

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

Proposed Intervenor  
Defendant

IN THE COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PENNSYLVANIA

NO. 2010 CV 11737 CV

CIVIL ACTION – LAW  
JURY TRIAL DEMANDED

**RULE TO SHOW CAUSE**

AND NOW, this \_\_\_\_\_ day of December, 2011, a Rule is hereby issued upon all parties to show cause why the relief requested in the Petition to Intervene filed by David Unkovic, in his official capacity as the Receiver for the City of Harrisburg, should not be granted. This Rule is

returnable at the Hearing on Motion for Appointment of a Receiver on Tuesday, December 20, 2011 at 9:00 a.m. in Courtroom #1, Fifth Floor, Dauphin County Courthouse.

BY THE COURT:

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**PETITION TO INTERVENE**

AND NOW, comes DAVID UNKOVIC, the RECEIVER FOR THE CITY OF HARRISBURG, having been nominated by Governor Thomas Corbett, Jr. and formally appointed to serve in the capacity as Receiver for the City of Harrisburg by the Commonwealth Court of Pennsylvania on December 2, 2011, to intervene in the above-referenced matter pursuant to Pa.R.C.P. 2326-2330, and in support thereof avers as follows:

## THE INTERVENOR

1. Petitioner, David Unkovic, is an adult individual having a professional address for service of process at Office of the Receiver for the City of Harrisburg, 401 Finance Building, Harrisburg, PA 17120.

2. On December 2, 2011, Petitioner, David Unkovic (hereinafter the “Receiver”), having been previously nominated by Governor Thomas Corbett, Jr. for the position of statutory receiver for the City of Harrisburg pursuant to applicable provisions of the Municipalities Financial Recovery Act, Act of July 10, 1987, P.L. 246, (*as amended*), 53 P.S. § 11701.101, *et seq.* (“Act 47 as amended”), was appointed to be the Receiver for the City of Harrisburg by Order of the Commonwealth Court of Pennsylvania. A true and correct copy of the Memorandum Opinion and Order issued by the Honorable James R. Kelley, Senior Judge, is attached hereto as Exhibit “A” and incorporated herein by reference as if set forth in full.

3. Thus, effective December 2, 2011, the Receiver began a two-year term of service as the Receiver for the City of Harrisburg pursuant to the provisions of Chapter 7 of Act 47 as amended, during which the Receiver is charged with the responsibility of formulating a recovery plan for the City that, amongst other things, ensures the “[c]ontinued provision of vital and necessary services.” 53 P.S. § 11701.703(b).

4. “Vital and necessary services” of the City of Harrisburg are defined by Act 47 as amended to include police and fire services; ambulance and rescue services; water supply and distribution; wastewater services; refuse collection and disposal; snow removal; and fulfillment of payment of debt obligations or any other financial obligations. 53 P.S. § 11701.701.

**PENDING REQUESTS FOR RELIEF IN THE WITHIN MATTER**

5. The averments of paragraphs one (1) through four (4) are incorporated herein by reference as if set forth in full.

6. On November 8, 2010, Plaintiffs filed a Motion for the Appointment of a Receiver Pursuant to the Local Government Unit Debt Act, the Municipality Authorities Act and the Trust Indentures. A true and correct copy of said Motion is attached hereto as Exhibit "B" and incorporated herein by reference as if set forth in full.

7. Plaintiffs' Motion for the Appointment of a Receiver specifically requests that this Honorable Court appoint a receiver for the Harrisburg Authority in respect of the Resource Recovery Facility ("RRF"). See Exhibit "A", p. 14.

8. On November 9, 2010, Plaintiffs filed a Motion for an Order of Mandamus Pursuant to Section 8261 and 8283 of the Local Government Unit Debt Act and For Equitable Relief. A true and correct copy of said Motion is attached hereto as Exhibit "C" and incorporated herein by reference as if set forth in full.

9. Plaintiffs' Motion for an Order of Mandamus requests that this Honorable Court order the Treasurer of the City of Harrisburg to "pay out of the first tax moneys or other revenues received by the City amounts currently due under the [City's guarantees] and to set aside the amounts required to be budgeted for the current and next fiscal year under the [City's guarantees]." See Exhibit "C", p. 14.

10. The amounts subject to the mandamus outlined in the preceding paragraph and demanded by the Plaintiffs to be collected on a "first dollar" basis and budgeted for in future years from the City is believed and therefore averred to exceed \$40,000,000.

11. The annual budget of the City of Harrisburg is believed and therefore averred to be approximately \$50,000,000.

### **BASIS FOR INTERVENTION**

12. The averments of paragraphs one (1) through eleven (11) are incorporated herein by reference as if set forth in full.

