

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . September 2, 2014  
Debtor. . 8:30 a.m.  
. . . . .  
LYDA, et al., . Adv. No. 14-04732  
 .  
Plaintiffs, .  
v. .  
CITY OF DETROIT, MICHIGAN, .  
 .  
Defendant. .  
. . . . .

HEARING RE. (#13) STATUS CONFERENCE (RE. EX PARTE ORDER  
TO EXPEDITE HEARING AND FOR IMMEDIATE CONSIDERATION RE.  
#12 MOTION TO EXPEDITE HEARING); (#20) MOTION FOR  
TEMPORARY RESTRAINING ORDER FILED BY PLAINTIFFS  
SCOTT EUBANKS, NICOLE HILL, JOHN JACKSON, MAURIKA  
LYDA, MICHIGAN WELFARE RIGHTS ORGANIZATION,  
MORATORIUM NOW!, NATIONAL ACTION NETWORK-MICHIGAN  
CHAPTER, ROSALYN PARHAM, PEOPLES WATER BOARD,  
JOHN SMITH, SYLVIA TAYLOR, ROSALYN WALKER, JANICE WARD,  
TAMMIKA WILLIAMS  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 THE CLERK: Case Number 14-04732, Lyda, et al,  
2 versus City of Detroit, Michigan.

3 MS. JENNINGS: Good morning, your Honor. How are  
4 you?

5 THE COURT: Your appearance, please.

6 MS. JENNINGS: Alice Jennings on behalf of the  
7 plaintiffs, your Honor.

8 MR. FUSCO: Timothy Fusco and Marc Swanson, Miller  
9 Canfield, for the city.

10 MR. GOLDBERG: Jerome Goldberg on behalf of the  
11 plaintiffs, too.

12 MR. THORNBLADH: Your Honor, Kurt Thornbladh also on  
13 behalf of the plaintiffs.

14 THE COURT: You may proceed, ma'am.

15 MS. JENNINGS: Thank you, your Honor. As your Honor  
16 knows, this is an adversary proceeding under the Federal  
17 Rules of Bankruptcy Procedure, Part 7, Rule 7001. We are  
18 here today on plaintiffs' motion for a temporary restraining  
19 order under Federal Rule 7065. Plaintiffs' request for a  
20 temporary restraining order arises out of the fact that over  
21 19,000 Detroiters have had their water cut off here in the  
22 city within the last couple of months, since March 1st. We  
23 know, your Honor -- and I have provided the Court with a  
24 FOIA-produced document -- that of those 19,000 homes, only  
25 14,000 have been restored, so there are approximately over

1 5,000 homes in Detroit -- and this is in plaintiffs' reply  
2 brief filed on Friday, Exhibit Number 4 -- that shows that  
3 there are substantial harm which will occur to children,  
4 elders, disabled, and low-income folks if the water is not  
5 shut on. Not only is it a potential imminent harm to those  
6 who don't have water, but because of the possibility of a  
7 pandemic medical condition that could sweep through the city,  
8 it could affect any and all of us.

9           We are here because we are asking this Court to  
10 enforce the executory contracts under 11 U.S.C., Section  
11 365(a), and, further, that these -- and there are a few of  
12 the plaintiffs who are actually recipients of an executory  
13 contract, just two of them of the ten named plaintiffs. The  
14 Court has jurisdiction, your Honor. We believe the  
15 defendants have waived their jurisdiction by placing in the  
16 plan under Article IV.A, DWSD rates and revenues this  
17 statement. "DWSD will maintain Fiscal Year 2015 rate setting  
18 protocols for a minimum of five years, subject to certain  
19 changes necessary to stabilize water and sewer revenues."  
20 Rates will be determined by the Board of Water Commission,  
21 and then the city may seek to implement a rate stability  
22 program for city residents, which program may, among other  
23 things, (a) provide a source of funds to mitigate against  
24 rate increases and (b) enhance affordability and (c) provide  
25 a buffer against delinquent accounts.

1           Your Honor, under Bankruptcy Code Section 904, even  
2 though the Court states -- even though the rule states,  
3 "Notwithstanding any power of the court, unless the debtor  
4 consents or the plan so provides, the court may not, by any  
5 stay, order, or decree, in the case or otherwise, interfere  
6 with." Here, your Honor, the plan so provides. We would  
7 specifically state that there has been an exception carved  
8 out to Rule 904 as it relates to the Court being involved in  
9 executory contracts to the degree that a TRO should issue.

