

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

v.

DAVID UFKOVIC, in his official capacity as
the RECEIVER FOR THE CITY OF
HARRISBURG,

Intervenor Defendant

TD BANK, NATIONAL ASSOCIATION,

Plaintiff

v.

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

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

NO. 2010 CV 11737 CV - file

CIVIL ACTION - LAW
JURY TRIAL DEMANDED

NO. 2010 CV 11738 CV

OF HARRISBURG,

Defendants

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CIVIL ACTION – LAW
JURY TRIAL DEMANDED

**MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS’ MOTION FOR AN
ORDER OF MANDAMUS**

David Unkovic, the Receiver for the City of Harrisburg (the “Receiver”), respectfully submits this brief in opposition to Plaintiffs TD Bank, National Association, Manufacturers and Traders Trust Company, and Assured Guaranty Municipal Corporation’s Motion for an Order of Mandamus under Sections 8261 and 8283 of the Local Government Unity Debt Act, 53 Pa.C.S.A. § 8001, *et seq.* (the “Debt Act”), filed in Case No. 2010-CV-11737 (the “737 Action”), and Plaintiffs TD Bank and National Association’s Motion for an Order of Mandamus under Sections 8261 and 8283 of the Debt Act, filed in Case No. 2010-CV-11738 (the “738 Action”).¹

I. INTRODUCTION

In the summer of 2011, the City of Harrisburg was in the midst of an unprecedented financial crisis. At that time, the Commonwealth had in place laws – the Municipalities Financial Recovery Act, Act of July 10, 1987, P.L. 246 (“Act 47”) – designed to deal with crises

¹ The Court’s December 22, 2011 Order directed the Receiver to respond to “Plaintiffs’ Motion for an Order of Mandamus under Sections 8261 and 8263 of the Debt Act.” As far as the Receiver is aware, however, Plaintiffs’ original Motions for Mandamus Relief in the 737 and 738 Actions request that the Court issue an order of mandamus under Section 8261 of the Debt Act. Plaintiffs’ post-hearing briefs in support of their Motions for Mandamus ask that the Court issue orders of mandamus pursuant to Sections 8261 and 8283 of the Debt Act. As a result, the Receiver addresses in this brief Plaintiffs’ request for mandamus under Sections 8261 and 8283 of the Debt Act.

Section 8263 of the Debt Act authorizes the appointment of a trustee for bondholders in the event of a local government’s default and further authorizes the trustee to petition the court for an order of mandamus directing the local government unit to levy taxes in amount sufficient to repay the amounts owed by the local government. Although Plaintiffs do not appear to have briefed their purported entitlement to mandamus relief under Section 8263, such relief would conflict with and frustrate the statutory policies and directives of Amended Act 47 for the same reasons as discussed herein with regard to Sections 8261 and 8283 of the Debt Act.

in financially distressed cities. However, the landscape of municipal financial recovery law radically changed in the fall of 2011. The General Assembly passed Senate Bill 1151, 53 P.S. § 11701.101, *et seq.* (“Amended Act 47” or “Act 47 as amended”), which Governor Tom Corbett signed into law on October 20, 2011. Amended Act 47 significantly changed the statutory scheme pertaining to municipal financial recovery in the Commonwealth of Pennsylvania – greatly expanding the Commonwealth’s authority and obligation to intervene in the face of a municipality’s fiscal crisis.

Specifically, Amended Act 47 authorizes the Commonwealth to declare a fiscal emergency and, significantly, for the first time, obtain the appointment of a receiver for the distressed city. Amended Act 47 mandates that the appointed receiver develop, submit for court approval, and implement a fiscal recovery plan, which must stabilize the distressed city’s budget, maintain vital and necessary municipal services, and address the distressed city’s lawful financial obligations. Amended Act 47 contemplates that the appointed receiver will be afforded a meaningful opportunity to understand all of the distressed city’s revenues and obligations, listen to all interested parties including creditors, and attempt to forge a feasible recovery plan that addresses all fiscal problems while at the same time maintaining critical municipal services for the citizens that cannot and should not be neglected. It is pursuant to this Amended Act 47 that the Receiver, Mr. David Unkovic, was appointed by the Commonwealth Court of Pennsylvania on December 2, 2011.

