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Attorneys for Defendant The Harrisburg Authority

TD BANK, NATIONAL ASSOCIATION, : IN THE COURT OF COMMON PLEAS
 MANUFACTURERS AND TRADERS TRUST : DAUPHIN COUNTY, PENNSYLVANIA
 COMPANY, and ASSURED GUARANTY :
 MUNICIPAL CORP., :
 Plaintiffs :
 v. : NO. 2010 CV 11737 CV

THE HARRISBURG AUTHORITY, THE CITY OF :
 HARRISBURG, PENNSYLVANIA, and PAUL P. : CIVIL ACTION
 WAMBACH, TREASURER OF THE CITY OF :
 HARRISBURG., : JURY TRIAL DEMANDED
 Defendants :

v. :
 THE BANK OF NEW YORK MELLON TRUST :
 COMPANY, NATIONAL ASSOCIATION, :
 Intervenor Plaintiff :

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**DEFENDANT, THE HARRISBURG AUTHORITY'S
 MOTION FOR PARTIAL SUMMARY JUDGMENT
 REGARDING APPOINTMENT OF A RECEIVER**

Defendant, The Harrisburg Authority (the "Authority"), by and through its counsel, Goldberg Katzman, P.C., files this Motion for Partial Summary Judgment Seeking Dismissal of Plaintiffs' Demand for the Appointment of a Receiver.

1. On or about September 13, 2010, Plaintiffs filed a Complaint, which, in part, sought the appointment of a receiver to manage the Harrisburg Resource Recovery Facility (RRF) pursuant to bond indentures and under the Municipal Authorities Act (MAA).

2. On or about February 4, 2011, the Bank of New York Mellon Trust Company (BNY) was permitted to intervene in this action and also seeks appointment of a receiver.

Hereinafter, "BNY" will be included when referring to "Plaintiffs."

3. The pleadings are closed at this point.
4. On or about November 10, 2010, Plaintiffs moved for the appointment of a receiver. (BNY has not moved for the appointment of a receiver).
5. The Court scheduled a hearing for October 17, 2011 to determine whether a receiver should be appointed.
6. The Court did not hold the hearing on the date originally scheduled due to the City of Harrisburg's bankruptcy filing, which was subsequently dismissed on November 23, 2011.
7. In the meantime, on or about October 18, 2011, the Pennsylvania Legislature, through Senate Bill 1151 (the "Act"), amended Public Law 246 (commonly known as "Act 47"), to allow a Third Class City, such as Harrisburg, to be declared to be in a state of "fiscal emergency." The Governor signed the Act into law on October 20, 2011. The Act as passed by the Legislature, is attached hereto as Exhibit A. The Act, without printer's marks is available at 53 P. S. §11701.101 et seq.¹ The Act starts a process whereby Harrisburg, on its own, can develop a plan to provide long-term financial stability to a distressed city, or, failing that, permits the appointment of a receiver over Harrisburg who creates and implements a recovery plan.
8. On or about October 24, 2011, pursuant to Section 602(b) of the Act, Governor Corbett declared Harrisburg to be in a state of fiscal emergency, as defined in the Act at Section 601.
9. Under the Act, at Section 605, the Legislature clearly, and without exception, states:

¹ Where there is a reference to a "Section" of the Act, this correlates to the number after the period in the statutory section. For example, Section 602(b) of the Act is found at 53 P.S. §11701.602(b).

During a fiscal emergency, the authorities and appointed and elected officials of a distressed city shall continue to carry out the duties of their respective offices, except that no decision or action shall conflict with an emergency action plan, order or exercise of power by the Governor under Section 604. (Emphasis Supplied).

10. “Authorities” is defined by the Act as:

A municipal authority, parking authority or any other authority or corporate entity that is directly or indirectly controlled by a distressed city or to which a distressed city has a power of appointment. The term shall not include a joint municipal authority.

(Act at §601)

11. The definition of “authority” applies to the Harrisburg Authority, one of the defendants in the above-captioned matter.

12. The Act requires that the Authority “shall continue to carry out the duties of [its] respective offices, during the state of fiscal emergency.”

13. The legislation does not include in its definition of “authority” a court-appointed receiver, such as that demanded by Plaintiffs in this action.

14. A fiscal emergency ends upon certification by the Secretary [Department of Community Affairs] that the city is no longer financially distressed. (Act at §608(a)).

15. No such certification by the Secretary has occurred as of this writing and is not expected to be declared in the foreseeable future.

16. Since the City of Harrisburg was unable to agree to its own plan, on November 18, 2011, the Governor named David Unkovic as the receiver for the City of Harrisburg.

17. Confirmation of Mr. Unkovic as the Harrisburg receiver by the Commonwealth Court is pending after a hearing on his appointment was convened on December 1, 2011.

18. Once approved by the Court, the receiver will develop a recovery plan within 30 days and file the recovery plan with the Commonwealth Court (Act at §703(a)). The Commonwealth Court holds a hearing and approves the plan within 60 days of filing (Act at §703(d)).

19. The plan includes, among other things, “payment of the lawful financial obligations of the distressed city and authorities” and includes “debt obligations, municipal securities, lease rental obligations, legal obligations and consensual modifications of existing obligations.” (Act at §703(b)(1)(ii)).

20. The recovery plan may also include:

(1) The sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authority;

(2) The approval, modification, rejection, renegotiation or termination of contracts or agreements of the distressed city or authorities, except to the extent prohibited by the constitutions of the United States and Pennsylvania;

(3) The execution of new contracts or agreements; and

(4) Other information the receiver deems appropriate. (Act at §703(b)(2)).

21. The Authority is obligated to comply with the recovery plan, and the receiver will be permitted, pursuant to Section 706:

(1) to require the distressed city or authority to take actions necessary to implement the recovery plan under Section 703;

(2) to modify the recovery plan as necessary to achieve financial stability of the distressed city and authorities in accordance with Section 703;

(3) to require the distressed city or authority to negotiate inter-governmental cooperation agreements between the distressed city and other political subdivisions in order to eliminate and avoid deficits, maintain sound budgetary practices and avoid interruption of municipal services;

* * *

(5) to require the distressed city or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed city's or authority's assets in accordance with Section 707 of the Law;

(6) to approve, disapprove, modify, reject, terminate or renegotiate contracts or agreements with the distressed city or authority, except to the extent prohibited by the Constitutions of the United States or Pennsylvania;

(7) to direct a distressed city or authority to take any other action to implement the recovery plan;

(8) to attend executive sessions of the governing body of the distressed city or authority and make reports to the public on implementation of the recovery plan....