10           Secondly, your Honor, the Court has jurisdiction  
11 here under the rejection of so many of these executory  
12 contracts. We know that many of the plaintiffs who have  
13 children in their homes, who have elderly -- in fact, one of  
14 the declarations we provided you with, Mrs. Donaldson, her  
15 mom is 92, and she is actually being fed intravenously, so  
16 the imminent harm is great as it relates -- many of the  
17 children have asthma. They need something called a  
18 nebulizer, which is a water-based mist, and so we are here on  
19 the issue of the contract. We know and we have provided the  
20 Court with the Homrich contract, which is for \$5.6 million,  
21 which was only to cut off water for residential usage, and  
22 those -- the language of that contract says that 70,000 homes  
23 in Detroit in a 24-month period would be cut off. And not  
24 only that, Homrich was paid on a piecemeal basis, so it was  
25 in their interest to cut off as many homes as possible. In

1 the reply brief on Exhibit Number 4, I believe, that document  
2 specifically shows that Homrich was not to do any type of due  
3 process issues at all. If you look at the interim rules of  
4 the DWSD from 2003, those rules require the bill collector to  
5 go to the home, knock, knock, knock, "Hello, I'm the bill  
6 collector from DWSD. First of all, let me show you your  
7 bill. Your bill is for this amount. Can you tell me whether  
8 you paid that bill? If you haven't paid that bill, then let  
9 me see if there's any reason why I shouldn't cut your water  
10 off." The rules also say that if there's a medical issue in  
11 the home, that families should have the opportunity to be  
12 able to go and to request a waiver of the shutoff.

13 Our plaintiffs, your Honor, in a military way, the  
14 Homrich trucks rolled through the neighborhood, one  
15 neighborhood after the other, putting blue paint on the  
16 sidewalk and then shutting the water without even a word to  
17 any of those residents. We are saying, your Honor, that the  
18 plaintiffs in this case, specifically eight of them, as well  
19 as the four plaintiffs who are organizations, Michigan  
20 Welfare Rights, the National Action Network, People's Water  
21 Board, and Moratorium Now, represent people who are concerned  
22 about the issue of affordability of water. There was just an  
23 eight-percent-plus increase for water. And probably one of  
24 the smoking guns documents in this case, I provided the Court  
25 on Friday Exhibit Number 2 that shows the CDG Consulting

1 Group stated that the DWSD had fell within less than one-  
2 third of their previous level. The reason there's so much  
3 chaos and disorganization around these shutoffs is that the  
4 CDG recognized and the -- Ms. Nicole Bateson, CPA, chief  
5 operating officer, provided this information, but that's not  
6 the only thing, your Honor. They also say that a three-year  
7 lien process with the county treasurer's office slows write-  
8 offs and recoveries, but that's not the most important thing,  
9 your Honor, because it says a system change caused sewer  
10 charges to go unbilled for roughly one-third of customers for  
11 about six years. And what did the City of Detroit do? They  
12 took those six years of charges and they applied it only to  
13 Detroit bills. It says, quote, "Bills sent with the  
14 cumulative charges likely contributed to recent customer  
15 service and collection volumes. Outstanding balance is  
16 approximately 115 million over 80 percent of which are 60  
17 days past due," so that's the factual basis, your Honor, for  
18 this claim. We are in a situation where the City of Detroit  
19 should be estopped and shamed by the fact that they are  
20 coming in here on the least of them, the poorest, the lowest  
21 income, the sickest, the youngest children, to try to collect  
22 this money.

23 I have also provided the Court as of Friday with a  
24 chart that shows that even though corporate accounts were in  
25 the amount of some \$20 million, there have been so far only a

1 hundred -- less than 150 accounts that were collected under  
2 the corporate section, and so what -- even though there was a  
3 total number of over 1,573 processed, over 1,500 of those --  
4 almost 1,500 of those didn't get shut off for whatever  
5 reason. We don't know why because we haven't done full  
6 discovery yet.

7           So with that said, I'd like to argue the standard  
8 for a TRO. The standard for a TRO is that the Court must  
9 weigh four factors. Those factors include a strong  
10 likelihood of success on the merit, whether the moving party  
11 will suffer irreparable harm if the injunction or TRO is not  
12 issued -- just for the Court's knowledge, we are requesting  
13 the TRO until we can have a full hearing, bring in medical  
14 expertise on this matter, bring in expertise about how these  
15 sewers were not billed for six years until the end of last  
16 year on our plaintiffs -- and also, three, whether the  
17 issuance of the injunction would cause substantial harm to  
18 others and, four, whether the public interest would be served  
19 by issuing the injunction.

20           Your Honor, it is plaintiffs' position here that we  
21 would more than likely or have a strong likelihood of success  
22 here where the due process claims -- there was no due  
23 process. There was a summary shutoff of service without even  
24 following their own long-term policies and procedures. For a  
25 issue to receive the type of due process it is supposed to



1 have, there is a need to do a actual notice to the person,  
2 and that notice should be such that it gives the person the  
3 opportunity to avoid the harm. In this case, people were  
4 coming home from work. The water was cut off. They were  
5 getting up in the morning about to send their children to  
6 school, and the water was cut off. There was no notice.  
7 There was no -- not only was there meaningful -- no  
8 meaningful notice, there was just no notice, so on the -- and  
9 we have cited in our brief, your Honor, many cases that deal  
10 with the due process issue. I am very mindful of the fact  
11 that the Court has other business here today, so I would rely  
12 on the brief regarding the property interest, a property  
13 interest in water. We have cited the case of Memphis Light,  
14 Gas & Water Division versus Craft at 436 U.S. 684. As well  
15 in the Mullane versus Central Hanover Bank & Trust case at  
16 339 U.S. 306, 1950, it states that an elementary and  
17 fundamental requirement of due process in any proceeding  
18 which is to be accorded finality is notice reasonably  
19 calculated under all of the circumstances to apprise  
20 interested parties of the pendency of the action and afford  
21 them an opportunity to present their objections. That did  
22 not happen here, so on the issue of -- and I would say this  
23 as well because while we are very encouraged by the fact that  
24 Mayor Duggan has announced the ten-point plan, we know that  
25 since the ten-point plan was implemented, even the current