Since his appointment, the Receiver has worked diligently to understand all of the City’s potential sources of revenue and all of the City’s obligations in an attempt to define the City’s financial issues and address them in the orderly fashion dictated by Amended Act 47. In compliance with his mandate, the Receiver is in the process of fashioning a fiscal recovery plan,

which, by order of the Commonwealth Court of Pennsylvania, is to be filed with the Commonwealth Court on February 6, 2012. As required by Amended Act 47, the Receiver's recovery plan has three objectives: (1) take the necessary steps to achieve a structurally feasible, balanced and sustainable budget for 2012 through 2016 whereby the City's operating revenues are sufficient to meet the City's required expenses, (2) maintain vital public services, such as police, fire and other vital emergency services, and (3) address the City's debts, including most notably, but not limited to, the indebtedness owed by the City as guarantor of bond indebtedness that provided funding related to the Harrisburg Resource Recovery Facility ("RRF"), also known as the Harrisburg incinerator.² With regard to the City's debt obligations relating to the RRF, the Receiver's recovery plan will seek to provide a basis on which the Receiver can sell, lease or otherwise monetize the RRF asset and other assets of the City and the Harrisburg Authority, and ensure that any shortfall between value realized from monetization and the RRF debt obligations (herein sometimes referred to as "Stranded RRF Indebtedness") is fairly addressed in a manner that avoids exacerbating the City's already difficult structural budgetary problems.

Unfortunately, while the Receiver has been attempting to forge a recovery plan, the Plaintiffs in these cases, who are creditors with regard to the RRF bond indebtedness, have pressed ahead in their quest for certain mandamus relief that, if granted, would immediately terminate the Receiver's ability to execute his Amended Act 47 mandate. Specifically, while Amended Act 47 charges the Receiver with the development and execution of a recovery plan that addresses the City's structural deficit, ensures the continued provision of vital and necessary

² The RRF project is well known in the national financial press for the size of the indebtedness relative to the value of the project. The RRF project and its bond financing is the subject of a recently-publicized forensic audit commissioned by the Harrisburg Authority that raises significant issues about project's underwriting, the selection of the construction contractor, and the supervision of the improvements for which public funds were raised.

services, and addresses the City's lawful financial obligations,³ Plaintiffs' motion for an order of mandamus requests that this Court direct the Treasurer of the City to "pay out of the first tax moneys or other revenues received by the City amounts currently due under the [City's bond guarantees relating to the RRF] and to set aside the amounts required to be budgeted for the current and next fiscal year under the [City's bond guarantees]." (Pls.' Mot. for Mandamus 14). The Receiver understands that Plaintiffs' demand for first dollar tax relief, if granted, would result in the immediate appropriation of 70% of the City's annual operating budget. It is obvious that this would leave insufficient funds for the City's provision of vital and fundamental municipal services, which Amended Act 47 requires the Receiver to maintain in any recovery plan. In addition, this relief would render futile any effort by the Receiver to devise a recovery plan that attempts to address the City's structural budget deficit problems, and would frustrate the Amended Act 47 mandate that the Receiver's recovery plan address any Stranded RRF Indebtedness in a manner that does not exacerbate the City's already difficult structural budgetary problems.

In sum, Plaintiffs' requested relief not only contravenes and obstructs the responsibilities of the Receiver, but also emasculates and frustrates the entire statutory scheme of Amended Act 47 recently enacted by the General Assembly. If the provisions of Amended Act 47 authorizing the appointment of a receiver are to have any meaning at all, they must be construed to afford the Receiver a meaningful opportunity to carry out the mandate in Amended Act 47 and must prevail over the provisions of the Debt Act on which Plaintiffs predicate their request for mandamus