22. Thus, in the enforcement of its recovery plan, the receiver will have substantial powers over the Authority with the singular purpose of restoring the City of Harrisburg and its authorities to financial stability.

23. The Act is clear and does not allow anyone but the Authority, as defined in the Act, to carry out the duties needed to implement the Recovery Plan.

24. Indeed, considering the substantial, if not complete, control the receiver has over the financial affairs of the City of Harrisburg and its authorities in the implementation of the recovery plan, it is difficult to envision a legislative intent whereby a receiver appointed under the Act would direct a receiver appointed under the MAA or trust indentures.

25. In fact, it would make no sense, either logically or financially, for the cash-strapped City or Authority to expend funds on a receiver appointed under the MAA or trust indentures when the potentially appointed receiver must follow the provisions of the recovery plan, just as the Authority must do.

26. If the Authority fails to comply with any provision of the recovery plan, the Authority is subject to judicial action, including a mandamus action to force the Authority to comply with the recovery plan. (Act at §§708 and 709).

27. Furthermore, the debt obligations of the Authority which concern Plaintiffs so much in this action and which have led Plaintiffs to seek the appointment of a receiver, are specific items that must be addressed in the recovery plan.

28. Finally, since the sale of assets, including the Authority's assets, are, potentially, an integral part of the recovery plan under the Act, and since Plaintiffs have admitted in this case that its sought-after receiver will have no ability to sell Authority assets, having a receiver supplant the Authority will only invite confusion and difficulty in effectuating the recovery plan.

29. The Act is clear. In light of the "state of fiscal emergency" and the fact that the Legislature has specifically stated that the Authority is to continue to operate during a period of fiscal emergency, Plaintiffs' request for receiver should be dismissed.

30. There are no factual issues over this pure matter of law which is based on the words of the newly-enacted law which was not in place prior to October 18, 2011. Thus, summary judgment is appropriate pursuant to Pa. R.C.P. 1035.1 et seq.

WHEREFORE, it is respectfully requested that the Court grant this Motion for Partial Summary Judgment and enter an order dismissing all claims for receiver contained in the Plaintiffs' Complaints, and denying Plaintiffs' Motion for a Receiver.

Respectfully submitted,

GOLDBERG KATZMAN, P.C.

Date: December 2, 2011

By: 

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EXHIBIT: A

A

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1151 Session of
2011

INTRODUCED BY PICCOLA, PILEGGI, EARLL, VANCE, GORDNER, WAUGH,
ALLOWAY, BAKER, ERICKSON, ORIE, BROWNE AND TOMLINSON,
JUNE 17, 2011

SENATE AMENDMENTS TO HOUSE AMENDMENTS, OCTOBER 17, 2011

AN ACT

1 Amending the act of July 10, 1987 (P.L.246, No.47), entitled "An
2 act empowering the Department of Community Affairs to declare
3 certain municipalities as financially distressed; providing
4 for the restructuring of debt of financially distressed
5 municipalities; limiting the ability of financially
6 distressed municipalities to obtain government funding;
7 authorizing municipalities to participate in Federal debt
8 adjustment actions and bankruptcy actions under certain
9 circumstances; and providing for consolidation or merger of
10 contiguous municipalities to relieve financial distress,"
11 further providing for purpose and legislative intent;
12 providing for fiscal emergencies in third class cities and
13 for receivership for third class cities; and making editorial
14 changes.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 102 of the act of July 10, 1987 (P.L.246,
18 No.47), known as the Municipalities Financial Recovery Act, is
19 amended to read:

20 Section 102. Purpose and legislative intent.

21 (a) Policy.--It is hereby declared to be a public policy of
22 the Commonwealth to foster fiscal integrity of municipalities so
23 that they provide for the health, safety and welfare of their

1 citizens; pay [due] principal and interest on their debt
2 obligations when due; meet financial obligations to their
3 employees, vendors and suppliers; and provide for proper
4 financial accounting procedures, budgeting and taxing practices.
5 The failure of a municipality to do so is hereby determined to
6 affect adversely the health, safety and welfare not only of the
7 citizens of the municipality but also of other citizens in this
8 Commonwealth.

9 (b) Legislative intent.--The General Assembly finds and
10 declares as follows:

11 (1) It is the intent of the General Assembly to:

12 (i) Enact procedures and provide powers and
13 guidelines to ensure fiscal integrity of municipalities
14 while leaving principal responsibility for conducting the
15 governmental affairs of a municipality, including
16 choosing the priorities for and manner of expenditures
17 based on available revenues, to the charge of its elected
18 officials, consistent with the public policy set forth in
19 this section.

20 (ii) Enact procedures for the adjustment of
21 municipal debt by negotiated agreement with creditors.

22 (iii) Provide for the exercise of the Commonwealth's
23 sovereign and plenary police power in emergency fiscal
24 conditions to protect the health, safety and welfare of a
25 municipality's citizens when local officials are
26 unwilling or unable to accept a solvency plan developed
27 for the benefit of the community.

28 (2) [The General Assembly further recognizes that
29 changing] Changing and deteriorating economic conditions,
30 developing technologies and attendant unemployment erode

1 local tax bases and threaten essential municipal services.
2 Under such circumstances, [the General Assembly believes
3 that] such distressed governmental units may no longer be
4 viable and that the citizens of those communities should be
5 granted the opportunity to voluntarily consolidate or merge
6 their municipalities with other municipalities in an effort
7 to allow municipal boundaries to reflect the geographic and
8 economic realities of a distressed area, to merge a common
9 community of interest, to take advantage of economies of
10 scale in providing services and to create an expanded revenue
11 base to provide necessary public services to the citizens of
12 financially distressed municipalities.

13 (3) Policies of certain municipalities are so
14 ineffective and the financial conditions so severe that the
15 provision of vital and necessary services is threatened.

16 (4) Sustained failure of a municipality to enact or
17 implement a fiscal plan to adequately address or prevent
18 insolvency after repeated opportunities to do so:

19 (i) constitutes a fiscal emergency; and

20 (ii) signifies:

21 (A) a breakdown in the function of municipal
22 government;

23 (B) a dereliction of its elected officials'
24 paramount public duty to safeguard the health, safety
25 and welfare of its citizens; and

26 (C) a threat to the fiscal stability of
27 neighboring communities.

