you don't follow the plan that was imposed
7 upon you, we're going to sanction you. And for what? A
8 meaningless act because they are not in charge of the money.
9 They don't have check writing authority, they barely have
10 taxing authority, and for the present looking forward, even
11 though the receiver's not there, the AFO, which is their
12 receiver in body, is there, they don't have authority regarding
13 that.

14 So I think it is inequitable to require them to
15 report any more than they have report which is their best
16 effort. They don't know. They rely on Mr. Morganis for the
17 first -- for the session where the receiver was in charge, and
18 for this present reporting period, I expect, without binding
19 them, that they are going to respond likewise.

20 I further respectfully suggest to the Court that the
21 failure to send me a copy of what they expect of my clients
22 this afternoon was intentional. They wish to be dismissive of
23 the fact that the three council members, at least until January
24 of '14, do have a role to play in government. And they also
25 have a certain amount of sovereign immunity which I have not

1 researched at this point and, again, I say, because I've had
2 this discussion with Your Honor before formally on a motion as
3 to what portions of this are a matter of state law and what
4 portions are a matter of federal providence?

5 THE COURT: All right. I can clear that up for you.

6 MR. GOLDBERG: Very well, Your Honor.

7 MS. CURLEY: Your Honor?

8 THE COURT: Yes.

9 MS. CURLEY: If I could just address a very -- a
10 procedural issue about how the budgets are now done in the City
11 of Central Falls. There's been some comments by my brother
12 Goldberg here that the AFO is running, is essentially running
13 the City. And I want Your Honor to be aware that the process
14 under the charter is still being followed right now, that the
15 finance director, the Mayor and the department heads compile
16 the budget. The budget is then put in front of the City
17 Council to be voted upon. The AFO has financial oversight, but
18 the AFO is not creating the finances, not creating the budget
19 and the AFO is most definitely not writing the checks. That is
20 still within the province of the finance director in the
21 finance department.

22 THE COURT: All right. Thank you.

23 MR. GOLDBERG: I want to respond.

24 MR. ORSON: Your Honor, may I make one more very
25 discrete point --

1 THE COURT: Yes, you may.

2 MR. ORSON: -- regarding things that were said which
3 has to do with what is being asked in the attestation and the
4 process leading towards the attestation. My brothers talked
5 about the fact that they're not in control, that is apples and
6 oranges to what the attestations are about. The attestations
7 are a reporting requirement and nothing more, and it's a
8 reporting requirement in order to protect elected officials.

9 Prior to them doing the attestation, they are
10 provided a report from the finance manager to give to them
11 which they are allowed to rely upon whether right or wrong.
12 And they -- all they are required to do under the attestation
13 is say, based on this information provided to me, whether it's
14 right or wrong, the -- and unless we know other information,
15 based on our best belief, this is or is not in compliance, no
16 more, no less.

17 THE COURT: See, that's the point that Mr. Goldberg
18 -- that's -- that is a correct statement of my reading of the
19 attestation requirement with the very important last point that
20 Mr. Orson makes, and that is, unless I have other information.

21 All right. Your clients have declined to tell me
22 they have no other information that would suggest that the City
23 is not in compliance with the budget. They've declined to do
24 that with this statement that they sent rewritten by you, it
25 comes in a letter from you.

1 MR. GOLDBERG: It does.

2 THE COURT: And it merely says that the AFO has told
3 me X; period. It doesn't say I've done any -- it doesn't say
4 that I have any other information, and that's what the form is
5 required -- it places a burden on them to inform themselves and
6 to reveal to me if they have such other information. Right
7 now, I don't have that affirmation from them and I feel it's a
8 -- it's not in compliance with the confirmation order.

9 Now, let's talk about state and federal just very
10 briefly, okay? State and federal. Chapter 9 does a very nice
11 job of limiting the power and jurisdiction of the bankruptcy
12 court certainly during the course of the Chapter 9 case so that
13 there is no undue involvement, at all, by the Court in the
14 day-to-day operations of a municipality. The tenth amendment
15 causes that divide, and Congress respected that divide by
16 enacting Chapter 9 and Provisions 903 and 904 of the bankruptcy
17 code that address that very divide.

18 However, 904 clearly says that unless the debtor
19 consents or the plan so provides... so 904 recognizes that
20 after a plan is proposed and it's voted on by the voting
21 creditors entitled to vote on that plan, that it then changes
22 the relationship between the federal court and the state
23 actors. They are bound to do what they promised to do, whoever
24 those actors are, in the -- in their plan. And they have
25 waived sovereign immunity by doing that, okay.