³ The statute defines "vital and necessary service" as "[b]asic and fundamental municipal services, including any of the following: (1) Police and fire services[;] (2) Ambulance and rescue services[;] (3) Water supply and distribution[;] (4) Wastewater services[;] (5) Refuse collection and disposal[;] (6) Snow removal[;] (7) Payroll and pension obligations[;] and (8) Fulfillment of payment of debt obligations or any other financial obligations." 53 P.S. § 11701.601. "Debt obligations" are defined as "[a]ny obligation to pay money, including amounts owed for payments relating to lease rental debt, debt service, bonds, notes, guarantees for bonds or notes, trust indentures, contracts or other agreements." *Id.*

relief. The Receiver therefore respectfully requests that this Honorable Court deny Plaintiffs' request for mandamus relief. In the alternative, the Receiver respectfully requests that this Court stay this case until such time as the Receiver has completed his duties under Amended Act 47, after which the Court may wish to consider Plaintiffs' request for mandamus relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs in the 737 Action, who are indenture and statutory trustees for certain holders of municipal bonds issued by Defendant the Harrisburg Authority and guaranteed by the City of Harrisburg, filed their Complaint on September 13, 2010. On November 9, 2010, Plaintiffs filed a motion for an order of mandamus pursuant to Sections 8261 and 8283 of the Debt Act. The City moved to stay or dismiss Plaintiffs' motion for mandamus, which the Court denied on May 16, 2011. Plaintiffs in the 738 Action also filed their Complaint on September 13, 2010. On December 3, 2010, Plaintiffs in the 738 Action filed a motion for an order of mandamus under Sections 8261 and 8283 of the Debt Act. The City moved to stay or dismiss the mandamus proceedings, which the Court denied on March 14, 2011. The Court held a joint hearing on Plaintiffs' mandamus motions in the 737 and 738 Actions on September 22, 2011. Plaintiffs in the 737 filed a post-hearing brief in support of their motion on October 2, 2011, and Plaintiffs in the 738 Action filed a post-hearing brief on October 6, 2011.

On October 20, 2011, Governor Corbett signed into law SB 1151, which amended Act 47. SB 1151 dramatically alters the nature and scope of Act 47, adding Chapters 6 and 7 to the statute, which provides for the invocation of the Commonwealth's plenary police power in the nature of a declaration of a fiscal emergency in distressed municipalities subject to Act 47 and for the Commonwealth's intervention in the fiscal affairs of a distressed municipality in a manner and degree never before authorized by the General Assembly. Significantly, Amended

Act 47 authorizes, for the first time ever, the appointment of a receiver for a financially distressed city under certain circumstances.

In compliance with the mandate of SB 1151, and in furtherance of the statutory scheme intended by the General Assembly, Governor Corbett determined and formally declared on October 24, 2011, that a fiscal emergency exists in the City of Harrisburg. Governor Corbett concurrently directed the Secretary of The Department of Community and Economic Development (“DCED”) to develop a temporary Emergency Action Plan, as prescribed by Amended Act 47. DCED developed a temporary Emergency Action Plan and provided it to City officials for immediate implementation. The temporary Emergency Action Plan is currently in place and will remain in place according to the provisions of Act 47 as amended until a financial recovery plan developed by the Receiver is approved by the Commonwealth Court of Pennsylvania.

After the failure of consent agreement negotiations between the City and its creditors, the Secretary of the DCED petitioned, as required by Amended Act 47, the Commonwealth Court of Pennsylvania to appoint Mr. Unkovic as the receiver for the City of Harrisburg.⁴ Following an evidentiary hearing on the request, the Commonwealth Court issued an Order on December 2, 2011 granting the Secretary’s petition and appointing Mr. Unkovic as Receiver. Thus, effective December 2, 2011, the Receiver began a two-year term of service in accordance with the provisions of Chapter 7 of Act 47 as amended. The Commonwealth Court’s Order initially directed Mr. Unkovic to submit a recovery plan within 30 days of the Order, but the Commonwealth Court subsequently extended the deadline for submission of the recovery plan to the Commonwealth Court until February 6, 2012. After the Receiver submits his recovery plan,

⁴ Governor Corbett nominated Mr. Unkovic for the position of receiver of the City of Harrisburg on November 18, 2011.

the Commonwealth Court will begin proceedings, including evidentiary hearings, pursuant to Amended Act 47 to consider the Receiver's recovery plan, and may confirm or modify the recovery plan in the course of those proceedings.