28 ~~(5) The Governor must act, in the face of a fiscal~~ ←
29 ~~emergency under paragraph (4)(i) and dereliction of official~~
30 ~~duty under paragraph (4)(ii)(B), pursuant PURSUANT to the~~ ←

1 Commonwealth's paramount right and duty to maintain law and
2 order and protect and preserve the health, safety and welfare
3 of its citizens and ensure compliance with this act under
4 Article IX of the Constitution of Pennsylvania, THE GOVERNOR ←
5 IS AUTHORIZED TO ACT IN THE FACE OF A FISCAL EMERGENCY UNDER
6 PARAGRAPH (4)(I) AND DERELICTION OF OFFICIAL DUTY UNDER
7 PARAGRAPH (4)(II)(B).

8 Section 2. The act is amended by adding chapters to read:

9 CHAPTER 6

10 FISCAL EMERGENCIES IN CITIES OF THE THIRD CLASS

11 Section 601. Definitions.

12 The following words and phrases when used in this chapter
13 shall have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Authority." A municipal authority, parking authority or any
16 other authority or corporate entity that is directly or
17 indirectly controlled by a distressed city or to which a
18 distressed city has power of appointment. THE TERM SHALL NOT ←
19 INCLUDE A JOINT MUNICIPAL AUTHORITY.

20 "City." A city of the third class.

21 "Debt obligations." Any obligation to pay money, including
22 amounts owed for payments relating to lease rental debt, debt
23 service, bonds, notes, guarantees for bonds or notes, trust
24 indentures, CONTRACTS or other agreements. ←

25 "Distressed city." A city which has been determined to be
26 financially distressed under section 203(f).

27 "Fiscal emergency." A determination made by the Governor
28 under section 602(b).

29 "Insolvent." Unable to meet all financial obligations as
30 they become due, including payment of debt obligations.

1 "Vital and necessary services." Basic and fundamental
2 municipal services, including any of the following:

3 (1) Police and fire services.

4 (2) Ambulance and rescue services.

5 (3) Water supply and distribution.

6 (4) Wastewater services.

7 (5) Refuse collection and disposal.

8 (6) Snow removal.

9 (7) ~~Fulfillment of financial obligations necessary for~~ ←
10 ~~the continued provision of one or more basic and fundamental~~
11 ~~municipal services, including payroll PAYROLL and pension~~ ←
12 ~~obligations, lease rental debt and all other debt~~ ←
13 ~~obligations.~~

14 (8) FULFILLMENT OF PAYMENT OF DEBT OBLIGATIONS OR ANY ←
15 OTHER FINANCIAL OBLIGATIONS.

16 Section 602. Declaration of fiscal emergency.

17 (a) Fiscal emergency.--A THE GOVERNOR DETERMINES A fiscal ←
18 emergency exists if the distressed city:

19 (1) (i) is insolvent or is projected to be insolvent
20 within 180 days or less; or

21 (ii) is unable to ensure the continued provision of
22 vital and necessary services; and

23 (2) (i) has failed to adopt or fully implement the ←
24 coordinator's plan; or

25 (ii) has failed to adopt or fully implement an ←
26 alternative plan that the secretary has approved under
27 section 246.

28 (b) Governor.--Upon making a determination that a state of
29 fiscal emergency exists, the Governor may declare a state of
30 fiscal emergency within the distressed city. Immediately upon

1 making the declaration, the Governor shall:

2 (1) Provide written notice of the declaration to the
3 governing body AND CHIEF EXECUTIVE OFFICER of the distressed ←
4 city along with a concise statement of facts supporting the
5 determination.

6 (2) Direct the secretary to, within ten days of the
7 Governor's declaration, develop an emergency action plan to
8 ensure that vital and necessary services are maintained
9 within the city during the state of fiscal emergency.

10 (c) Secretary.--In developing the emergency action plan, the
11 secretary shall consider the financial plan prepared by the
12 coordinator under Subchapter C of Chapter 2 and any other
13 available plan or information the secretary deems appropriate
14 and may employ financial or legal experts to assist in
15 addressing the fiscal emergency. Notwithstanding any law to the
16 contrary, the employment of such experts shall not be subject to
17 contractual competitive bidding procedures.

18 Section 603. Notification by the secretary.

19 (a) Notice.--Upon completion of the emergency action plan,
20 the secretary shall cause the plan to be posted on the
21 department's Internet website and shall provide written notice
22 of the emergency action plan by overnight delivery service,
23 providing proof of receipt, to all members of the governing body
24 and the chief executive officer of the distressed city.

25 (b) Publication.--The secretary shall publish once in a
26 newspaper of general circulation notice that the emergency
27 action plan has been completed. The notice shall specify the
28 Internet address of the department's website where the plan is
29 posted.

30 Section 604. Powers of the Governor.

1 (a) Powers.--During the state of fiscal emergency, the
2 Governor may exercise the authority of the elected or appointed
3 officials of the distressed city or authority as necessary to
4 ensure the provision of vital and necessary services and may
5 delegate the authority to the secretary or a designee of the
6 secretary. The emergency powers of the Governor shall include
7 the following:

8 (1) The power to collect funds payable to the distressed
9 city and authority and use those funds to pay for vital and
10 necessary services.

11 (2) The power to obtain emergency financial aid for the
12 distressed city and authority under Chapter 3 to pay for
13 vital and necessary services.

14 (3) The power to enter into contracts and agreements on
15 behalf of the distressed city and authority to pay for vital
16 and necessary services.

17 (4) The power to modify the emergency action plan as
18 necessary to ensure the provision of vital and necessary
19 services.

20 (5) Any other power of the elected or appointed
21 officials of the distressed city or authority to ensure the
22 provision of vital and necessary services.

23 (b) Orders.--The Governor may issue an order to an elected
24 or appointed official of the distressed city or an authority to
25 implement any provision of the emergency action plan or refrain
26 from taking any action that would interfere with the powers
27 granted to the Governor or the goals of the plan. An order
28 issued under this subsection shall be enforceable under section
29 606.

