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Wednesday
October 22, 2014

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Ref: *Allen Park Retirees Association Inc – v – State of Michigan, et al*
General Membership Updates on APRA Activities in State & Federal Courts

Greetings to All,

Here is an update, current as of **Wednesday, October 22nd**, on the APRA files in various Courts.

Wayne Circuit Court & Michigan Court of Claims

On **Thursday, August 21st**, the Wayne County Circuit Court issued its Order which decided the opposing motions that we argued before it on **July 11th**. The Court agreed with our ongoing argument [first raised in the Ingham Circuit Court last year] that the Emergency Manager for Allen Park is a **State Officer**; and not a “local official.”

The designation was crucial, because it meant that the Wayne Circuit Court has no authority or jurisdiction over the State’s Emergency Manager, to decide any matters in this case. You’ll recall that shortly after we’d filed the original lawsuit in Ingham Circuit Court in October, 2013, the Legislature and Governor had quickly changed the jurisdictions of both the Circuit Courts and the State Court of Claims.

All **State** cases, including Emergency Managers, were supposed to be transferred from the State’s various **Circuit Courts** into the **State Court of Claims**. In **December, 2013** the State Attorney General’s office moved our other two Defendants [the State and the State Treasury Department] into the Court of Claims. The AG’s office, however, intentionally left the Emergency Manager in the **Circuit Court** system – to try and dominate the case in that Court. That improper placement has now come to an end – the **City of Allen Park**, alone, will remain in the **Wayne Circuit Court**.

On **Wednesday, August 27th**, I got a phone call from the Assistant Attorney General representing the State, who said that as of that date, the AG’s office had not decided whether to appeal the Wayne Circuit Court judge’s decision in our favor. The 21-day period passed without any appeal by the State.

In **April, 2014**, however, the AG’s office had convinced the **Court of Claims** to “temporarily close,” or “**Stay**” our case at that Court. The Court of Claims agreed with the State that the APRA had been automatically swept into the **Detroit** bankruptcy case [which also involved an Emergency Manager]. We would then have to file a legal brief in the **Federal Bankruptcy Court** to break free from that case.

Meanwhile, the next response in late **August, 2014**, was from the law firm representing the **City of Allen Park** in the **Wayne County Circuit Court**. That law firm filed its own Motion at the Wayne Circuit Court, again requesting that the Wayne Circuit Court “**Stay**,” or “temporarily close” the case, pending the outcome in the **State Court of Claims**. Since the Court of Claims case, as noted above, is also closed, it was yet another effort to freeze us out of all possible discovery, for as long as possible.

On mid-September, we finally began discovery of documents – based upon the still-open **Wayne Circuit Court** case. A subpoena was served on the Daly-Merritt Insurance Agency, to obtain all of the records and correspondence between that insurance broker and the State’s Emergency Manager.

One week later, however – on **Friday, September 26th** – the **Wayne Circuit Court** granted the City’s motion to again “**Stay**” the case. The Wayne Circuit Court ruled that we must first get a ruling from the **Michigan Court of Claims** on the Constitutionality of the current Emergency Manager Act, **Public Act 436 of 2012**. The Court’s ruling and Order also halted the discovery of records at the Daly-Merritt insurance agency – as well as all discovery, in all directions, for now.

The Federal Bankruptcy and District Court Case(s)

On **July 30, 2014**, the **Federal Bankruptcy Court** granted our Motion to Clarify and Remove the APRA from any part of the Detroit bankruptcy case. Even better – that Court decided our Motion and issued its Order without calling for an oral hearing – thereby saving the APRA time and expenses.

Under the US Constitution and Federal law, the Federal **Bankruptcy** Court is somewhat independent of – but still subordinate to – the Federal **District** Courts. The Federal **District** Courts are the main trial Courts in the Federal system for both civil and criminal cases. They have the same role that Michigan Circuit Courts have under Michigan law. All legal briefs and filings in all Federal Courts are done electronically.

As expected, both the State and the City have filed appeals from the Federal **Bankruptcy** Court into the Federal **District** Court for Eastern Michigan. The State, as “an interested party,” filed its Notice of Appeal on **August 6th** – **and** the City of Detroit filed its Notice of Appeal on **August 13th**. The appeals were – again – obvious attempts to delay as long as possible the APRA lawsuit.