Pursuant to his statutorily-mandated duty to formulate a recovery plan for the City, the Receiver has been identifying and assessing the assets and liabilities of the City, including asserted and unasserted legal claims. During this process, the Receiver learned of this litigation and petitioned the Court for leave to intervene in the instant proceedings on December 16, 2011. The Court granted the Receiver's motion to intervene on December 22, 2011, and directed the Receiver to respond to Plaintiffs' request for mandamus.⁵

III. ARGUMENT AND CITATION OF AUTHORITY

As explained herein, the General Assembly dramatically changed the statutory scheme for municipal financial recovery through its amendment of Act 47, most significantly by providing for the appointment of a receiver for the financially distressed municipality who must develop and implement a financial recovery plan. Because the mandamus relief Plaintiffs seek under Sections 8261 and 8283 of the Debt Act would prevent the Receiver from performing his statutorily mandated functions as receiver – and would essentially emasculate and frustrate the purpose of the entire statutory scheme of Amended Act 47 – the relief contemplated by the Debt

⁵ Because the Court's December 22, 2011 Orders referred to Plaintiffs' requests for mandamus relief, the Receiver in this brief only responds to those Motions and is not responding herein to Plaintiffs' November 8, 2010 Motion in the 737 Action for the Appointment of a Receiver under the Debt Act. The Receiver understands that the City has filed a motion for partial summary judgment on Plaintiffs' request for the appointment of a receiver, which is still pending before this Court, and that the evidentiary hearing with respect to that motion, which had previously been scheduled for December 20, 2011, has been indefinitely postponed. The Receiver respectfully requests the opportunity to file a brief in opposition to and present oral argument on Plaintiffs' request for the appointment of a receiver before the Court considers that motion and at such time as the Court deems it appropriate. Finally, while now is not the time to fully address the issue, the Receiver notes that he wishes to oppose at the appropriate time the request for appointment of a receiver essentially for the same reasons set forth in this brief. That is, the appointment of a receiver for the Harrisburg Authority and its assets would frustrate the Receiver's duties as discussed herein and is antithetical to Amended Act 47's mandate in much the same way as the mandamus relief sought.

Act and Amended Act 47 directly conflict in this instance.⁶ Under Pennsylvania's rules of statutory construction, the provisions of Amended Act 47 must prevail over those of the Debt Act, and the Court must therefore deny Plaintiffs' requested mandamus relief. Additionally, principles of equity dictate that the Court deny Plaintiffs' equitable request for mandamus relief.

A. SB 1151 Significantly Altered the Scope and Nature of the Recovery Measures Authorized by Act 47.

Unlike in the previous iteration of Act 47 in effect at the time of the inception of the instant matter, which established a process by which a municipality could choose to negotiate with its creditors and adopt or reject proposed recovery plans, the General Assembly intended SB 1151 to give the Governor the power to declare a fiscal emergency where, as here, a municipality's officials are "unwilling or unable to accept a solvency plan developed for the benefit of the community" or a municipality's policies "are so ineffective and the financial conditions so severe that the provision of vital and necessary services is threatened." 53 P.S. § 11701.102. The General Assembly specifically found that such failures by a municipality not only constitute a fiscal emergency, but also signify "a breakdown in the function of municipal government," "a dereliction of [a municipality's] elected officials' paramount public duty to safeguard the health, safety and welfare of its citizens," and "a threat to the fiscal stability of neighboring communities," such that the Governor is authorized to intervene under Article IX of the Pennsylvania Constitution. *Id.* Thus, Act 47 explicitly authorizes the Governor to institute immediate corrective measures to rectify the serious financial distress of a municipality.