30 (c) Authorization prohibited.--Neither this chapter nor the

1 emergency action plan shall be interpreted to authorize the

2 Governor to:

3 (1) unilaterally levy taxes;

4 (2) unilaterally abrogate, alter or otherwise interfere
5 with a lien, charge, covenant or relative priority that is:

6 (i) held by a holder of a debt obligation of a
7 distressed city; and

8 (ii) granted by the contract, law, rule or
9 regulation governing the debt obligation.

10 (3) Unilaterally impair or modify existing bonds, notes,
11 municipal securities or other ~~uncontested~~ LAWFUL contractual ←
12 or legal obligations of the distressed city or authority, ←
13 EXCEPT AS OTHERWISE ORDERED BY A COURT OF COMPETENT
14 JURISDICTION.

15 (4) Authorize the use of the proceeds of the sale,
16 lease, conveyance, assignment or other use or disposition of
17 the assets of the distressed city or authorities in a manner
18 contrary to section 707.

19 (5) Pledge the full faith and credit of the
20 Commonwealth.

21 Section 605. Elected and appointed officials.

22 During a fiscal emergency, the authorities and APPOINTED AND ←
23 elected officials of the distressed city shall continue to carry
24 out the duties of their respective offices, except that no
25 decision or action shall conflict with an emergency action plan,
26 order or exercise of power by the Governor under section 604.

27 Section 606. Mandamus.

28 The Governor may petition Commonwealth Court to issue a writ
29 of mandamus upon any elected or appointed official of the
30 distressed city or authority to secure compliance with an order.

1 issued under section 604(b). The court shall grant the relief
2 requested within 14 days of the filing of the petition if it
3 determines that the order was issued in compliance with this
4 chapter.

5 Section 607. Consent agreement.

6 (a) Negotiations.--Within eight days of the declaration of a
7 fiscal emergency, the governing body and chief executive officer
8 of the distressed city shall convene a special public meeting to
9 negotiate a consent agreement. The meeting shall be attended by
10 the secretary or secretary's designee. Negotiations among
11 creditors and any of the parties in this subsection shall be
12 conducted in accordance with section 223(b).

13 (b) Contents.--

14 (1) The consent agreement shall incorporate a plan
15 setting forth measures designed to provide long-term
16 financial stability to the distressed city after the
17 termination of the fiscal emergency.

18 (2) The consent agreement shall include all of the
19 following:

20 (i) Continued provision of vital and necessary
21 services.

22 (ii) Payment of the LAWFUL financial obligations of ←
23 the distressed city and authority. This subparagraph
24 includes debt obligations, municipal securities, lease
25 rental obligations, uncontested legal obligations and ←
26 consensual modifications of existing obligations, EXCEPT ←
27 AS OTHERWISE ORDERED BY A COURT OF COMPETENT
28 JURISDICTION.

29 (iii) Timely deposit of required payments to the
30 pension fund for the distressed city and each authority

1 or the fund in which the distressed city and each
2 authority participates.

3 (iv) Legislative and administrative actions to be
4 taken by the elected or appointed officials of the
5 distressed city during the term of the consent agreement.

6 (3) The consent agreement may include:

7 (i) The sale, lease, conveyance, assignment or other
8 use or disposition of the assets of the distressed city
9 or authority.

10 (ii) Approval, modification, rejection,
11 renegotiation or termination of contracts or agreements
12 of the distressed city or authorities.

13 (iii) Execution of new contracts or agreements.

14 (4) The consent agreement may not include any of the
15 following:

16 (i) Projections of revenue from a tax or tax rate
17 not currently authorized by law.

18 (ii) Provisions that unilaterally abrogate, alter or
19 otherwise interfere with a lien, charge, covenant or
20 relative priority, that is:

21 (A) held by a holder of a debt obligation of a
22 distressed city; and

23 (B) granted by the contract, law, rule or
24 regulation governing the debt obligation.

25 (iii) Provisions that unilaterally impair or modify
26 existing bonds, notes~~or~~, municipal securities OR OTHER ←
27 LAWFUL CONTRACTUAL OR LEGAL OBLIGATIONS OF THE DISTRESSED
28 CITY OR AUTHORITY, EXCEPT AS OTHERWISE ORDERED BY A COURT
29 OF COMPETENT JURISDICTION.

30 (iv) Provisions that authorize the use of the

1 proceeds of the sale, lease, conveyance, assignment or
2 other use or disposition of the assets of the distressed
3 city or authorities in a manner contrary to section 707.

4 (v) Any increase in the rate of an earned income tax
5 imposed on nonresident workers.

6 (c) Ordinance.--Notwithstanding any law to the contrary, the
7 following shall apply:

8 (1) Upon approval by a majority VOTE of the governing ←
9 body of the distressed city, the consent agreement shall be
10 presented to the secretary within 20 days of the declaration
11 of fiscal emergency.

12 (2) The secretary shall approve or disapprove the
13 consent agreement within three days.

14 (3) If the secretary determines that the consent
15 agreement is sufficient to overcome the distressed city's
16 financial distress and approves the agreement, the governing
17 body shall enact the consent agreement in the form of an
18 ordinance within seven days of approval by the secretary.

19 (4) The ordinance shall provide that, in the event of a
20 breach or unilateral modification of the consent decree by
21 the governing body or an elected or appointed official, the
22 Governor may institute or reinstitute proceedings under
23 Chapter 7.

24 (d) Consent to proceedings under Chapter 7.--In addition to
25 breach or modification of the consent agreement under subsection
26 (c), the following shall be deemed consent to proceedings under
27 Chapter 7:

28 (1) Failure of the governing body of the distressed city
29 to convene, or the failure of a quorum of the governing body
30 to participate in, a special public meeting required by

1 subsection (a).

2 (2) Failure of the governing body or chief executive
3 officer to enact a valid ordinance under subsection (c).

4 (3) Failure of the distressed city to comply with the
5 consent agreement or provision of an ordinance enacted under
6 subsection (c).

7 (4) Enactment by the distressed city of an amendment to
8 the ordinance enacted in subsection (c) in violation of
9 subsection (e).

10 (e) Amendment.--The ordinance may be amended upon the
11 approval of the secretary.

12 (f) Collective bargaining.--A collective bargaining
13 agreement or arbitration settlement executed following enactment
14 of an ordinance under this section is void to the extent that it ←
15 violates, expands or diminishes MAY NOT IN ANY MANNER VIOLATE, ←
16 EXPAND OR DIMINISH the provisions of the consent agreement.

