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NYT: Bond Insurer Syncora Claims Mediator Favors Detroit's Retirees.

One of Detroit's chief remaining adversaries in bankruptcy said the city's exit strategy was tainted by what it called the biases of its chief mediator, whose job it was to impartially negotiate out-o--court settlements of as many of the city's debts as possible.

Syncora Guarantee, a bond insurer, said in a court filing on Tuesday that instead of setting aside his sympathies, the chief mediator, Gerald E. Rosen, had said repeatedly that he believed he ought to get the best outcome possible for a single group of creditors — the city's retirees.

The chief mediator in Detroit's case is also the chief judge of the United States District Court for the Eastern District of Michigan, where the historic bankruptcy is being handled. A spokesman for the court said Judge Rosen was on the bench and unavailable to comment on Tuesday.

Syncora said it believed that the chief mediator was acting out of good intentions. But, it said, in the hard knocks world of bankruptcy law, such compassion must be carefully weighed against the requirement that similar creditors be treated in roughly the same way. Syncora is an unsecured creditor, as are Detroit's retirees, but Syncora has been offered not only a worse deal than theirs but also one of the worst in the whole bankruptcy: Detroit wants to repudiate debt that Syncora insured, dealing it a total loss of hundreds of millions of dollars.

A lawyer representing Syncora in bankruptcy, James H. M. Sprayregen, said in an interview that he was unaware of any other municipal bankruptcy case in which debt sold on the capital markets had been repudiated. Usually, such debts are restructured or "impaired," which is what is Detroit proposes to do with its other outstanding bonds.

He said it seemed "the height of chutzpah" that the city sought to repudiate the debt that Syncora had insured because that debt was taken on to replenish the municipal pension fund.

As one example of what Syncora said was the bias driving the mediation, the objection cited remarks that Judge Rosen made at a news conference this year in which corporate donors and city officials described their efforts to keep the treasures of the Detroit Institute of Arts from being sold to pay the city's creditors.

"None of this would be possible without all of us keeping a clear vision firmly in mind about who this is really about," Judge Rosen said. "It's about Detroit's retirees, who have given decades and decades of their lives, devoted to Detroit."

Syncora's objection also asserts that Judge Rosen "personally lobbied the Michigan State Senate" to make an appropriation for the retirees contingent on "advancing the mediators' agenda."

"Regrettably, but truly, it could not be clearer that the mediators — rather than mediating discrete disputes — designed and later executed a transaction in furtherance of their own personal vision of what was important to protect and for whom," the objection states.

With Detroit scheduled to seek approval of its plan for emerging from bankruptcy this month, Syncora's objection offers a preview of some of the issues likely to be thrashed out in court. To finish the case, Detroit's bankruptcy judge, Steven Rhodes, will ultimately have to decide whether the city's plan meets certain fundamental criteria — whether it is in the best interests of the creditors, for instance, whether it is feasible and whether it treats equally situated creditors roughly the same.

Syncora said Detroit's current plan failed the tests and should be rejected because it funneled "every dime" of available resources to the retirees, "at the exclusion of all other creditors of equal rank."

"The court must reject the plan to preserve the integrity of judicial and mediation processes," the insurer said in its objection.

In addition to Judge Rosen, it said, another member of the team of mediators working on the bankruptcy — Eugene Driker — had at least the appearance of a conflict of interest. Mr. Driker's wife was a longtime trustee of the Detroit Institute of Arts and now serves in an emeritus role.

Mr. Driker's personal connection with the museum was disclosed to parties to the bankruptcy when he joined the team of mediators. No one appears to have objected until now.

The art museum has turned out to be the linchpin of a far-reaching arrangement known as the "grand bargain," crafted with the help of Detroit's team of mediators. It calls for outside donors — including companies and foundations — to help pay the cost of transferring the city's prized artwork to a new nonprofit entity, where none of Detroit's creditors would be able to lay claim to it.

At the time the grand bargain first began to take shape, many of the city's retirees, and their unions, were themselves calling for the art museum's liquidation, because without a source of fresh money, they faced cuts to their pensions.

The cuts promised to be drastic because the city pension system was about $3.5 billion short when Detroit declared bankruptcy last summer. Companies with pension plans are required to participate in a federal insurance program, and in bankruptcy after bankruptcy, the federal government has stepped in to keep retirees from losing their benefits. But states and cities with pension plans never joined that program, so retired public workers face a frightening degree of exposure in municipal bankruptcy.

Mr. Sprayregen said he had nothing against Detroit's retirees. "We wish them large recoveries," he said. Instead, "we're concerned about the massive politicization of this case, and that it has been made to look as if it is Detroit versus Wall Street."

With another bond insurer, the Financial Guaranty Insurance Company, Syncora insured part of a borrowing Detroit undertook in 2005, to raise $1.4 billion for its municipal pension system.

Detroit now argues that the borrowing was a sham transaction, illegal from the outset because the city had already used up its legal borrowing capacity by 2005. It says the deal was structured in a convoluted way to make it look as if the city was not really taking on more debt, and it should be treated as if it never happened.

Mr. Sprayregen said that if so, the municipal pension system should give up the $1.4 billion it received and return it to the investors who were lured into the transaction.

By MARY WILLIAMS WALSH
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