⁶ In this brief, the Receiver assumes for the sake of argument, but does not concede, that Plaintiffs can demonstrate entitlement to mandamus relief under the Debt Act or otherwise because the Receiver has limited his opposition brief to the sole ground that provisions of Amended Act 47 prevail over the provisions of the Debt Act authorizing mandamus relief. The Receiver is aware that the other Defendants have, prior to the Receiver's intervention, asserted various affirmative defenses to the mandamus relief requested by Plaintiffs in this matter. Nothing in the Receiver's brief is intended to be adverse to any of those arguments.

One of the principal recovery measures authorized by Act 47 as amended is the Governor's authority to appoint a receiver for a distressed municipality. The appointed receiver is responsible for the formulation of a recovery plan that *must* address the City's structural deficit, ensure the continued provision of vital and necessary services, and address the City's lawful financial obligations in a manner that does not exacerbate the structural deficit problems. 53 P.S. § 11701.703(b)(1)(i)&(ii). Chapter 7 vests significant authority in the appointed receiver to develop, modify, and execute the recovery plan, including, *inter alia*, the power to "require the distressed city or authority to take actions necessary to implement the recovery plan under section 703," "require the distressed city or authority to negotiate intergovernmental cooperation agreements between the distressed city and other political subdivisions in order to eliminate and avoid deficits," "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," "approve, disapprove, modify, reject, terminate or renegotiate contracts and agreements with the distressed city or authority," and "direct the distressed city or authority to take any other action to implement the recovery plan." 53 P.S. § 11701.706(a).

Act 47 as amended thus authorizes a receiver appointed by the Commonwealth and approved by the Commonwealth Court to intervene in the fiscal affairs of a distressed municipality in times of dire and unresolved financial crisis. The Commonwealth's intervention and institution of a financial recovery plan through the Commonwealth Court-approved receiver depends not on a municipality's decision to voluntarily negotiate with its creditors, but rather on the Commonwealth's sovereign and plenary powers to vest in a Court-appointed receiver the power to protect its citizens where a municipality's independent efforts to address or prevent insolvency have failed. 53 P.S. § 11701.102. By providing for the appointment of a receiver

tasked with formulating a recovery plan that addresses the City's structural deficit, ensures the continued provision of vital and necessary services, and addresses the City's lawful financial obligations in a manner that does not exacerbate the structural deficit problems, the General Assembly further confirmed that any distressed municipality's financial recovery must also protect the health, safety, and welfare of the municipality's citizens.

B. The Remedial Provisions of Amended Act 47 Prevail Over the Relief Sought by Plaintiffs Under Sections 8261 and 8283 of the Debt Act.

As discussed above, Chapter 7 of Amended Act 47 tasks the Receiver for the City of Harrisburg with significant responsibilities, most of which would be directly impeded by the relief requested by Plaintiffs in their mandamus motion. Specifically, Plaintiffs' demand for first dollar tax relief will preclude formulation of a viable recovery plan by capturing 70% of the City's annual operating budget, thereby preventing the continued provision of vital and necessary services to the citizens of Harrisburg as required by Amended Act 47 and frustrating the Receiver's ability to propose a recovery plan that tackles the City's structural deficit and fairly addresses the City's lawful financial obligations in a manner that does not exacerbate the structural budget deficit problems.

When faced with two statutes that are potentially in conflict, the Court must attempt to harmonize the statutes and give effect to all provisions of both if possible. 1 P.S. 1921(a). However, if the two statutes cannot be harmonized and reconciled, then the earlier statute must give way to the later: "Whenever the provisions of two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute in date of final enactment shall prevail." 1 P.S. § 1936. *See Duquesne Light Co. v. Borough of Monroeville*, 298 A.2d 252, 254-55 (Pa. 1972); *Hankee v. Wilkes-Barre/Scranton Int'l Airport*, 616 A.2d 614, 617 (Pa. 1992).