1 notice that's placed on a hanger on the door does not have a  
2 notice about the fact that a person can request a hearing,  
3 that they can dispute the bill and stop the shutoff based  
4 upon that dispute. And the cases cited require explicit-type  
5 language in that regard, and I do -- it's also attached to  
6 the original filing for the TRO.

7           Secondly, on the back of an original bill that's  
8 being sent out, even though there's little bitty tiny  
9 language that says if past due balance is not paid  
10 immediately, service is subject to disconnection, the back of  
11 it, which purports to be the rights -- these are recent  
12 bills. This bill was just sent out a week ago, your Honor.  
13 The recent bills do not again state anything about a hearing  
14 process. They do not state anything about stopping the  
15 shutoff. And it is our position that they fall below the  
16 standard, maybe a little better since at least something is  
17 put on the door where before the first notice was the water  
18 not working.

19           To move on to the issue of the 14th Amendment and  
20 the issue of equal protection, your Honor, it is plaintiffs'  
21 position that the customers who are residential, as shown by  
22 the CDC report that they were targeted, the residential, as  
23 well as by the statement in one of the exhibits received from  
24 the Freedom of Information that there was only 153 commercial  
25 accounts that were terminated compared to 19,400 and

1 something of the customers. This is just since March. Last  
2 year there were 24,000 people who had their water -- not  
3 people but homes. If you assume that each of those homes has  
4 three people, we're talking about 60,000 people being at risk  
5 for injury and potential death as is the case with Ms.  
6 Donaldson.

7           So moving on with the equal protection claim, they  
8 are being treated unlike the residential employees. There's  
9 no real reason why. They owe substantially 20 million --  
10 I've got a chart here that I provided the Court, which was  
11 also FOIA'd. They have a substantial bill as well for --  
12 here it is. It's not like they only owe about a hundred  
13 thousand or anything that would verify or justify their  
14 disparate treatment. These particular corporate clients --  
15 many of them, if there was only a recovery of ten of them  
16 would be as much as 1,500 of the residential customers, yet  
17 there's no attempt being made to do so. In fact, as of  
18 August 4th of this year, the residential customers -- rather,  
19 the commercial customers owe 21,500 -- 21,511,954. That's  
20 just up to recently, and yet only 154 of those have been  
21 shut, and then all 100 percent have been turned back on, by  
22 the way.

23           Moving on, your Honor, so under the equal  
24 protection, we believe a TRO should issue. City of Detroit  
25 needs to get its stuff together as it relates to -- none of

1 this, by the way, is on a website or anything. If you go to  
2 DWSD's website right now, your Honor, not that very low  
3 income and poor people would even have the capacity to do  
4 that, but if you went to their website right now, there is  
5 nothing on there about a hearing process. There is nothing  
6 on there about the hearing stopping the shutoff, and that is  
7 a fundamental breach.

8           Moving on, your Honor, the health emergency argument  
9 C on page 12 of our brief, plaintiffs also have a strong  
10 likelihood of success on their claim regarding the creation  
11 of a public health emergency. George Gaines, the former  
12 director of the Detroit Health Department, has stated as well  
13 as the National Nurses United that the inability -- that  
14 water is a right that should be given to all citizens, but  
15 besides that, which is profound and fundamental enough, you  
16 need water to survive, to live, to thrive and to clean your  
17 homes. Sanitation. The first thing that goes when the water  
18 is cut off is sanitation. The ability to not be able to  
19 flush a toilet, your Honor, frankly, causes severe sanitation  
20 issues. We are in the process of hiring a doctor who is an  
21 epidemiologist up at U of M on public health concerns, and we  
22 would like to present his testimony to this Court and a  
23 permanent injunction that this injury testified in the letter  
24 by George Gaines of the -- as well as the National Nurses can  
25 be supported by medical evidence that this is not something

1 we're just here to holler about. We could all be affected.  
2 As the Court knows, what's going on in Africa with Ebola is  
3 spreading now in the United States. We are at risk. All of  
4 us are in this together to that extent.