17 Section 608. Termination of fiscal emergency and suspension of
18 powers.

19 (a) Financial emergency.--A fiscal emergency shall end upon
20 certification by the secretary that the city is no longer
21 financially distressed.

22 (b) Governor's powers.--The emergency powers of the Governor
23 under this chapter shall be suspended upon the enactment and
24 continued implementation of an ordinance under section 607 or
25 entry of a judicial order appointing a receiver under section
26 702.

27 Section 609. Restrictions.

28 (a) Earned income tax on nonresidents.--A distressed city
29 subject to this chapter or Chapter 7 may not petition a court of
30 common pleas for an increase in the rate of an earned income tax

1 imposed on nonresident workers under section 123(c) until the
2 secretary terminates the distress status of the city under
3 section 253.

4 (b) Municipal debt adjustment.--A distressed city subject to
5 this chapter or Chapter 7 may not file a municipal debt
6 adjustment action under Federal law THE BANKRUPTCY CODE (11 ←
7 U.S.C. § 101 ET SEQ.) except to the extent authorized under
8 Chapter 7.

9 Section 610. Applicability.

10 (a) Statement.--

11 (1) This chapter shall apply only to distressed cities.

12 (2) Except as set forth in subsection (b), nothing in
13 this chapter is intended to limit or otherwise abrogate the
14 applicability of any other part of this act.

15 (b) Conflict.--If there is a conflict between a provision of
16 this chapter and any other provision of this act, the provision
17 of this chapter shall prevail.

18 CHAPTER 7

19 RECEIVERSHIP IN CITIES OF THE THIRD CLASS

20 Section 701. Definitions.

21 The following words and phrases when used in this chapter
22 shall have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

24 "Authority." A municipal authority, parking authority or any
25 other authority or corporate entity that is directly or
26 indirectly controlled by a distressed city or to which a
27 distressed city has power of appointment. THE TERM SHALL NOT ←
28 INCLUDE A JOINT MUNICIPAL AUTHORITY.

29 "City." A city of the third class.

30 "Debt obligations." Any obligation to pay money, including

1 amounts owed for payments relating to lease rental debt, debt
2 service, bonds, notes, guarantees for bonds or notes, trust
3 indentures, CONTRACTS or other agreements. ←

4 "Distressed city." A city which has been determined to be
5 financially distressed under section 203(f).

6 "Fiscal emergency." A determination made by the Governor
7 under section 602(b).

8 "Insolvent." Unable to meet all financial obligations as
9 they become due, including payment of debt obligations.

10 "Vital and necessary services." Basic and fundamental
11 municipal services, including any of the following:

12 (1) Police and fire services.

13 (2) Ambulance and rescue services.

14 (3) Water supply and distribution.

15 (4) Wastewater services.

16 (5) Refuse collection and disposal.

17 (6) Snow removal.

18 (7) ~~Fulfillment of financial obligations necessary for~~ ←
19 ~~the continued provision of one or more basic and fundamental~~
20 ~~municipal services, including payroll PAYROLL and pension~~ ←
21 ~~obligations, lease rental debt and all other debt~~ ←
22 ~~obligations.~~

23 (8) FULFILLMENT OF PAYMENT OF DEBT OBLIGATIONS OR ANY ←
24 OTHER FINANCIAL OBLIGATIONS.

25 Section 702. Receivership.

26 (a) Receiver.--Following the issuance of a declaration of
27 fiscal emergency under section 602(b), the Governor may direct
28 the secretary to file a petition in Commonwealth Court to
29 appoint the individual named in the petition as a receiver for
30 the distressed city. The court shall have no authority to

1 appoint anyone other than the individual named in the petition
2 as the receiver.

3 (b) Service and notice.--

4 (1) The secretary shall serve the petition upon:

5 (i) the governing body of the distressed city;

6 (ii) the chief executive officer of the distressed
7 city; and

8 (iii) the governing body of each authority.

9 (2) The secretary must publish notice of the filing of
10 the petition once in a newspaper of general circulation.

11 (c) Hearing.--~~Within 15 days~~ UPON NOTIFICATION OF THE ←
12 GOVERNOR of the failure of the distressed city to adopt a valid
13 ordinance under section 607, the Commonwealth Court shall
14 conduct a hearing WITHIN 15 DAYS on the petition. ←

15 (d) Determination.--No later than 60 days following the
16 filing of a petition under this section, the court shall issue
17 an order under subsection (e) if it finds by a preponderance of
18 the evidence that all of the following apply:

19 (1) Thirty days have passed since the declaration of a
20 fiscal emergency.

21 (2) There has been a failure by:

22 (i) the governing body of the distressed city to
23 adopt a consent agreement acceptable to the secretary AN ←
24 ORDINANCE under section 607;

25 (ii) the governing body of the distressed city to
26 fully implement a consent agreement acceptable to the ←
27 secretary AN ORDINANCE under section 607; or ←

28 (iii) an elected or appointed official of the
29 distressed city or authority to strictly comply with an
30 order issued by the Governor under section 604.

1 (3) A fiscal emergency under section 602(a) continues to
2 exist.

3 (e) Order.--An order issued under subsection (e) shall:

4 (1) set forth the findings under subsection (d);

5 (2) grant the petition and ~~declares~~ DECLARE the ←
6 distressed city to be in receivership;

7 (3) appoint the individual named in the petition to be
8 the receiver for a period not to exceed two years, subject to
9 extension under section 710(b);

10 (4) direct the receiver to develop a recovery plan
11 WITHIN 30 DAYS under section 703 and submit it to the court, ←
12 THE SECRETARY, the governing body AND CHIEF EXECUTIVE OFFICER ←
13 of the distressed city and the secretary; and ←

14 (5) require and empower the receiver to implement the
15 emergency action plan developed by the secretary under
16 section 602 until a recovery plan developed by the receiver
17 is approved by the court under section 703.

18 (F) ADDITIONAL ACTIONS.-- ←

19 (1) THE GOVERNOR MAY DIRECT THE SECRETARY TO FILE A
20 PETITION IN COMMONWEALTH COURT TO APPOINT AN INDIVIDUAL NAMED
21 IN THE PETITION AS A RECEIVER FOR THE DISTRESSED CITY IF THE
22 DISTRESSED CITY FAILS TO COMPLY WITH OR HAS AMENDED THE
23 ORDINANCE WITHOUT THE APPROVAL OF THE SECRETARY UNDER SECTION
24 607(D)(3) OR (4).