Applying these venerable principles of statutory construction to the case at hand, the mandamus relief contemplated by Sections 8261 and 8283 of the Debt Act directly conflicts with the remedial provisions established by Act 47 as amended because it would prevent the Receiver from performing his statutorily-mandated functions. First, Plaintiffs' mandamus request to appropriate 70% of the City's annual operating budget for 2012 and allocate it to Plaintiffs' bond debt is so obviously frustrative of the Receiver's mandate to address the City's structural deficit and ensure the continued provision of vital and necessary services that nothing more needs to be said. *See* 53 P.S. § 11701.703(b) ("The recovery plan shall provide for . . . [the] [c]ontinued provision of vital and necessary services."); Emergency Action Plan, Ex. F to the Receiver's Petition to Intervene ("Expenditures that are essential to the health, safety and welfare of City residents, referred to in SB 1151 as 'vital and necessary services', will not be jeopardized by any other expenditure . . .").

Second, Plaintiffs' requested mandamus relief, if granted, would render futile the Receiver's efforts to devise and propose a recovery plan that takes the necessary steps to achieve a structurally feasible, balanced, and sustainable budget for 2012 through 2016 whereby the City's operating revenues are sufficient to meet the City's required expenses, and fairly addresses the City's debts, including the RRF bond guaranty debt obligations. In this regard, the Receiver, as part of his recovery plan, and as specifically contemplated by Amended Act 47,⁷ is seeking a basis on which the Receiver can sell, lease, or otherwise monetize the RRF asset and other assets of the City or the Harrisburg Authority. In the recovery plan, the Receiver will attempt to ensure that any shortfall between value realized from monetization and the RRF debt obligations is fairly addressed in a manner that adequately and equitably addresses the lawful

⁷ *See* 53 P.S. § 11701.703(b)(2)(i) ("The recovery plan may include . . . the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authority . . .").

obligations of the City, including obligations owed to creditors such as Plaintiffs, but does not exacerbate the City's already difficult structural budget deficit problems. If the provisions of Amended Act 47 authorizing the appointment of a receiver are to have any meaning at all, they must be construed to afford the Receiver a meaningful opportunity to carry out the mandate in Amended Act 47 obligating him to formulate a recovery plan. Here, were the mandamus relief requested by Plaintiffs to be granted, the Receiver would have zero ability to formulate a recovery plan in accordance with Amended Act 47, let alone a meaningful one.⁸

In sum, the mandamus relief authorized by Sections 8261 and 8283 of the Debt Act cannot be granted without wholly obstructing the Receiver's ability to comply with the directives of Amended Act 47 and undermining the fundamental purposes of the statutory scheme. Accordingly, the provisions of the most recently enacted statute – Act 47 as amended – prevail over the conflicting provisions of the Debt Act to the extent that they authorize the first dollar mandamus relief Plaintiffs seek. 1 P.S. § 1936. For this reason, Plaintiffs' request for mandamus relief should be denied.

C. Equitable Considerations Also Require That This Court Deny Plaintiffs' Request for Equitable Mandamus Relief.

Although the provisions of Act 47 as amended prevail over the conflicting provisions of the Debt Act, equitable considerations also confirm that this Court should deny Plaintiffs' request for mandamus relief. Because the mandamus relief Plaintiffs request is equitable in nature, *Pittenger v. Union Area School Bd.*, 356 A.2d 866, 867 (Pa. Cmwlth. 1976), this Court must apply equitable principles in considering Plaintiffs' request for equitable relief. Among the

⁸ In addition, the Emergency Action Plan, the interim existing financial crisis plan which the Governor directed the Secretary of the DCFD to create and which Amended Act 47 requires the Receiver to implement, could also not be carried out were Plaintiffs' requested relief granted. 53 P.S. §§ 11701.702(b)(2); 11701.702(e)(5). For instance, it would be impossible for the Receiver to "maintain adequate cash balances for the remainder of 2011 and into 2012" were Plaintiffs awarded first dollar tax relief amounting to 70% of the City's annual budget. (See Emergency Action Plan, Exhibit F to the Receiver's Petition to Intervene).

equitable considerations the Court should weigh are the public interest and the relative balance of harm in granting or denying the requested relief. *See generally Hilton v. State Employees Retirement Bd.*, 353 A.2d 883, 885 (Pa. Cmwlth. 1976), *reversed on other grounds by Hilton v. State Employees Retirement Bd.*, 368 A.2d 640 (Pa. 1977). Both of these factors weigh against the mandamus relief Plaintiffs seek in these circumstances.

