

November 22, 2011

Jeffery G. Weil, Esquire
Neal D. Colton, Esquire
Stephen Miller, Esquire
Eric L. Scherling, Esquire
Cozen O'Connor, P.C.
1900 Market Street
Philadelphia, PA 19103

VIA FIRST CLASS MAIL, FAX NO. 215-665-2013 AND EMAILS:

**jweil@cozen.com
ncolton@cozen.com
samiller@cozen.com
escherling@cozen.com**

Mark D. Schwartz, Esquire
David A. Gradhol, Esquire
P.O. Box 330
Bryn Mawr, Pa. 19010

**VIA FIRST CLASS MAIL, FAX NO. 610-525-5534 AND EMAIL
markschwartz6814@gmail.com**

Re: C. Alan Walker, in his capacity as Secretary for the Department of Community and Economic Development v. City of Harrisburg

No. 569 M.D. 2011 (Commonwealth Court of Pa)

Gentlemen:

Enclosed please find a date stamped copy of the Answer and New Matter of Respondent, City of Harrisburg, to the Petition For Appointment of Receiver For The City Of Harrisburg And Related Relief Pursuant To Subsection 702 Of Act 47 As Amended filed this date.

Should you have any questions, please feel free to contact me.

Very truly yours,

TUCKER ARENSBERG, P.C.



Kenneth W. Lee

KWL/dth
Enclosure

cc: Jason Hess, Esquire (w/encl.) (via email jhess@cityofhbg.com)
HBGDB:123407-1 026882-153669

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

569 M.D. 2011

C. ALAN WALKER, IN HIS CAPACITY AS SECRETARY FOR THE DEPARTMENT OF
COMMUNITY AND ECONOMIC DEVELOPMENT,

Petitioner,

vs.

CITY OF HARRISBURG,

Respondent.

**Answer and New Matter of Respondent, City of Harrisburg, to the Petition For
Appointment of Receiver For The City Of Harrisburg And Related Relief Pursuant To
Subsection 702 Of Act 47 As Amended**

Tucker Arensberg, P.C.

Kenneth W. Lee, Esquire
PA ID No. 50016
Christopher E. Fisher, Esquire
PA ID No. 201395
P.O. Box 889
Harrisburg, PA 17108-0889
Telephone: (717) 234-4121
Facsimile: (717) 232-6802
Email: klee@tuckerlaw.com
cfisher@tuckerlaw.com

Beverly Weiss Manne, Esquire
PA ID No. 34545
Michael A. Shiner, Esquire
PA ID No. 78088
1500 One PPG Place
Pittsburgh, PA 15222
Telephone: (412) 566-1212
Facsimile: (412) 594-5619
Email: bmanne@tuckerlaw.com
mshiner@tuckerlaw.com

***Counsel for City of Harrisburg by and through its Mayor, the Honorable
Linda D. Thompson***

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CLERK OF COURT
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HARRISBURG, PA

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. ALAN WALKER, IN HIS CAPACITY AS
SECRETARY FOR THE DEPARTMENT OF
COMMUNITY AND ECONOMIC
DEVELOPMENT,

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v.

THE CITY OF HARRISBURG,

Respondent.

No. 569 M.D. 2011

NOTICE TO PLEAD

To: C. ALAN WALKER and his attorneys:

You are hereby notified to file a written response with the court to the within New Matter in either twenty (20) days from the service hereof or such other time as the court may require or judgment entered against you.

TUCKER ARENSBERG, P.C.

By: 

Kenneth W. Lee, Esquire

PA ID # 50016

Beverly Weiss Manne, Esquire

PA ID # 34545

Michael A. Shiner, Esquire

PA ID # 78088

Christopher E. Fisher, Esquire

PA ID # 201395

*Counsel for the City of Harrisburg and its Mayor,
the Honorable Linda D. Thompson*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. ALAN WALKER, IN HIS CAPACITY AS
SECRETARY FOR THE DEPARTMENT OF
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THE CITY OF HARRISBURG,

Respondent.