25 (2) THE COURT SHALL CONDUCT A HEARING ON THE PETITION
26 UNDER PARAGRAPH (1) WITHIN 15 DAYS OF THE FILING OF THE
27 PETITION.

28 (3) NO LATER THAN 60 DAYS FOLLOWING THE FILING OF THE
29 PETITION UNDER PARAGRAPH (1), THE COURT SHALL ISSUE AN ORDER
30 UNDER SUBSECTION (E) IF IT FINDS BY A PREPONDERANCE OF THE

1 EVIDENCE THAT THE DISTRESSED CITY HAS FAILED TO COMPLY WITH
2 SECTION 607(D)(3) OR (4).

3 Section 703. Recovery plan.

4 (a) Issuance.--Within 30 days of the appointment of the
5 receiver, the recovery plan required under section 702(e)(4)
6 shall be furnished to Commonwealth Court, the secretary and the
7 governing body and chief executive officer of the distressed
8 city.

9 (b) Contents.--The receiver shall consider the plan prepared
10 by the coordinator under section 241 and any other existing
11 alternate plans in the development of the recovery plan. The
12 following shall apply:

13 (1) The recovery plan shall provide for all of the
14 following:

15 (i) Continued provision of vital and necessary
16 services.

17 (ii) Payment of the LAWFUL financial obligations of ←
18 the distressed city and authorities. This subparagraph
19 includes debt obligations, municipal securities, lease
20 rental obligations, ~~uncontested~~ legal obligations and ←
21 consensual modifications of existing obligations.

22 (iii) Timely deposit of required payments to the
23 pension fund in which the distressed city and each
24 authority participates.

25 (2) The recovery plan may ~~include~~ INCLUDE: ←

26 (i) the sale, lease, conveyance, assignment or other
27 use or disposition of the assets of the distressed city
28 or authority;

29 (ii) the approval, modification, rejection,
30 renegotiation or termination of contracts or agreements

1 of the distressed city or authorities, EXCEPT TO THE
2 EXTENT PROHIBITED BY THE CONSTITUTIONS OF THE UNITED
3 STATES AND PENNSYLVANIA;

4 (iii) the execution of new contracts or agreements;
5 and
6 (iv) other information the receiver deems
7 appropriate.

8 (c) Restrictions.--The recovery plan may not do any of the
9 following:

10 (1) Unilaterally levy taxes.

11 (2) Unilaterally abrogate, alter or otherwise interfere
12 with a lien, charge, covenant or relative priority that is:

13 (i) held by a holder of a debt obligation of a
14 distressed city; and

15 (ii) granted by the contract, law, rule or
16 regulation governing the debt obligation.

17 (3) Unilaterally impair or modify existing bonds, notes
18 or, municipal securities OR OTHER LAWFUL CONTRACTUAL OR LEGAL
19 OBLIGATIONS OF THE DISTRESSED CITY OR AUTHORITY, EXCEPT AS
20 OTHERWISE ORDERED BY A COURT OF COMPETENT JURISDICTION.

21 (4) Authorize the use of the proceeds of the sale,
22 lease, conveyance, assignment or other use or disposition of
23 the assets of the distressed city or authority in a manner
24 contrary to section 707.

25 (d) Confirmation.--Commonwealth Court shall conduct a
26 hearing on the recovery plan within 30 days of the receipt of
27 the plan from the receiver. The court shall confirm the plan
28 within 60 days of the receipt of the plan unless it finds clear
29 and convincing evidence that the plan is arbitrary, capricious
30 or wholly inadequate to alleviate the fiscal emergency in the

1 distressed city.

2 (e) Modification of plan.--The receiver shall notify the
3 Commonwealth Court of any modification to the plan. The court
4 may conduct a hearing on the modification within 30 days of its
5 receipt. The court shall confirm the modification within 60 days
6 of receipt of NOTIFICATION OF the modification unless it finds ←
7 clear and convincing evidence that the recovery plan as modified
8 is arbitrary, capricious or wholly inadequate to alleviate the
9 fiscal emergency in the distressed city.

10 Section 704. Confirmation.

11 (a) Effect of confirmation.--The confirmation of the
12 recovery plan and any modification to the receiver's plan under
13 section 703 shall have the effect of:

14 (1) imposing on the elected and appointed officials of
15 the distressed city or an authority a mandatory duty to
16 undertake the acts set forth in the recovery plan;

17 (2) suspending the authority of the elected and
18 appointed officials of the distressed city or an authority to
19 exercise power on behalf of the distressed city or authority
20 pursuant to law, charter, ordinance, rule or regulation to
21 the extent that the power would interfere with the powers
22 granted to the receiver or the goals of the recovery plan;
23 and

24 (3) superseding the emergency action plan developed by
25 the secretary under section 602.

26 (b) Form of government.--Confirmation of the recovery plan
27 and any modification to the plan under section 703 shall not be
28 construed to:

29 (1) change the form of government of the distressed city
30 or an authority; or

1 (2) except as set forth in subsection (a), affect powers
2 and duties of elected and appointed officials of the
3 distressed city or an authority.

4 (c) Collective bargaining.--A collective bargaining
5 agreement or arbitration settlement executed after confirmation
6 of a recovery plan is void to the extent that it violates, ←
7 ~~expands or diminishes~~ MAY NOT IN ANY MANNER VIOLATE, EXPAND OR ←
8 DIMINISH the provisions of the recovery plan.

9 Section 705. Receiver.

10 (a) Appointment.--The court shall appoint the receiver as
11 provided under section 702.

12 (b) Qualifications.--The receiver shall have the following
13 qualifications:

14 (1) Have a minimum of five years' experience and
15 demonstrable expertise in business, financial or local or
16 state budgetary matters.

17 (2) Be a resident of this Commonwealth for at least one
18 year prior to the appointment.

19 (c) Vacancy.--A vacancy in the office of the receiver shall
20 be filled in the same manner as the original appointment.

21 (d) Revocation.--Upon application TO COMMONWEALTH COURT by ←
22 the secretary, the appointment of the receiver shall be revoked
23 and the receiver shall be replaced by the individual named in
24 the application. The court shall have no authority to appoint
25 anyone other than the individual named in the application as the
26 receiver.