First, the public interest weighs against the mandamus relief Plaintiffs seek. In amending Act 47, the General Assembly determined that, in the critical circumstances giving rise to the declaration of a fiscal emergency, the Commonwealth's sovereign and police power authorizes the appointment of a receiver who will develop a recovery plan that protects *all* the citizens affected by the distressed municipality, not just the interests of a few creditors. 53 P.S. § 11701.102. Indeed, in mandating that the Receiver's recovery plan stabilize the distressed city's budget, maintain vital and necessary municipal services, and address the distressed city's lawful financial obligations, Amended Act 47 clearly is directed to protecting the greater public interest of all affected citizens, including all creditors, rather than narrowly focusing on the interests of any single creditor, such as Plaintiffs here. This understanding of Amended Act 47 is consistent with well-established rules of statutory construction, which dictate that a statute should be read in a manner that favors the public good over private interests. *See* 1 P.S. § 1922(5) (the General Assembly generally favors "the public interest as against any private interest").

Second, the relative balance of harms likewise weighs against the mandamus relief Plaintiffs seek. Granting mandamus will immediately frustrate the Receiver's statutorily-mandated task of developing a recovery plan that addresses the City's structural deficit, ensures the continued provision of vital and necessary services, and addresses the City's lawful financial obligations for the benefit of all citizens and creditors affected by the City's financial crisis,

including Plaintiffs. Moreover, granting mandamus relief will obviously have a disastrous effect on the City's ability to operate and function. By contrast, denying mandamus will not harm Plaintiffs. The Receiver is performing his duties pursuant to the Order of the Commonwealth Court and Amended Act 47. If the Plaintiffs have any concerns about the Receiver's performance of his duties under Amended Act 47 or their rights with respect to the recovery plan, or believe they may suffer any harm as a result thereof, Plaintiffs have every opportunity to voice their concerns in the Commonwealth Court. In addition, the Receiver is pursuing a process that will more effectively protect the rights and interests of Plaintiffs than granting mandamus relief. As previously explained, the Receiver contemplates monetizing not only the RRF asset, but also potentially monetizing other assets of the City and the Harrisburg Authority for the purpose of addressing the Stranded RRF Indebtedness. Thus, the Receiver's recovery plan will potentially address Plaintiffs' unsecured claims -- a result that is certainly more advantageous to Plaintiffs than utilizing the blunt instrument of granting mandamus relief with the effect of shutting down the City of Harrisburg and jeopardizing the health, safety and welfare of the public, not only those who live in Harrisburg, but also those who work in the capital city each day.

Finally, a temporary delay in considering the mandamus relief requested until after the Receiver has completed his recovery plan and the Commonwealth Court has considered it will not irreparably harm Plaintiffs nor preclude enforcement of Plaintiffs' rights indefinitely. Because Plaintiffs will suffer no harm -- irreparable or otherwise -- from this temporary delay, the Court should deny Plaintiffs' request.

IV. CONCLUSION

Based on the foregoing, the Receiver respectfully requests that the Court deny Plaintiffs' request for mandamus relief or, alternatively, stay this litigation or the authorization of such relief until the Receiver has completed his duties under Amended Act 47.


The Receiver is aware that the other Defendants have, prior to the Receiver's intervention, asserted various affirmative defenses to the mandamus relief requested by Plaintiffs in this matter. Nothing in the Receiver's brief is intended to be adverse to any of those arguments.

Respectfully submitted,

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Date: January 23, 2012

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CERTIFICATE OF SERVICE

I, Joseph Krolikowski, Esq., do hereby certify that on this date I caused a true and correct copy of the foregoing **Memorandum of Law in Opposition to Plaintiffs' Motion for Mandamus** to be served upon the following individuals by first class, pre-paid mail and e-mail to the addresses listed below:

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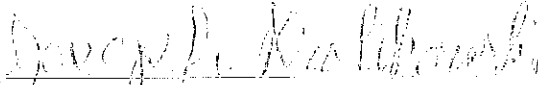
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