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## San Bernardino Firefighters May Resist City Bankruptcy

By Steven Church - Aug 16, 2012

Firefighters in San Bernardino, California, asked the judge overseeing the city's bankruptcy for more time to decide whether they will fight the decision by elected officials to seek court protection from creditors.

Should the union, one of the city's most powerful, challenge the bankruptcy decision, the case could last months longer. The San Bernardino City Professional Firefighters Local 891 said in court papers filed late last night that it opposes the city's request to force creditors to decide quickly whether to try to block the case by challenging the city's eligibility to reorganize under Chapter 9 of the U.S. Bankruptcy Code.

"As it stands, it is impossible for the firefighters to verify debtor's eligibility," the union said. "If the motion is approved, the firefighters may be forced to file an objection to the petition on limited facts and knowledge, leading to uninformed decision-making and potentially unnecessary litigation."

Under Chapter 9, creditors, including unions, lenders and bondholders, can force a municipality to prove it is eligible to remain in bankruptcy after a case is filed. In two other recent municipal bankruptcies, a battle over eligibility added months to the cases and delayed work on reorganization plans they need to exit court protection.

### Hearing scheduled

The city is scheduled to be in court tomorrow seeking to impose a deadline on creditors to file any challenges. They include National Public Finance Guarantee Corp., which also objected to the city's proposed Sept. 21 deadline for any challenges to its bankruptcy filing.

City Attorney Jim Penman didn't return an e-mail requesting comment on the firefighters filing.

After the City of Vallejo filed bankruptcy in 2008, three city unions spent months trying to get the case thrown out, said Dale Ginter, a lawyer who represented retired city workers in that case. Challenging eligibility slows a case down, he said.

“It does cause delay,” Ginter said.

Creditors may feel they have no choice, even if they think they will lose a fight over eligibility, he said. That’s because once a judge rules that a city’s bankruptcy was properly filed, the city gains the power to try to cancel certain contracts, like union agreements and leases that are tied to bond financings, Ginter said.

The right to challenge whether a city is entitled to file bankruptcy is a key difference between municipal and corporate bankruptcies. Under Chapter 11, a corporation automatically gains the right to try to cancel contracts and seek other help from a court as soon as it files a bankruptcy petition.

“The city obtains a great deal of leverage” if it wins the eligibility fight, Ginter said in a telephone interview. “Creditors may fight eligibility, even if they have a low percent chance of winning.”

The case is *In re San Bernardino*, 12-28006, U.S. Bankruptcy Court, Central District of California (Riverside).

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