No. 569 M.D. 2011

**ANSWER AND NEW MATTER OF RESPONDENT, CITY OF HARRISBURG,
TO THE PETITION FOR APPOINTMENT OF RECEIVER FOR THE CITY OF
HARRISBURG AND RELATED RELIEF PURSUANT TO SUBSECTION 702 OF
ACT 47 AS AMENDED**

The City of Harrisburg, through its Mayor, the Honorable Linda D. Thompson, by and through their counsel, Tucker Arensberg, P.C., files this Answer and New Matter to the Petition For Appointment of Receiver For The City Of Harrisburg And Related Relief Pursuant To Subsection 702 Of Act 47 As Amended (the "Petition") and in support thereof, states as follows:

ANSWER

1. The allegations in Paragraph 1 of the Petition are admitted.
2. The allegations in Paragraph 2 of the Petition are admitted in part and denied in part. It is admitted that DCED undertook an investigation of the financial affairs of the City. The allegation that DCED fulfilled its obligations pursuant to the subsections cited constitute a legal conclusion to which no response is required. To the extent that a response is required, the City denies the same due to a lack of knowledge regarding the truth or falsity of each and every matter investigated or sought to be investigated and demands strict proof thereof.

3. The allegations in Paragraph 3 of the Petition are admitted.

4. The allegations in Paragraph 4 of the Petition are admitted in part and denied in part. It is admitted that on January 12, 2011, Secretary Burke appointed the Novak Consulting Group as Recovery Plan Coordinator for the City of Harrisburg pursuant to the provisions of Subsection 221 of Act 47 and that the Recovery Plan Coordinator filed Harrisburg's Act 47 Recovery Plan with the municipal clerk in accordance with Subsection 242 of Act 47 on June 13, 2011. It is further admitted that the Recovery Plan Coordinator filed Harrisburg's Final Act 47 Recovery Plan with the municipal clerk in accordance with Subsection 244 of Act 47 on July 8, 2011 and that on July 19, 2011 a majority of the City Council of the City of Harrisburg rejected that Plan. To the extent Paragraph 4 of the Petition endeavors to characterize in a single sentence the contents of each such Plan, those allegations are denied as the Plan(s) are written documents which speak for themselves.

5. The allegations in Paragraph 5 of the Petition are admitted in part and denied in part. It is admitted that following the City Council's failure to adopt the Recovery Coordinator's Final Act 47 Plan, the City through Mayor Thompson developed and filed an Alternate Final Recovery Plan (the "Mayor's Alternate Final Recovery Plan") pursuant to the provisions of Subsection 246 of Act 47 and filed such Plan with the municipal clerk on August 22, 2011. It is also admitted that on August 31, 2011, a majority of the Harrisburg City Council rejected Mayor's Alternate Final Recovery Plan and that on September 13, 2011, a majority of the City Council declined to reconsider its rejection of the Mayor's Alternate Final Recovery Plan. The allegation that the City was left with no plan to alleviate its fiscal distress is denied. To the contrary, the City has a plan which complies with Act 47 as amended through the Mayor's Alternate Final Recovery Plan. Because the City Council unreasonably withheld approval of the

Mayor's Alternate Final Recovery Plan the statutory scheme as it relates to Act 47 as amended and the Receiver sought by the Petition strongly implies, if not expressly mandates that the Mayor's Alternate Final Recovery Plan must be implemented by the Receiver sought to be appointed by the Petition.

6. The allegations in Paragraph 6 of the Petition are admitted in part and denied in part. It is admitted that sometime after June 20, 2011, Governor Corbett signed into law Senate Bill 1151, amending Act 47. The remaining allegations in Paragraph 6 of the Petition constitute a conclusion of law to which no response is required.