In mid-September, I received a phone call from the law firm representing the **City of Detroit** in this appeal. Those attorneys requested that I agree to combine **both** appeals from the **State** and the **City of Detroit** into one hearing at the Federal District Court in Detroit. In order to save time and the APRA’s finances, I agreed to combine the appeals.

The City of Detroit’s attorneys – the State Attorney General’s office – and this law firm then filed a joint motion at the Federal **District Court** during the last week of September. That Court granted the request of all of the parties and combined all of the appeals – thereby reducing its own workload.

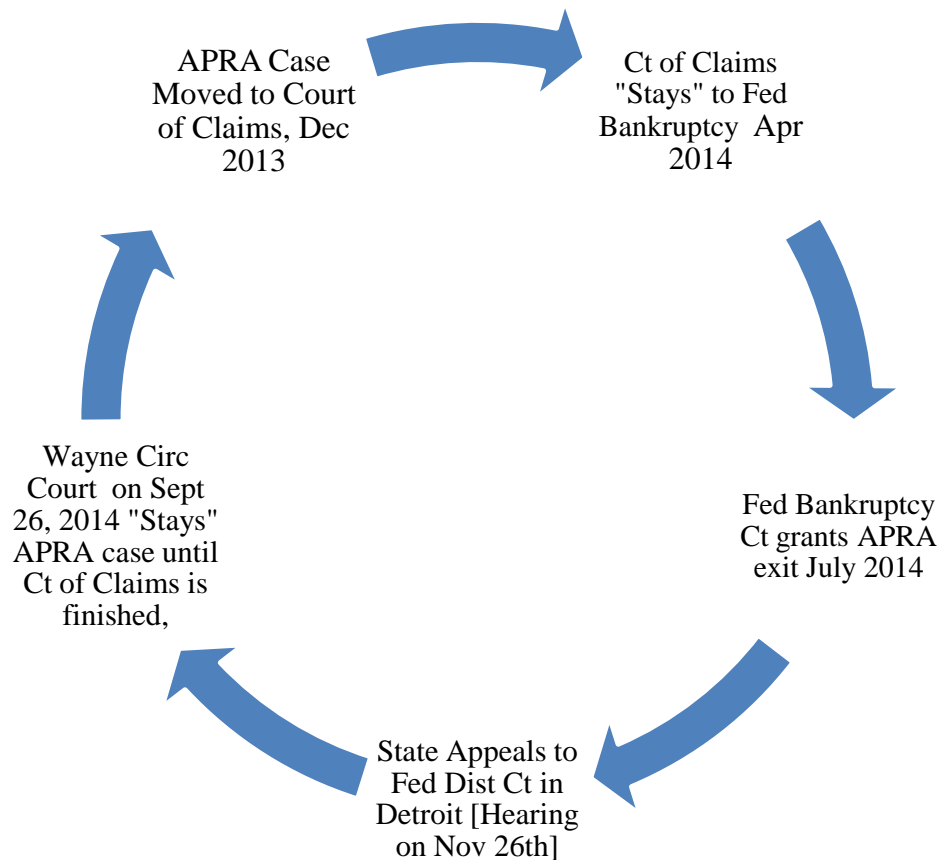
The State and the City of Detroit have filed their legal briefs at the Federal District Court. Our legal brief on behalf of the APRA is due on **October 29th**. The Federal Court has scheduled a hearing on **November 26th** – unless it decides the matter without having oral arguments.

The Bankruptcy Court’s Wild Card: You may have heard this week that the Federal judge in the Federal **Bankruptcy** Court has announced that he will rule on the Detroit bankruptcy plan

during the week of **November 3rd**. In theory – but only in theory – the State's efforts to block our case may be coming to an end.

After the Bankruptcy Court issues its ruling – and if no party appeals that ruling – the Detroit bankruptcy case will permanently close. That would clear the way for the return to the **Michigan Court of Claims**, to re-open the APRA case, without further delay. That said, we should expect to have our hearing at the **Federal District** Court on **November 26th**, unless otherwise notified by that Court.

As you can see, the ongoing goal of the State and the City of Allen Park – as well as the City of Detroit – is to keep the APRA case bottled up as long as possible in all of the various Courts. We have no choice but to keep pressing the APRA's case in all of those Courts – while at the same time being prudent in our use of the APRA's resources.



Sincerely,

Mark A Porter

Mark A. Porter
Counsel for APRA