1 945 of the bankruptcy code says that the Court may
2 and, in this instance, has, because the parties have asked me
3 to do it, retain jurisdiction over the case for such period of
4 time as is necessary for the successful implementation of the
5 plan. That's why I'm here today because the bankruptcy code
6 tells me that I should be here because the parties -- the
7 confirmed debtor has asked me to be here and to ensure the
8 successful implementation of this plan. To me, that includes
9 the affirmations that we've been talking about this morning.

10 And finally, section -- another section of the code
11 that I think we cannot ignore, Section 1142(b) of the
12 bankruptcy code which Congress specifically incorporated into
13 Chapter 9, states that the Court may direct the debtor to
14 perform any act that is necessary for the consummation of the
15 plan. Your clients are actors on behalf of the confirmed
16 debtor. And for that reason, I know you feel that the receiver
17 was not authorized perhaps, but your state courts have said
18 otherwise.

19 Consequently, this plan, which resulted in my
20 confirmation order, is a legally and dually adopted plan of
21 reorganization bringing it within the ambit of these Chapter 9
22 provisions that give me the duty to ensure their
23 implementation.

24 MR. GOLDBERG: Judge, forgive me that this is
25 somewhat disjointed, but I am certain my clients never waived

1 sovereign immunity, number one. The State of Rhode Island may
2 have tried to do that for them, but with respect to what the
3 State of Rhode Island and the receiver and so on did, they
4 should bear that burden.

5 My clients are, I would suggest, if the Court is
6 inclined to apply its coercive contempt power against these
7 three individuals who concededly had no say in this whatsoever
8 and were intimidated, I've got the letter, into not
9 participating under threat of further sanctions of counsel fees
10 which are still being resisted over in the superior court, now
11 the supreme court, I would suggest to you that that is an
12 improper perversion of what the bankruptcy court is here to
13 accomplish under Chapter 9. It is not here, I would
14 respectfully suggest, to exert punitive, coercive Rule 45, I
15 think it's the same in the federal court, Rule 45 contempt,
16 criminal contempt or civil contempt authority against my
17 clients who were not participants in this, at all.

18 It is as though they were bystanders at something and
19 they were told get out, mind your own business, we don't want
20 to hear from you. But now, you're responsible for what was
21 undertaken without having a full, fair and free say in what was
22 to be undertaken about them. And I raised this on a number of
23 occasions when there were things that I objected to as this
24 plan was being developed and things were going forward.

25 THE COURT: Indeed you did. Indeed you did and

1 that's why I find it astounding for you to stand here and say
2 they had no say. How does that make sense to you, to stand
3 there and say they had no say, but I was here and objected?
4 It's one or the other, isn't it? And they -- and you're right,
5 they objected or at least Mr. Benson did. I don't recall
6 whether you identified yourself as special counsel to other
7 than Mr. Benson. I recall him being here and I gave you all
8 your rights. I gave you due process and I overruled those
9 objections. And now, they're just doing what they said they
10 didn't -- when -- they are now undertaking, on their own
11 behalf, to not follow the confirmation order to which they
12 objected and were overruled. The -- it's either the rule of
13 law or not.

14 MR. GOLDBERG: Respectfully, Judge, I don't think
15 that the clients or -- my clients or I are, in any manner,
16 disrespectful of the rule of law, but they certainly are and I
17 certainly would advise any client to avoid, if possible, if the
18 court orders them to do something, they're going to have to do
19 it and apparently, were this to be carried out to what I think
20 the Court sees as its conclusion, whether they like it or not,
21 they're to sign this document. They're not insulated from any
22 liability because of it, they're just told to sign the
23 document. If there's a liability, that's too bad for them.
24 Signing documents, executing things, participating, having a
25 say in their own personal capacities, in my opinion in this

1 country, requires that it be imposed upon parties equitably.

2 Even if there's a specific performance case, a party
3 can simply say I refuse to sign the deed in which case there's
4 a procedure where the clerk signs the deed and it's recorded
5 and the act is done. It's not done by the party. And many --
6 in many cases, I can think of a variety of situations where,
7 for example, this is similar to a warrantee deed.

8 Now, the Court's characterizing this as they're just
9 saying that their signing of this is just they asked, they got
10 an answer and this is the answer they got. I don't have the
11 document in front of me, but it talks about -- it limits the
12 manner in which they can object by saying they must, if I
13 recall correctly, excuse me, if I recall correctly, they must
14 cite a line in the budget which they take issue with. And even
15 that doesn't say that they're indemnified as a result of what
16 they've done. They gain nothing by signing this.