27 (e) Compensation and expenses.--The receiver's compensation
28 and reimbursement for actual and necessary expenses shall be
29 paid by the Commonwealth. Compensation shall be established by
30 the secretary.

1 (f) Prohibitions.--The receiver shall not:

2 (1) Seek or hold a position as any other elected or
3 appointed public official within this Commonwealth or as a
4 political party officer during the term of the receivership.

5 (2) Seek election as a public official or political
6 party officer for one year after the person's service as
7 receiver has ended.

8 (3) Engage in any conduct prohibited by the act of July
9 19, 1957 (P.L.1017, No.451), known as the State Adverse
10 Interest Act, or 65 Pa.C.S. Ch. 11 (relating to ethics
11 standards and financial disclosure).

12 (g) Liability.--The receiver shall not be liable personally
13 for any obligations of the distressed city OR AUTHORITY. It is ←
14 declared to be the intent of the General Assembly that the
15 receiver shall enjoy sovereign and official immunity as provided
16 in 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed;
17 specific waiver) and shall remain immune from suit except as
18 provided by and subject to the provisions of 42 Pa.C.S. Ch. 85
19 Subchs. A (relating to general provisions) and B (relating to
20 actions against Commonwealth parties).
21 Section 706. Powers, duties and prohibited actions.

22 (a) Powers and duties.--Notwithstanding any other provision
23 of law, the receiver shall have the following powers and duties:

24 (1) To require the distressed city OR AUTHORITY to take ←
25 actions necessary to implement the recovery plan under
26 section 703.

27 (2) To modify the recovery plan as necessary to achieve
28 financial stability of the distressed city AND AUTHORITIES in ←
29 accordance with section 703.

30 (3) To require the distressed city OR AUTHORITY to ←

1 negotiate intergovernmental cooperation agreements between
2 the distressed city and other political subdivisions in order
3 to eliminate and avoid deficits, maintain sound budgetary
4 practices and avoid interruption of municipal services.

5 (4) To submit quarterly reports to the governing body
6 and the chief executive officer of the distressed city and to
7 the department. The reports shall be posted on the Internet
8 website for the distressed city.

9 (5) To require the distressed city OR AUTHORITY to cause ←
10 the sale, lease, conveyance, assignment or other use or
11 disposition of the distressed city's OR AUTHORITY'S assets in ←
12 accordance with section 707.

13 (6) To approve, disapprove, modify, reject, terminate or
14 renegotiate contracts and agreements with the distressed city
15 OR AUTHORITY, except to the extent prohibited by the ←
16 Constitutions of the United States and Pennsylvania.

17 (7) To direct the distressed city OR AUTHORITY to take ←
18 any other action to implement the recovery plan.

19 (8) To attend executive sessions of the governing body
20 of the distressed city OR AUTHORITY and make reports to the ←
21 public on implementation of the recovery plan.

22 (9) ~~Subject to the limitation on bankruptcy in Article~~ ←
23 ~~XVI D.1 of the act of April 9, 1929 (P.L.343, No.176), known~~
24 ~~as The Fiscal Code~~ AFTER JULY 1, 2012, to file a municipal ←
25 debt adjustment action under ~~Federal law~~ THE BANKRUPTCY CODE ←
26 (11 U.S.C. § 101 ET SEQ.) and to act on the city's behalf in
27 the proceeding. The power under this paragraph shall only be
28 exercised upon the written authorization of the secretary.
29 The filing of a municipal debt adjustment action under this
30 paragraph and any plan of the receiver accepted by the

1 Federal court shall be considered a modification of the
2 recovery plan, except that the modification shall not be
3 subject to judicial review under section 709. A recovery plan
4 submitted to, and approved by, the Federal court under a
5 Federal municipal debt adjustment action may include Federal
6 remedies not otherwise available under this chapter.

7 (10) To meet and consult with the advisory committee
8 under section 711.

9 (11) To employ financial or legal experts deemed
10 necessary to develop and implement the recovery plan.
11 Notwithstanding any law to the contrary, the employment of
12 such experts shall not be subject to contractual competitive
13 bidding procedures.

14 (b) Authorization prohibited.--Neither this chapter nor the
15 recovery plan shall be interpreted to authorize the receiver to
16 do any of the following:

17 (1) Unilaterally levy taxes.

18 (2) Unilaterally abrogate, alter or otherwise interfere
19 with a lien, charge, covenant or relative priority that is:

20 (i) held by a holder of a debt obligation of a
21 distressed city; and

22 (ii) granted by the contract, law, rule or
23 regulation governing the debt obligation.

24 (3) Unilaterally impair or modify existing debt ←
25 obligations or BONDS, NOTES, municipal securities OR OTHER ←
26 LAWFUL CONTRACTUAL OR LEGAL OBLIGATIONS OF THE DISTRESSED
27 CITY OR AUTHORITY, EXCEPT AS OTHERWISE ORDERED BY A COURT OF
28 COMPETENT JURISDICTION.

29 (4) Authorize the use of the proceeds of the sale,
30 lease, conveyance, assignment or other use or disposition of

1 the assets of the distressed city or authority in a manner
2 contrary to section 707.

3 Section 707. Use or disposition of assets.

4 (a) Use of proceeds.--The proceeds from any sale, lease,
5 conveyance, assignment or other use or disposition of assets of
6 the distressed city or authority shall be applied to the payment
7 of outstanding debt obligations owed by the distressed city or
8 authority, subject to any lien, charge, covenant, restriction,
9 contract, law, rule or regulation, that encumbers or is
10 otherwise applicable to the assets. Proceeds remaining after
11 payment of outstanding debt obligations owed by the distressed
12 city or authority may be used by the receiver to restructure or
13 provide escrow for the payment of future debt obligations or to
14 meet operating and capital needs of the distressed city or
15 authority.

16 (b) Prohibitions.--Nothing under this section shall be
17 construed to authorize the receiver to unilaterally abrogate,
18 alter or otherwise interfere with a lien, charge, covenant or
19 relative priority that is:

20 (1) held by a holder of a debt obligation of a
21 distressed city; and

22 (2) granted by the contract, law, rule or regulation
23 governing the debt obligation.