13. Since the commencement of the within proceedings, the statutory landscape, and indeed the entire statutory scheme, of Pennsylvania's municipal financial recovery law has dramatically changed.

14. On October 20, 2011, Governor Corbett signed into law Senate Bill 1151, amending the Municipalities Financial Recovery Act, Act of July 10, 1987, P.L. 246, 53 P.S. § 11701.101, *et seq.*, also known as Act 47. A true and correct copy of Senate Bill 1151 is attached as Exhibit "A" to the Motion pending before this Honorable Court filed by Defendant, The Harrisburg Authority.

15. SB 1151 dramatically altered the statutory scheme of Act 47 pertaining to municipal financial recovery in the Commonwealth of Pennsylvania, significantly adding Chapters 6 and 7 to Act 47 as amended which authorized the Commonwealth's intervention in the fiscal affairs of a distressed municipality in a manner never before authorized by the General Assembly.

16. In strict compliance with the mandate of the Pennsylvania legislature following the enactment of SB 1151, and in furtherance of the statutory scheme intended by the Pennsylvania legislature, specifically Chapter 6 of Act 47 as amended, the Commonwealth took the following actions:

(a) On October 24, 2011, Governor Corbett determined, pursuant to Act 47 as amended, that a fiscal emergency exists in the City of Harrisburg and declared a fiscal emergency in the City of Harrisburg (a true and correct copy of the Declaration of Fiscal Emergency is attached hereto as Exhibit "D" and is incorporated herein by reference as if set forth in full);

(b) Concurrently with the issuance of the Declaration of Fiscal Emergency, Governor Corbett issued a Concise Statement of Facts Supporting the Determination of Fiscal Emergency in the City of Harrisburg Required by 53 P.S. § 11701.602(b)(1) of Act 47 as amended (a true and correct copy of the Concise Statement of Fact is attached hereto as Exhibit "E" and is incorporated herein by reference as if set forth in full);

(c) Governor Corbett directed the Secretary of Community and Economic Development ("DCED"), pursuant to the Declaration of Fiscal Emergency, to develop and Emergency Action Plan, as prescribed by Act 47 as amended. Such Emergency Action Plan was developed and provided to the City officials for immediate implementation, and is in place and will remain in place according to the provisions of Act 47 as amended until a financial recovery plan is approved by the Commonwealth Court (a true and correct copy of the Emergency Action Plan is attached hereto as Exhibit "F" and is incorporated herein by reference as if set forth in full).

17. In addition to the foregoing, following the failure of consent agreement negotiations between the City of Harrisburg and its creditors, the Commonwealth took further action pursuant to Chapter 7 of Act 47 as amended, specifically:

(a) On November 18, 2011, having been informed of the Governor's nomination of David Unkovic, the Secretary of DCED petitioned the Commonwealth Court to appoint Mr. Unkovic as the receiver for the City of Harrisburg;

(b) On December 1, 2011, the Commonwealth Court conducted a hearing on the Commonwealth's request for the appointment of Mr. Unkovic as the receiver of the City of Harrisburg pursuant to the provisions of Chapter 7 of Act 47 as amended;

(c) On December 2, 2011, Judge Kelley granted the Commonwealth's Petition and appointed Mr. Unkovic to be the Receiver for the City of Harrisburg (see Exhibit "A" attached hereto).

18. Chapter 7 of Act 47 as amended vests significant authority in the Receiver for the City of Harrisburg, most of which is directly impeded, jeopardized, or otherwise adversely affected by the relief requested by Plaintiffs in the Motions referenced in paragraphs six (6) and eight (8) above. Moreover, the requested relief in the nature of the appointment of a receiver over the Harrisburg Authority is duplicative, unnecessary, and will result in conflicts between the Commonwealth-appointed Receiver and the self-interested receiver Plaintiffs seek to install with respect to the RRF.

19. Pursuant to Act 47 as amended, the Receiver is responsible to formulate a recovery plan that must provide for the (i) continued provision of vital and necessary services to the City of Harrisburg and (ii) payment of the lawful financial obligations of the City of Harrisburg and its authorities. 53 P.S. § 11701.703(b)(1)(i)&(ii).

20. In addition, the Receiver may include in the City's recovery plan provisions for (i) the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed city or authorities, including but not limited to the Defendant, Harrisburg Authority, and (ii) the

approval, modification, rejection, renegotiation or termination of contracts or agreements of the distressed city or authorities. 53 P.S. § 11701.703(b)(2)(i)&(ii).