7. The allegations of Paragraph 7 are admitted in part and denied in part. It is admitted Governor Corbett declared that he had determined a fiscal emergency exists in the City of Harrisburg. It is admitted that the City Council has not adopted a fiscal recovery plan. The remaining allegations including the truth of the "Concise Statement of Facts Supporting the Determination of Fiscal Emergency in the City of Harrisburg" are denied. To the contrary, the City has the ability to ensure the continued provision of vital and necessary services as such term is defined by Section 601 of the Act of July 10, 1987, P .L. 246, (as amended), 53 P.S. §11701 .601 ("Act 47 as amended"), and is not "insolvent."

8. The allegations in Paragraph 8 of the Petition are admitted in part and denied in part. It is admitted that Governor Corbett issued a Declaration of Fiscal Emergency for the City of Harrisburg (the "Emergency Declaration") on October 24, 2011 and that Exhibit "B" appears to be a true and correct copy of the Emergency Declaration. The allegations in Paragraph 8 of the Petition that the Emergency Declaration was pursuant to the Subsection 602(b) of Act 47 constitute a legal conclusion to which no response is required. Further, to the extent that Paragraph 8 of the Petition incorporates the allegations within the Emergency Declaration, the

City does not admit that such averments are all true and correct, including the allegations that the City is insolvent. To the contrary, the City faces liquidity issues with respect to payment of certain guarantee obligations, but with the exception of the guarantee obligations pertaining to one asset, which is the subject of pending litigation, the City is able to pay its obligations as they become due.

9. The allegations in Paragraph 9 of the Petition are admitted in part and denied in part. It is admitted that Governor Corbett directed the Secretary to prepare an Emergency Action Plan. The remaining allegations in Paragraph 9 of the Petition constitute conclusions of law to which no response is required. To the extent a response is required, the allegations are denied. Specifically, the City denies that the Emergency Action Plan was required at this time to ensure that vital and necessary services are maintained within the City of Harrisburg.

10. The allegations in Paragraph 10 of the Petition are admitted in part and denied in part. It is admitted that on November 15, 2011, Governor Corbett directed the Secretary to file a petition with the Commonwealth Court. The remaining allegations in Paragraph 9 of the Petition constitute conclusions of law to which no response is required. By way of further response the Governor's Letter is a writing which speaks for itself. As to the allegations contained within said Letter, it is admitted that the City did not present a consent agreement within twenty (20) days of the Governor's Declaration of the Fiscal Emergency. It is denied that the City will not be adopting a valid ordinance -- although it is admitted that the City Council has refused to adopt a valid ordinance as of this date.

11. The allegations in Paragraph 11 of the Petition are admitted in part and denied in part. It is admitted that the Secretary of DCED is petitioning the Commonwealth Court for the appointment of David Unkovic as Receiver for the City of Harrisburg. The remaining

allegations in Paragraph 11 of the Petition constitute conclusions of law to which no response is required.

12. The allegations in Paragraph 12 of the Petition are admitted.

13. The allegations in Paragraph 13 of the Petition constitute a conclusion of law and request for relief to which no response is required.

14. The allegations in Paragraph 14 of the Petition constitute conclusion of law and request for relief to which no response is required.

15. The allegations in Paragraph 15 of the Petition constitute a conclusion of law and request for relief to which no response is required.

16. The allegations in Paragraph 16 of the Petition constitute a conclusion of law and request for relief to which no response is required.

17. The allegations of Paragraph 17 of the Petition are admitted to the extent that the Petition has been served upon the Mayor. At present, the Mayor is without information or knowledge as to whether the remaining parties identified in Paragraph 17 of the Petition have been served or whether the Secretary has published any notices.

NEW MATTER

The City of Harrisburg (the "City") hereby alleges the following New Matter:

1. The City is a Pennsylvania Municipal Corporation organized pursuant to the Third Class City Code, Act of June 23, 1931, P.L. 932, as amended, 53 P.S. § 35101 *et seq.*, and operating pursuant to Mayor-Council Plan A ("Plan A") of the Optional Third Class City Charter Law, Act of July 15, 1957, P.L. 901, as amended, 53 P.S. § 41101 *et seq.*

2. With the exception of the guaranty of certain bonds issued in relation to the Resource Recovery Facility ("RRF") the City is able to pay its obligations as they become due.

