

**Joint Public Hearing on Act 47**  
**Senate Committees on Community, Economic and Recreational**  
**Development and Local Government**  
**House Committees on Urban Affairs and Local Government**  
**Testimony of James H. Roberts, Esquire**  
**October 20, 2011**

Good afternoon.

My name is Jim Roberts and I'm a member of the law firm of Eckert Seamans Cherin & Mellott in our Pittsburgh office.

I am currently serving as the Act 47 Coordinator for Pittsburgh and New Castle (along with Public Financial Management) and Johnstown. I have previously served as Coordinator for four additional communities.

I appreciate the opportunity to discuss with you my experience two years ago as Act 47 Coordinator for Westfall Township, Pike County. Westfall is the only Pennsylvania municipality, at least in recent memory, to file for Article 9 bankruptcy and to complete the process with a plan confirmed by the Bankruptcy Court. It is also the only municipality to invoke the bankruptcy provisions of Act 47 and to successfully adopt an Act 47 Recovery Plan in combination with a confirmed Article 9 Plan. The process went very well and Westfall today is in full compliance with both the Act 47 Recovery Plan and its confirmed Article 9 Plan.

Because of its small size, the relative simplicity of its municipal operation and the limited scope of its financial distress, Westfall was probably the perfect test case for municipal bankruptcy under Act 47 in Pennsylvania. Westfall Township is decidedly NOT Vallejo, California.

Westfall is a Second Class Township with a population of 2,430. Its annual budget in 2009 was about \$1 million. Westfall has no unions, no collective bargaining agreements, no

pension plans and very little debt. The Township provides road maintenance through its Public Works Department, volunteer fire service and police services through a regional police department. Prior to 2009, the Township had a positive operating balance, regularly balanced its budget and met its debt obligations.

So, what was the problem?

The problem was federal civil rights litigation with a developer in the Federal District Court for the Middle District of Pennsylvania, going back to the early 1990's. That litigation resulted in a \$7 million judgment against the Township in 1999. Following breached settlement agreements, more litigation and appeals and mounting plaintiff's attorney fees, interest and costs, by February of 2009 the liability had grown to almost \$21 million. Remember, the Township's annual budget is about \$1 million. Eventually, in April, 2009, the developer filed a mandamus motion in federal court to force payment of the judgment. A few days before the mandamus hearing, the Township filed its Chapter 9 Petition in the Bankruptcy Court for the Middle District of Pennsylvania.

Pursuant to Act 47, a municipality which files a municipal debt adjustment action under federal law "shall be deemed to be a financially distressed municipality under the act." Act 47, § 262(a). On April 14, 2009, upon receipt and review of the Township's Chapter 9 Bankruptcy Petition, the DCED Secretary ordered that the Township be deemed to be a distressed municipality under Act 47. In May, the Secretary appointed Eckert Seamans as the Act 47 Coordinator.

Act 47 further requires that the Coordinator formulate the Act 47 recovery plan in cooperation with the bankruptcy court. Specifically, the Township is charged with utilizing the procedures set up under Act 47 "concurrently with the processing of the Federal action, so as to

efficiently expedite the formulation of a plan, its timely confirmation by the Federal court having jurisdiction of the Federal action and its adoption by ordinance.” Act 47, § 263(b). Thus, Act 47 requires that the Act 47 Plan be adopted by the Township by ordinance and confirmed by the bankruptcy court.

In August, 2009, we filed a Motion To Intervene in the Township’s Chapter 9 Bankruptcy Case in order to fulfill our responsibilities as Coordinator under Act 47. The Bankruptcy Court granted the motion.

With the Township’s filing of the Chapter 9 Petition as a backdrop, including the leverage provided by the “cramdown” provisions of Chapter 9, by August of 2009 the Township and the developer reached a settlement reducing the judgment amount to \$6 million, payable in quarterly amounts of \$75,000, plus payment by the Township of the costs of construction of certain improvements such as a sewage pumping station and water service lines.

As Coordinator, I worked closely with the Township’s bankruptcy counsel to craft an Act 47 Plan consistent with the Chapter 9 Plan with the main goal of requiring the Township to levy the taxes necessary to meet its obligations under the settlement with the developer, to meet its ongoing debt obligations and to continue to provide services to its residents.

Following extensive discussions with the Township’s Board of Supervisors about their options under state law to raise the required revenue, the Act 47 Plan required the Board to increase the property tax millage significantly and to set aside and segregate in a special account the revenues necessary to fund the cash and construction obligations to the developer. Short term loans were required to meet all Township obligations and to generate the cash flow required for operations in early 2010. The Plan addressed the satisfaction of all Township obligations and

provided that the final amount of those obligations would be as finally determined by the Bankruptcy Court in its confirmation of the Chapter 9 Plan.

The Act 47 Plan was adopted by ordinance by the Supervisors on November 5, 2009 and subsequently attached as an exhibit to the Chapter 9 Plan. I appeared at the Chapter 9 confirmation hearing and testified as to the content of the Act 47 Plan and the interplay between state law in the form of Act 47 and Chapter 9. On March 2, 2010, the Bankruptcy Court confirmed the Chapter 9 Plan and approved the Act 47 Plan in one confirmation order.

I mentioned earlier that Westfall was an excellent test case for municipal bankruptcy in Pennsylvania. It is a small community with efficient but limited public services. The bankruptcy process was certainly simplified because Westfall has no unions, no collective bargaining agreements, no pension plans and very little debt. Higher profile bankruptcies, like Vallejo, California, are clearly complicated by the presence of all of these elements. Complexities aside, Westfall Township's legal bills were substantial. Any Chapter 9 bankruptcy proceeding is complex. But in view of very bitter litigation over many years resulting in a judgment clearly beyond the Township's ability to pay, the Township and its legal advisors concluded that the Township had no other option. The leverage provided by Chapter 9 and its "cramdown" provisions was central to the Township's ability to settle the litigation on painful, but manageable, terms.

Thank you.