5 A moratorium has been called where there has been  
6 health and safety issues previously, your Honor. The case of  
7 Home Building & Loan Association versus Blaisdell at 290 U.S.  
8 398 states specifically that the government to protect the  
9 lives, health, morals, comfort, and general welfare of the  
10 people and is paramount to any right under contract between  
11 individuals. That case was picked up by the Michigan Supreme  
12 Court in the matter of Russell versus Battle Creek Lumber  
13 Company at 265 Mich. 642. It stated the Michigan moratorium  
14 on foreclosures was extended for five years in 1934 based  
15 upon the fact that there was a state of emergency that if  
16 there was a disaster area as it related to housing.  
17 Similarly here where this company, Homrich, a wrecking  
18 company, no less -- a wrecking company, no less -- is going  
19 to cut off within two years 70,000 homes affecting any number  
20 of residents, the city cannot tell you what type of process  
21 is in place to keep there from being safety hazards or injury  
22 to the residents of those homes.

23 Let's debunk this myth right now. People are paying  
24 their bills, your Honor. They're not able to pay the full  
25 amount. We now know, based on the FOIA information, they got

1 dumped with a huge sewer bill last year where the city hadn't  
2 bothered to bill them for six years. That would explain  
3 right there why some people are suddenly incapable of paying  
4 their full bills, but people try to pay their bills. You saw  
5 the long lines, I'm sure, at the affordability fairs --  
6 unfairs that were held. There's going to be a potential for  
7 imminent harm, which is one of the requirements. An imminent  
8 harm is a harm that cannot be recovered in money damages.  
9 When you talk about someone like one of the children that's  
10 in this case like Rosalyn Walker's little boy, who has  
11 serious asthma, has to go to the ER sometimes because he  
12 simply can't breathe, and you shut off water without proper  
13 notice and that child has a severe and serious asthma attack  
14 that will not allow you to use a nebulizer, or Ms.  
15 Donaldson's mother, who's being fed with a tube and begged to  
16 have two additional days to pay a little money on her bill so  
17 that her mom's water wouldn't get cut off, when you talk  
18 about those kind of harms, your Honor, they are imminent, and  
19 they are irreparable. The courts have held in Obama for  
20 America, 697 Fed. 3d at 436, when constitutional rights are  
21 threatened or impaired, irreparable harm is presumed. Here  
22 we have brought constitutional arguments based on both the  
23 due -- under 1983 based on both due process procedurally as  
24 well as the equal protection clause, and we would ask that  
25 the Court assume that there would be irreparable harm, yet

1 the facts of the various plaintiffs and their lives and their  
2 children -- Mr. Smith has a mother who's very ill. Many of  
3 these folks, your Honor, are on Social Security Disability.  
4 They don't have money. They have limited incomes, and there  
5 is a need to stop this process. We are more than willing to  
6 work with the city lawyers to try to pull together a  
7 comprehensive plan for affordability as well as a  
8 comprehensive process for when the landlords don't pay the  
9 bill and yet the tenants get their bills cut off and so  
10 forth. We want to be able to have a hearing process right  
11 now. It takes over a year to get to a hearing. Even as it  
12 were, if one put in a request for a hearing today, it would  
13 take about a year or more to get to a DWSD hearing, and so by  
14 placing you in a hearing status but still shutting off your  
15 water, that's irreparable harm, your Honor.

16           And with that, the other issue that is substantial  
17 and potential, your Honor, is that where water is not in the  
18 home, a child can be taken out of the home. In the case of  
19 Rocha versus Florez at 2014 U.S. District, LEXIS 10287, just  
20 decided in January of 2014, it says that even a temporary  
21 deprivation of custody of one's children constitutes an  
22 irreparable harm. Here we have both Rosalyn Walker as well  
23 as Nicole Hill as well as Ms. Lyda, the named -- one of the  
24 named plaintiffs in these cases, had to have their children  
25 taken out of their home and placed with relatives because of

1 the fear that their children would be taken by the Department  
2 of Social Services. We have placed on page 18 of our brief  
3 the Michigan governmental documents that states that not to  
4 have water in the home could be a prima facie basis for  
5 having the child removed, and that, indeed, would be  
6 irreparable.

7           The third prong of this argument, your Honor, is  
8 substantial harm to defendants or others. Here defendant in  
9 their report that I've attached shows defendants have  
10 collected millions of dollars since 2013 when Homrich started  
11 these shutoffs, and they collected that money on the backs of  
12 folks without any due process of law. In order to show some  
13 harm under Lopez versus Heckler, 713 Federal 2d 1432 -- this  
14 was an injunction that was issued restoring Social Security  
15 Disability benefits to thousands of disabled and infirm  
16 plaintiffs -- the court noted, "Faced with such a conflict  
17 between financial concerns and preventable human suffering,  
18 we have little difficulty concluding that the balance of  
19 hardship tips decidedly in plaintiff's favor."

20           THE COURT: How do you deal with the argument that  
21 some make that when --

22           MS. JENNINGS: I'm sorry, your Honor.

23           THE COURT: You needed your water.

24           MS. JENNINGS: I needed my water. We all need our  
25 water, no pun intended.



1           THE COURT: How do you deal with the argument that  
2 some make that when some people don't pay their water bills,  
3 everyone else's water bill goes up and it makes it harder for  
4 them to pay?