3. The City has liquidity issues, but the value of the assets of the City exceeds the City's obligations and the City is not insolvent.

4. The Mayor's Alternate Final Recovery Plan is a reasonable plan and if implemented would alleviate the City's financial distress, including but not limited to the fact that the Mayor's Alternate Final Recovery Plan would cause a projected surplus for fiscal year 2012.

5. The City has already implemented numerous measures and recommendations set forth in the Mayor's Alternate Final Recovery Plan.

6. The Mayor has sought and will continue to seek additional revenues in various forms and other relief from the Commonwealth of Pennsylvania, the County of Dauphin and other interested parties, and such additional revenues and other relief are included in the Mayor's Alternate Final Recovery Plan.

7. In spite of the filing of an unauthorized Chapter 9 Bankruptcy petition by four members of the City Council, and notwithstanding the issues pertaining to RRF bonds, the City is able to provide and maintain vital and necessary services within the City of Harrisburg.

8. The relief sought by the DCED, that this Court require and empower the Receiver to implement the Emergency Action Plan developed by the Secretary under Subsection 602 of Act 47 as amended until a recovery plan developed by the Receiver is approved by the court under Subsection 703 of Act 47 as amended, is inappropriate and not justified.

9. The Mayor's Alternate Final Recovery Plan provided necessary concessions from numerous parties and modifications to the Secretary's plan.

10. The Secretary of DCED did not have objections to and, and upon information and belief accepted or was ready to accept the Mayor's Alternate Final Plan.

11. The statutory scheme under Act 47 as amended as it relates to the Petition and the Receiver sought to be confirmed thereby strongly implies, if not expressly mandates, both at law and in equity, that the Mayor's Alternate Final Recovery Plan be implemented by the Receiver sought by the Petition.

12. If the Mayor's Alternate Final Recovery Plan is adopted and implemented by the Receiver, then the appointment of the Receiver could be for a significantly shorter period than 2 years. Accordingly, the length of the Receiver's appointment should be for not more than one (1) year, subject to extension upon the showing of cause.

13. Accordingly, if this Court accepts the Petition of the DCED and appoints a Receiver; this Court should require and empower the Receiver to implement the Mayor's Alternate Final Recovery Plan.

14. Additional meetings with the creditors of the RRF facility has set forth the groundwork for both the sale of the Incinerator and the lease of the City Parking garages, and the treatment of any deficiency that might be due to such creditors if the sale and lease combined are insufficient to pay the RRF obligations in full, including the forgiveness of all or a part of the deficiency and the long term financing of any deficiency which the City will be obligated to pay.

15. In the interests of equity, the interests of creditors and the interests of the Citizens of the City of Harrisburg, the Court should craft relief to ensure that the Receiver shall not abandon efforts to obtain concessions from creditors in consideration of the liquidation and lease of the Parking Authority assets which are not specifically pledged to repay the RRF creditors.

16. Section 711(a) of Act 47 as amended provides for the establishment of a Municipal Financial Recovery Advisory Committee to meet and consult with the Receiver in carrying out the duties under Act 47 as amended.

17. The Petition of the DCED does not specify the identity of the Advisory Committee to be appointed by the Governor.

18. The DCED Order for relief should, but does not, require the Receiver to meet with the Advisory Committee as provided for under Section 711(a) of Act 47.

19. The proposed Order does, however, require the Receiver to develop and submit a Recovery Plan within thirty (30) days from appointment.

20. This Court should direct the immediate identification of Advisory Committee Members by the Governor and the Dauphin County Commissioners and further should provide that an initial meeting of said Advisory Committee should be held within seven (7) business days following the appointment of the Receiver.