21. Plaintiffs' demand for first dollar tax relief will preclude any formulation of a viable recovery plan by stripping the Receiver of approximately eighty percent (80%) of the City's annual operating budget. In doing so, the entire statutory scheme intended for the benefit of distressed municipalities, including the City of Harrisburg, is contravened and obstructed, rendering Plaintiffs' demand precisely the type of relief that a court sitting in equity cannot impose.

22. The drastic relief requested by Plaintiffs will plainly preclude the continued provision of vital and necessary services to the City of Harrisburg, a cornerstone of the responsibility of the Receiver according to Act 47 as amended. Imposition of the mandamus relief requested by the Plaintiffs will render the City incapable of providing fire, police, and other vital protections upon which the citizens of Harrisburg, including those who work in the City, depend and rely.

23. In addition, the Receiver is charged with the responsibility of implementing the Emergency Action Plan, attached hereto as Exhibit "F", none of which could be implemented were the relief requested by Plaintiffs granted. Specifically, it would be impossible for the Receiver to "maintain adequate cash balances for the remainder of 2011 and into 2012" as provided for in the Emergency Action Plan were Plaintiffs awarded the first dollar relief they request.

24. Moreover, the imposition of "dueling receivers", one installed by the Commonwealth of Pennsylvania and the other installed by the Dauphin County Court of Common Pleas, is an unproductive outcome that is not authorized by Pennsylvania law, and

likewise impedes the application and implementation of Act 47 as amended, and directly conflicts with the responsibilities and obligations of the Receiver with respect to not only the City of Harrisburg, but the authorities of the City as well.

25. Chapter 7 of Act 47 as amended authorizes the Receiver to issue an order to an elected or appointed official of the City of Harrisburg or an authority, including the Defendant, Harrisburg Authority, to (i) implement any provision of the recovery plan and (ii) refrain from taking any action that would interfere with the powers granted to the Receiver or the goals of the recovery plan. 53 P.S. §11701.708(a)(1)&(2).

26. The Receiver's orders as outlined above directed to either City officials or officials of the authorities of the City are enforceable by mandamus actions fostered by the Receiver in the Commonwealth Court of Pennsylvania. 53 P.S. §11701.709. Accordingly, any alleged protection sought by the Plaintiffs is already statutorily provided for in Act 47 as amended. Ironically, the Plaintiffs' receiver would be subject to the same mandamus remedy available to the Receiver and provided for in Act 47 as amended, just as would any other official of the authority, thus setting up the untenable situation in which this Honorable Court would be pitted against the Commonwealth Court in refereeing potential conflicts between the Commonwealth-appointed Receiver and the Plaintiffs' receiver.

27. For all the reasons explained above, the Receiver is permitted to intervene in this action pursuant to Pa. R.C.P. 2327(3) and (4).

28. If permitted to intervene in this matter as requested, the Receiver intends to assert the supremacy of Act 47 as amended in defense of Plaintiffs' claims pursuant to the Local Government Unit Debt Act and any other authority upon which Plaintiffs rely, as well as request a stay of execution or collection on any judgment that may be issued in favor of Plaintiffs.

29. The Receiver's request to intervene should not be refused due to any provision of Pa. R.C.P. 2329(1)-(3). The Receiver's assertion of interest in this matter is statutorily supported, the interest of the Receiver is not adequately represented in the pending litigation, and no prior request to intervene was possible as the Receiver was not appointed until December 2, 2011 and the provisions of Act 47 as amended implicated herein were not enacted into law until after the pending litigation was commenced.

WHEREFORE, Petitioner, David Unkovic, in his official capacity as Receiver for the City of Harrisburg, respectfully requests that this Honorable Court grant the within Petition to Intervene and permit Petitioner's participation in this and all related matters as a party in interest. Court's convenience.

Respectfully submitted,

**McKenna Long & Aldridge, LLP**

Date: December 16, 2011

By:



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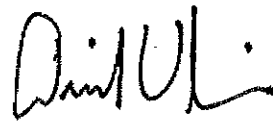
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**Attorneys for David Unkovic, in his official  
capacity as Receiver for the City of Harrisburg**

VERIFICATION

The undersigned, David Unkovic, in his official capacity as Receiver for the City of Harrisburg, hereby verifies that the facts set forth in the foregoing Petition to Intervene are true and correct to the best of his knowledge, information and belief and further states that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 12/16/11



\_\_\_\_\_  
DAVID UNKOVIC, in his official capacity as  
Receiver for the City of Harrisburg

## CERTIFICATE OF SERVICE

I, Joseph Krolkowski, Esq., do hereby certify that on this date I caused a true and correct copy of the foregoing **Petition to Intervene** 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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