5           MS. JENNINGS: Well, your Honor, what I would say to  
6 that simply is this. With the electrical Public Service  
7 Commission, every year they have a provision for the poor and  
8 the least financial able, and they are able to see that in  
9 this society it just isn't right to let people freeze in the  
10 winter without heat, and there's a heating fund. So there is  
11 a need, but what we -- there is a need to answer that  
12 question, and this is how we would answer it. With the  
13 water -- Detroit water affordability plan or make it  
14 statewide, what it says is that this person would pay a  
15 percentage of their income, that the part that is owed they  
16 would pay different parts to the point that there may be some  
17 waiver after two years. Every state that has done that,  
18 every department that has done that has found that they  
19 collect more money that way. You tell me what benefit is  
20 achieved. Since the moratorium went off on Thursday, over  
21 900 additional people had their water cut off. Now,  
22 allegedly there is now a water affordability fund that's  
23 going to help folks, so why isn't DWSD going out with a team  
24 of folks looking at these 5,000-some-odd homes that are  
25 without water and then making an assessment of who needs

1 water and connecting them into the fund? Why turn off the  
2 water? Why cause the harm? Why put people at risk for death  
3 or serious injury? So I think in a society we've got Social  
4 Security income.

5 THE COURT: Well, some would argue that the answer  
6 to that question is that people have to take responsibility  
7 for their own inability to pay and be proactive in seeking  
8 out the help they need.

9 MS. JENNINGS: Your Honor, in the perfect world, I  
10 would agree with you, but there are some people even now --

11 THE COURT: It's not my argument, ma'am.

12 MS. JENNINGS: Okay.

13 THE COURT: I'm only asking you questions.

14 MS. JENNINGS: Okay. I understand that, your Honor,  
15 and if I mean -- if I sounded flip there, pardon me. Just  
16 want to get this out for the people.

17 THE COURT: Okay.

18 MS. JENNINGS: So my position is this. If that is  
19 the position that you're taking, then put together a water  
20 affordability plan that's going to be sustainable in the  
21 longrun that people will be able to pay their bills. And the  
22 fallacy here, your Honor, is that people are paying their  
23 water bills. They're just not able because -- and this is  
24 part of our estoppel argument -- the City of Detroit, through  
25 mismanagement or whatever reason, allowed some of these bills

1 to climb into the thousands, and even though the folks would  
2 get their money -- maybe they may have got \$800 a month --  
3 they might send \$75 to the water company. They weren't  
4 shutting water off. It was thought that if they didn't pay  
5 the water bill, that the bill would go to the taxes or the  
6 landlord would pay it and then increase it. There are all  
7 kind of thinking that goes on here. So my position on that,  
8 your Honor, is you can have an affordable water plan that  
9 pays the money that supports everyone, and right now in this  
10 society we know that the Kerner report in 1968 said we were  
11 moving toward two societies separate and unequal --

12 THE COURT: Well, but pause --

13 MS. JENNINGS: -- but we're still doing that.

14 THE COURT: But pause again. Can you identify  
15 anyone who in this period of pause or moratorium or whatever  
16 you want to call it applied for proactively financial help  
17 for their water bill because they needed it and didn't get  
18 it?

19 MS. JENNINGS: Absolutely, your Honor.

20 THE COURT: Who is that, and what happened?

21 MS. JENNINGS: I have declarations here since the  
22 moratorium. Ms. Donaldson -- and let me just -- if the Court  
23 would allow me a moment to get to them.

24 THE COURT: Sure, yeah.

25 MS. JENNINGS: There were several --

1 THE COURT: Give me one example.

2 MS. JENNINGS: Okay. Ms. Donaldson asked for -- I'm  
3 looking for the declaration now.

4 THE COURT: Take your time because --

5 MS. JENNINGS: Okay.

6 THE COURT: -- I want you to get this right.

7 MS. JENNINGS: Okay. Okay. Okay. Here we go. On  
8 Exhibit 5-2, your Honor, in the original TRO filing, the  
9 declaration of Denise Donaldson -- she's the one whose mother  
10 is 92 years old and has a feeding tube -- on August 20th  
11 during the period of time where there was a TRO -- or strike  
12 that -- there was a moratorium on shutoffs, she received a  
13 shutoff notice from DWSD that states that my water will be  
14 shut off on August 27th. She immediately called a DWSD  
15 representative. The representative did not ask who lived in  
16 the home. She told the representative that there was a  
17 shutoff notice that was put on her door, and she had a  
18 home -- and her home had a medical emergency. She tried to  
19 call DWSD. The notice only states that I should call a DWSD  
20 representative. After receiving the notice on my door, I  
21 tried to call DWSD on August 20th, 2014, to make payment  
22 arrangements. On the first call, I was on hold for two and a  
23 half hours and was still unable to speak to anyone at DWSD.  
24 Later that evening, she talked to someone, and they said to  
25 send in ten percent of the total bill to avoid the water