WHEREFORE, the City further prays that this Court either deny the Petition or, in the alternative grant the Petition subject to further relief requested by the City, including but not limited to the appointment of the David Unkovic as the Receiver and mandate his immediate implementation of the Mayor's Alternate Final Recovery Plan, and to further grant the City such other relief as is just and proper.

Dated: November 22, 2011

Respectfully submitted,

TUCKER ARENSBERG, P.C.

By: 

Kenneth W. Lee, Esquire

PA ID # 50016

Christopher E. Fisher, Esquire

PA ID # 201395

P.O. Box 889

Harrisburg, PA 17108-0889

Telephone: (717) 234-4121

Facsimile: (717) 232-6802

Email: cfisher@tuckerlaw.com

klee@tuckerlaw.com

Beverly Weiss Manne, Esquire
PA ID # 34545
Michael A. Shiner, Esquire
PA ID # 78088
1500 One PPG Place
Pittsburgh, PA 15222
Telephone: (412) 566-1212
Facsimile: (412) 594-5619
Email: bmanne@tuckerlaw.com
mshiner@tuckerlaw.com

*Counsel for the City of Harrisburg and its Mayor,
the Honorable Linda D. Thompson*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

C. ALAN WALKER, IN HIS CAPACITY AS
SECRETARY FOR THE DEPARTMENT OF
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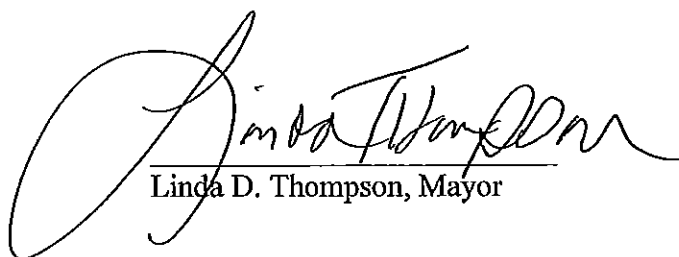
THE CITY OF HARRISBURG,

Respondent.

No. 569 M.D. 2011

VERIFICATION

AND NOW, comes Linda D. Thompson, Mayor of the City of Harrisburg, for herself and on behalf of the City of Harrisburg, and verifies that the facts contained in the foregoing Answer and New Matter to the Petition For Appointment of Receiver For The City Of Harrisburg And Related Relief Pursuant To Subsection 702 Of Act 47 As Amended are true and correct to the best of her knowledge, information and belief and that she, as Mayor of the City of Harrisburg, is authorized to execute this Verification. This Verification is made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities, which provides criminal penalties if a person with intent to mislead makes a written false statement which he does not believe to be true.


Linda D. Thompson, Mayor

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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THE CITY OF HARRISBURG,

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving two (2) copies of the foregoing Answer and New Matter to the Petition For Appointment of Receiver For The City Of Harrisburg And Related Relief Pursuant To Subsection 702 Of Act 47 As Amended upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121 and Pa.R.A.P. 2187(a):

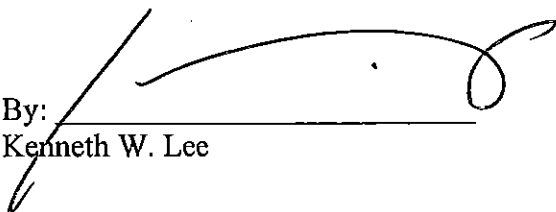
Service by United States Mail, First Class, postage prepaid, facsimile, and email:

Jeffery G. Weil, Esquire
jweil@cozen.com
Neal D. Colton, Esquire
ncolton@cozen.com
Stephen Miller, Esquire
samiller@cozen.com
Eric L. Scherling, Esquire
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David A. Gradhol, Esquire
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Facsimile: 610-525-5534

TUCKER ARENSBERG, P.C.

Dated: November 22, 2010

By: 
Kenneth W. Lee