17 THE COURT: All it says is that they state, to the
18 best of their knowledge and belief, whether or not actual
19 performance by the City, during the prior quarter and
20 year-to-date, remains in material conformity. That's all it
21 says, to the best of their knowledge.

22 MR. GOLDBERG: I believe if they have -- I believe
23 the document goes on, Judge, and says that they have to refer
24 to --

25 THE COURT: If they know, if they're aware that

1 something is amiss, they are required to tell me and that would
2 be a useful thing. That's why they're in a position of elected
3 authority. That's why they undertook that position.

4 MR. GOLDBERG: But they didn't, Judge. They --

5 THE COURT: All right. I don't think it -- I think
6 we're at an impasse and it's apparently they have elected not
7 to comply with the plan. I'll have to decide what I'm going to
8 do about it. All right. Is there anything else you want to
9 say?

10 MR. GOLDBERG: I do want to quarrel with the
11 representations by the State of Rhode Island and by the present
12 bankruptcy counsel, Attorney Curley, that Mr. Morganis isn't,
13 in fact, running the City because I have a letter from him that
14 says I'm not paying a particular bill on behalf of the City on
15 City stationery. And that running the City, that's not I don't
16 think so --

17 THE COURT: What bill is that?

18 MR. GOLDBERG: It's a bill that I sent.

19 THE COURT: Okay. So your fees.

20 MR. GOLDBERG: My -- no, a fee of mine --

21 THE COURT: A fee, okay.

22 MR. GOLDBERG: -- not all of my fees by any means.

23 THE COURT: All right. That's the bill that we're
24 talking about.

25 MR. GOLDBERG: Yes.

1 THE COURT: All right. Anything else?

2 MR. GOLDBERG: No, Your Honor.

3 THE COURT: Thank you. All right. Anyone else wish
4 to be heard on this issue of the attestation clause,
5 attestation requirements?

6 (No audible response)

7 THE COURT: All right. I think that, on the agenda,
8 we've also dealt with the status of plan payments. Ms. Curley,
9 I think you've told me everything you know about that. And
10 Item 4, any other matters that may be necessary, does anyone
11 wish to -- this is a status conference, anyone wish to be
12 heard? Yes, Mr. Orson?

13 MR. ORSON: Your Honor, I just want to bring the
14 Court up to speed.

15 THE COURT: Come on up and make sure we're recording
16 you properly.

17 MR. ORSON: Your Honor, Theodore Orson on behalf of
18 the State of Rhode Island and Allan M. Shine as trustee
19 appointed under the plan. This is as a status matter, I wanted
20 the Court to know the status of appeals relative to elected
21 officials, even though that is not directly within the Court's
22 jurisdiction, it is part of the entire process. We had
23 obtained a judgment as we made the Court aware, I believe it
24 was in February of last year -- of this year, excuse me,
25 against the elected officials in their personal capacities.

1 That was appealed and, due to administrative
2 problems, as of the time I went to the Court maybe two weeks
3 ago, it still had not been docketed. There were minor things
4 that had to be corrected. They -- it was also summer session
5 and they expected it to be docketed shortly. Once that is
6 docketed, then that appeal will proceed and I will represent
7 the appellee in that appeal.

8 We had also obtained a judgment, excuse me, well, we
9 obtained an order against the elected officials requiring
10 payment of 50 percent of the mediation costs. Although a
11 motion for stay pending appeal was filed, it's my understanding
12 and I checked my records, I was going to go back to the Court
13 and make sure it wasn't in the docket.

14 And I did speak to opposing counsel who is not Mr.
15 Goldberg, it's Mr. Mancini and he said he does not believe they
16 appealed that. So that should be a final judgment at this
17 point allowing, at the appropriate time, for Mr. Shine to
18 collect.

19 THE COURT: All right. Thank you. Anything further
20 from anyone?

21 MS. CURLEY: Your Honor, I just want to clarify on
22 the record, I spoke specifically about Class 16 and Class 17
23 creditors, all of the other creditors' classes are also being
24 paid in accordance with the plan.

25 THE COURT: Okay. Thank you. All right. Very well.

1 I think that we are at an end. Thanks very much.

2 MS. CURLEY: Thank Your Honor.

3 * * * * *

4 C E R T I F I C A T I O N

5 I, AMY L. RENTNER, court approved transcriber,
6 certify that the foregoing is a correct transcript from the
7 official electronic sound recording of the proceedings in the
8 above-entitled matter, and to the best of my ability.

9
10 /s/ Amy L. Rentner

11 AMY L. RENTNER

12 J&J COURT TRANSCRIBERS, INC. DATE: September 27, 2013

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