1 shutoff. She told the person that she wouldn't have the  
2 money until two days after the shutoff. She told the person  
3 that she took care of her mother, who was bedridden and had a  
4 feeding tube. They did not tell me that I may qualify for  
5 any financial assistance or payment plan. And, your Honor,  
6 this is what I mean when I say people don't know. They don't  
7 have a computer in their home. If they don't get information  
8 from DWSD, which occurred here, the only way this person got  
9 some help was through calling Michigan Welfare Rights and was  
10 told that there may be some help available to her. And so  
11 this was during the moratorium. I'm trying to see if there's  
12 also --

13 THE COURT: So was her water shut off?

14 MS. JENNINGS: No, it wasn't shut off, but the bill  
15 is still owed, so now she's afraid --

16 THE COURT: Why wasn't it shut off? What happened?

17 MS. JENNINGS: Because the Michigan Welfare Rights  
18 called and said please don't shut off the water. We're  
19 trying to see if we can get some help for this person, and  
20 that's the only way that this water was not shut off.

21 THE COURT: Um-hmm.

22 MS. JENNINGS: And right now, though, the bill is  
23 still owing. She's still subject to shutoff, and the fear is  
24 that the water could be shut off at any moment. We have no  
25 TRO, no injunction, nothing to keep that from happening.

1 That's why we're here. And there were instances in the  
2 declaration of Ms. -- the declaration of over six people  
3 since the moratorium. Monica Patrick-Lewis provided a  
4 declaration that said specifically that the -- we, the  
5 people, through the hotline that's keeping track of how the  
6 water was being shut off even during the moratorium, that  
7 there were people who called all of these different  
8 facilities to try to get money. The city in its own document  
9 that I provided you with says, yes, we have a million  
10 dollars, but we're holding onto it for whatever reason, and  
11 it's -- okay. Amount of money in THAW and DRWAP. To date  
12 THAW has approved 191 customers. The amount of money in  
13 DRWAP is 1.1 million. However, those funds are anticipated  
14 to be committed. That was on August 4th. What does that  
15 mean, anticipated to be committed? We are still in the  
16 enrollment process for the referrals that we have received.  
17 Once that process is complete, we can then let you know if  
18 there are any funds remaining. We are not accepting any  
19 additional referrals at this time. That was on August 4th,  
20 just weeks ago. WAVE funds have been exhausted. This is  
21 DWSD's document, your Honor, not mine, and so they have made  
22 a statement here that they don't -- they're not giving out  
23 any money. Now, that \$2 million that the mayor has just  
24 started getting together, they're not giving out any money  
25 yet. You've got to go through and put in an application

1 process, and then you've got to be vetted. Then you got to  
2 present income. That's why we're here for a TRO is because  
3 unless and until there's a comprehensive plan that is  
4 actually implemented that people get a little book that says  
5 "Your Rights with the DWSD" or something and then we're able  
6 to show that people are not being cut off without due  
7 process, we're looking for your help, Judge.

8 THE COURT: All right. Let me ask you to wrap up,  
9 please.

10 MS. JENNINGS: At this point, your Honor, we're  
11 looking for your help to issue a TRO until there can be a  
12 preliminary injunction where we can present the type of  
13 expert medical testimony that would be required for the Court  
14 to continue the TRO -- a permanent injunction as well to  
15 present our clients here for the testimony to show the type  
16 of treatment that they are not receiving in terms of getting  
17 help from the Department of Water and Sewage Department.  
18 Thank you, your Honor.

19 MR. FUSCO: Good morning, your Honor. In view of  
20 the hour and the crowd, I will be very brief. We're here on  
21 plaintiff's request for extraordinary relief, relief that  
22 would be unprecedented in the history of a Chapter 9 case. I  
23 think it's instructive to look at exactly what the plaintiffs  
24 are seeking, want a TRO to prevent the Detroit Water and  
25 Sewer Department from terminating water service to any

1 occupied residential account requiring DWSD to immediately  
2 restore terminated water service to occupied residential  
3 properties, and, most significantly, prohibiting the  
4 prosecution of any illegal use of water service. So this  
5 Court would be issuing an injunction preventing enforcement  
6 of local law. And this TRO is to continue until the DWSD has  
7 fully funded, staffed, and implemented a whole bunch of  
8 programs, including the one that we hear over and over again,  
9 the water affordability plan, which appears to be the crux of  
10 the relief requested by the plaintiffs.

11           Unfortunately, your Honor, there is absolutely no  
12 chance or likelihood of success on the merits. We filed a  
13 motion to dismiss this case with the Court, among other  
14 reasons, the principles cited in your order denying  
15 permissive intervention for parties aligned with the  
16 plaintiffs to object to the plan and seek the same relief  
17 that is being sought here. And you stated then that the  
18 relief ultimately sought by the movants, should they be  
19 permitted to intervene, is modification of the plan to  
20 prohibit prohibition against water shutoffs and  
21 implementation of certain oversight provisions and procedures  
22 relating to future rate increases. And you held that under  
23 Section 904 this Court cannot interfere with the choices a  
24 municipality makes as to what services and benefits it'll  
25 provide.