24 Section 708. Elected and appointed officials.

25 (a) Orders.--The receiver may issue an order to an elected
26 or appointed official of the distressed city or an authority to:

27 (1) implement any provision of the recovery plan; and

28 (2) refrain from taking any action that would interfere
29 with the powers granted to the receiver or the goals of the
30 recovery plan.

1 (b) Enforcement.--An order issued under subsection (a) shall
2 be enforceable under section 709.

3 Section 709. Judicial actions.

4 (a) Action by receiver.--The receiver may petition
5 Commonwealth Court to issue a writ of mandamus upon any elected
6 or appointed official of the distressed city or authority to
7 secure compliance with an order issued under section 708. The
8 court shall grant or deny the relief within 14 days of the
9 filing of the petition. The court shall grant the relief
10 requested if it determines that the order was issued in
11 compliance with this chapter.

12 (b) Action by elected or appointed officials.--Any elected
13 or appointed official of a distressed city or authority may
14 petition Commonwealth Court to enjoin any action of the receiver
15 that is contrary to this chapter.

16 Section 710. Termination of receivership.

17 (a) Time.--Except as provided under subsection (b), the
18 receivership under this chapter shall expire two years after the
19 appointment of the receiver.

20 (b) Extension.--The secretary may petition Commonwealth
21 Court for one or more extensions of the receivership. The court
22 shall grant each extension for another two years if the
23 secretary establishes by a preponderance of the evidence that
24 further implementation of the recovery plan is necessary to end
25 the fiscal emergency.

26 Section 711. Municipal Financial Recovery Advisory Committee.

27 (a) Establishment.--There is established a Municipal
28 Financial Recovery Advisory Committee to meet and consult with
29 the receiver in carrying out the duties under this chapter. The
30 sole function of the advisory committee shall be to provide

1 recommendations and feedback to the receiver on the
2 implementation of the recovery plan.

3 (b) Composition.--The advisory committee established under
4 subsection (a) shall be comprised of the following:

5 (1) The chief executive officer of the distressed city
6 or a designee.

7 (2) The president of the governing body of the
8 distressed city or a designee.

9 (3) One member appointed by the county commissioners of
10 the county where the distressed city is located.

11 (4) One member appointed by the Governor.

12 (c) Compensation.--Members of the advisory committee shall
13 receive no compensation for their services.

14 (d) Meetings.--The advisory committee shall meet with the
15 receiver at least twice per month to discuss the recovery plan.
16 Meetings of the advisory committee shall be in accordance with
17 65 Pa.C.S. Ch. 7 (relating to open meetings).

18 (e) Duty to consult.--The receiver shall consult with the
19 advisory committee prior to exercising any of the powers under
20 section 706(a)(1), (2), (3), (5), (6), (7) and (9).

21 (f) Termination.--The advisory committee shall terminate in
22 conjunction with the expiration of the receivership as provided
23 for under section 710.

24 Section 712. Applicability.

25 (a) Statement.--

26 (1) This chapter shall apply only to distressed cities.

27 (2) Except as set forth in subsection (b), nothing in
28 this chapter is intended to limit or otherwise abrogate the
29 applicability of any other part of this act.

30 (b) Conflict.--If there is a conflict between a provision of

1 this chapter and any other provision of this act, the provision
2 of this chapter shall prevail.

3 Section 3. The heading of Chapter 6 and section 601 of the
4 act are renumbered to read:

5 CHAPTER [6] 20

6 TECHNICAL PROVISIONS

7 Section [601] 2001. Repeals.

8 Section 2501-C(e) and (f) of the act of April 9, 1929
9 (P.L.177, No.175), known as The Administrative Code of 1929, are
10 repealed insofar as they are inconsistent with this act.

11 The act of June 11, 1935 (P.L.323, No.146), entitled "An act
12 designating the Department of Internal Affairs as the agency of
13 the Commonwealth to approve or disapprove petitions to courts,
14 and plans for the readjustment of debts of political
15 subdivisions, under the act of Congress relating to the
16 bankruptcy of political subdivisions; and defining the powers
17 and duties of said department in relation thereto," is repealed
18 insofar as it relates to a municipality as defined in section
19 103 of this act.

20 Section 4. Section 602 of the act, amended December 19, 1988
21 (P.L.1272, No.157), is renumbered to read:

22 Section [602] 2002. Expiration.

23 Section 203(a)(5) shall expire upon publication in the
24 Pennsylvania Bulletin of the notice required under section
25 121(f).

26 Section 5. Section 603 of the act is renumbered to read:

27 Section [603] 2003. Effective date.

28 This act shall take effect in 60 days.

29 Section 6. The provisions of this act are severable. If any
30 provision of this act or its application to any person or

1 circumstance is held invalid, the invalidity shall not affect
2 other provisions or applications of this act which can be given
3 effect without the invalid provision or application.
4 Section 7. This act shall take effect immediately.

CERTIFICATE OF SERVICE

I hereby certify that I am this date serving a copy of the foregoing document upon the following via First Class Mail, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure:

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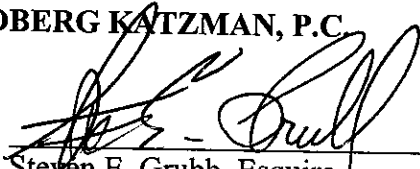
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GOLDBERG KATZMAN, P.C.

By: _____


Steven E. Grubb, Esquire

Date: December 2, 2011

TD BANK, NATIONAL ASSOCIATION,
MANUFACTURERS AND TRADERS TRUST
COMPANY, and ASSURED GUARANTY
MUNICIPAL CORP.,

Plaintiffs

v.

THE HARRISBURG AUTHORITY, THE CITY OF
HARRISBURG, PENNSYLVANIA, and PAUL P.
WAMBACH, TREASURER OF THE CITY OF
HARRISBURG.,

Defendants

v.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, NATIONAL ASSOCIATION,
Intervenor Plaintiff

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

NO. 2010 CV 11737 CV

CIVIL ACTION

JURY TRIAL DEMANDED

ORDER

Upon consideration of Defendant The Harrisburg Authority's Motion for Partial Summary Judgment, and any responses filed thereto, it is hereby ordered this ___ day of _____, 2011 that said Motion for Partial Summary Judgment is GRANTED and all claims for a receiver are hereby dismissed, and Plaintiffs' Motion for a Receiver is DENIED.

BY THE COURT:

J.

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