1           Now, simply put, this Court cannot grant the relief  
2 sought by the plaintiff even if there were a record. I mean  
3 if we were here and there were proper jurisdiction and we  
4 were in a forum that could grant the relief, I'd be here  
5 telling you there's been no record presented to justify the  
6 relief, but we don't need to go there. You simply cannot do  
7 it. However laudable the objectives of the plaintiff, it is  
8 beyond the reach of the jurisdiction and authority of this  
9 Court at this time to do what the plaintiffs seek.

10           Now, and the other thing, which Ms. Jennings did not  
11 mention, in the motion at the end in paragraph 8 they ask  
12 that in the event that the Court determines it lacks  
13 jurisdiction over this matter either as a core or noncore  
14 proceeding, plaintiffs request that the reference to  
15 Bankruptcy Court be withdrawn and that the case be referred  
16 to the District Court or that the stay be lifted to pursue  
17 these meritorious claims in another tribunal. Well, as we  
18 know, you can't withdraw the reference even if there were a  
19 proper motion. Only the District Court can. And, of course,  
20 the stay could be lifted if a proper motion were presented to  
21 do that. And maybe that's ultimately what will happen after  
22 you rule on our motion to dismiss.

23           There are cases that have talked about in the  
24 balancing of all the factors that the nature and extent of  
25 the irreparable harm is significant and that you don't need a

1 perfect balance among all the factors, but none of them has  
2 said you don't need to show a likelihood of success on the  
3 merits.

4           And in addition to the 904 issue and the  
5 constitutional mootness problem that it presents, to issue  
6 the TRO you would have to be the first court ever to find in  
7 Michigan there is a constitutional or some other right to  
8 delivery of treated water and sewer services that would give  
9 rise to a due process argument.

10           THE COURT: I don't hear the plaintiffs asserting  
11 that.

12           MR. FUSCO: Asserting what?

13           THE COURT: That there's a constitutional right to  
14 treated water. What I hear them asserting is that there's a  
15 constitutional right to notice before the delivery is  
16 terminated.

17           MR. FUSCO: You have to find a property right in  
18 that before you even reach that issue.

19           THE COURT: Right.

20           MR. FUSCO: As we discussed in our --

21           THE COURT: But a property right is a long way from  
22 a constitutional right.

23           MR. FUSCO: But the claim is made under the due  
24 process clause of the Constitution. The cases cited by the  
25 plaintiff are in states where either by Constitution or by

1 local statute the right in question, whether it's the right  
2 to medical care in a case cited in California or the right to  
3 sewer services in Tennessee, is ingrained in Constitution.  
4 Now, just to the opposite, in Michigan we have a statute that  
5 specifically permits municipalities to turn off service if  
6 you don't pay for municipal --

7 THE COURT: Does it permit that to be done without a  
8 hearing?

9 MR. FUSCO: It doesn't require a hearing, but, in  
10 any event, all that's academic because what they're asking  
11 for here and the breadth of it is just unbelievable.

12 THE COURT: Is there anything in the DWSD  
13 regulations that requires a party to be given an opportunity  
14 for a hearing before --

15 MR. FUSCO: Yes.

16 THE COURT: -- water is terminated?

17 MR. FUSCO: Yes. In certain cases there is, your  
18 Honor.

19 THE COURT: In certain cases? What cases?

20 MR. FUSCO: If there's a dispute over the bill, you  
21 can request a hearing, and that will put a moratorium.  
22 Simply in the cases in the declaration, the one where you  
23 asked about where the lady's water was not terminated, she  
24 could have said, "I have a medical health emergency," and  
25 that would have resulted in a moratorium as well.

1 THE COURT: It sounds like that's what she said.

2 MR. FUSCO: Well, she did, but you need evidence for  
3 it. I think what Ms. Jennings is saying is that the DWSD  
4 didn't affirmatively tell her to do that. Now, whether the  
5 DWSD should or should not isn't at issue. We have a  
6 declaration. I don't know. I've not looked into that, but I  
7 don't think that's germane to the issue that's before you  
8 today, which is the narrow issue of are you going to issue  
9 the most far-reaching TRO that would ever have been issued by  
10 a Bankruptcy Court with respect to municipal services in  
11 government during the course of a -- course of a Chapter 9.  
12 There are other ways to achieve these. We have initiated a  
13 dialogue with the plaintiffs. We've met with the plaintiffs,  
14 and the DWSD is committed to working with the plaintiffs, but  
15 all of these things -- think about a water affordability  
16 plan.

17 THE COURT: Well, let me just put it to you. Does  
18 the DWSD have a practice of not telling customers who assert  
19 over the phone a medical issue what they have to do to get  
20 relief from the DWSD based on that medical issue?

21 MR. FUSCO: I have no idea. I'm sure if the  
22 question is asked, then they're told there is an emergency  
23 procedure, but I have no idea exactly what they're told to  
24 tell the customers. I have nothing further, just the  
25 standard has not been met under any of the criteria, and this

1 is not the forum or the way to deal with this issue. If the  
2 plaintiffs wish to pursue it in another forum, we'll deal  
3 with that at another time.

4 THE COURT: Do you, sir -- sorry. Before you go, do  
5 you have any statistics or data on how many customers were  
6 provided with financial assistance during this period of  
7 pause or moratorium?

8 MR. FUSCO: No, no. I can obtain it, but I do not.

9 THE COURT: Thank you.

10 MR. FUSCO: Um-hmm.

11 THE COURT: Any rebuttal?

12 MS. JENNINGS: The most brief of rebuttal, your  
13 Honor. I do want to say that in the TRO and the injunction  
14 request for a hearing, we are not asking that the Court  
15 implement a water affordability plan. We're not trying to  
16 try our case at this point. The issue for the TRO and the --  
17 is the irreparable harm that's happening while there is no  
18 real plan. As said by brother counsel, he doesn't even know  
19 what they're telling people, and I think that's very  
20 important, your Honor.

21 THE COURT: What's the basis, ma'am, for ordering  
22 the city not to terminate customers who have illegally used  
23 water --

24 MS. JENNINGS: One of the --

25 THE COURT: -- or not to prosecute them?

1 MS. JENNINGS: One of the things that's happening is  
2 the landlords are going out turning the water back on, your  
3 Honor. They are not -- it's not the people in the house  
4 that's turning off the water, but the bill is --

5 THE COURT: You mean turning on the water?

6 MS. JENNINGS: Turning on the water. And so because  
7 the landlord is trying not to have it be an issue because  
8 people would move out of the house, so we know that is one of  
9 the factors. The other factor is there have been -- in  
10 fact --

11 THE COURT: Well, but if the landlord does that,  
12 shouldn't the landlord pay whatever the legal consequences  
13 are of doing that?

14 MS. JENNINGS: Yes, but it's the bill that's -- what  
15 they are doing is they're going back, turning the water back  
16 on, then billing the person who lives in the house. The  
17 landlord may have come out and turned the water on, so that  
18 would be them getting blamed for something their landlord  
19 did, but then, secondly, they are making mistakes with this  
20 blue paint all over the place. There are some neighborhoods  
21 if your Honor would ride down those neighborhoods, you would  
22 see there's blue paint everywhere, so they're going to see if  
23 the water -- they're getting all mixed up. They're not  
24 keeping their records properly. And so until this is sorted  
25 out, there needs to be a process to say this person is

1 violate -- which person did it? I mean in any criminal case,  
2 you have to have a claim against a specific person, but he --

3 THE COURT: Well, but doesn't that all get sorted  
4 out in the criminal process? Why is it for this Court to get  
5 involved in that?

6 MS. JENNINGS: Well, your Honor, with the issue of  
7 the water that's being cut on illegally, I would say two  
8 things. One, some water is being cut on illegally by the  
9 landlords. Other water may be being cut on by friendly  
10 neighbors. They're Robin Hoods that are out there just going  
11 through cutting water on because people think it's wrong for  
12 children to be in homes without water. That is part of the  
13 issue.

14 THE COURT: Well, but if that's an illegal act,  
15 shouldn't they be prosecuted for that if --

16 MS. JENNINGS: Whoever is doing it --

17 THE COURT: -- the local authorities --

18 MS. JENNINGS: I agree.

19 THE COURT: -- if the local authorities decide  
20 that's appropriate under local law?

21 MS. JENNINGS: If they are being caught doing what  
22 they're doing and it's a landlord or it's a -- even if it's  
23 Robin Hood, your Honor, I think that they should --

24 THE COURT: All right.

25 MS. JENNINGS: But the person living in the house

1 doesn't necessarily have -- they get \$250 put on their bill.

2 THE COURT: All right. The Court is going to take  
3 this under advisement and issue a written order I hope later  
4 today.

5 We also have a status conference scheduled for this  
6 adversary proceeding at this time. The city has advised that  
7 it filed a motion to dismiss. I see that was filed on the  
8 28th. When do the plaintiffs intend to respond to that  
9 motion, please?

10 MS. JENNINGS: Your Honor, it's our understanding  
11 under the Federal Rules of Bankruptcy we have 14 days, which  
12 would make it due September 12th.

13 THE COURT: Okay. Stand by one second, and we'll  
14 see if we can give you a hearing date on that. Actually, my  
15 preference would be to see the response, and then we'll  
16 determine whether and when to set that for hearing.

17 MS. JENNINGS: Very well, your Honor.

18 THE COURT: If I decide -- well, I guess really  
19 regardless of whether I decide to grant the TRO or not, we  
20 should set a hearing on the request for a preliminary  
21 injunction.

22 MS. JENNINGS: That is correct, your Honor.

23 THE COURT: So I will do that in the order today as  
24 well. Is there anything else anyone wants to cover in the  
25 status conference today?



1 MS. JENNINGS: No, your Honor. Thank you.

2 THE COURT: Ms. Jennings, Mr. Fusco, let me see you  
3 at the side of the bench over here, please.

4 (Proceedings concluded at 9:24 a.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

September 7, 2014

\_\_\_\_\_  
Lois Garrett

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September 7, 2014