MUNICIPAL DISTRESS PANEL PRESENTATION

MID-YEAR TMA CONFERENCE

Moderator:
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Atlanta, Georgia

Panelists:
Patrick Darby, Bradley Arant Boult Cummings LLP
Bill Roberti, Alvarez & Marsal
Stephen Spencer, Houlihan Lokey
J. Robert Stoll, Mayer Brown
1. IS THE PREDICTED WAVE OF MUNICIPAL DISTRESS HERE OR IS IT COMING?

a. Typical Causes of Municipal Distress; Are They Apt to Intensify?
   i. Significant union payroll and benefits.
   ii. Eroded or Eroding Property Tax Base.
   iii. Underfunded Retiree OPEB.
   iv. Too much Reliance on GO Bond Debt or Other Short Term Financings; “Kicking the Can”.
   v. Softening of State and Federal Grants or Other Supports.
1. IS THE PREDICTED WAVE OF MUNICIPAL DISTRESS HERE OR IS IT COMING?

b. How Have States Been Addressing the Rising Exposure to Municipal Distress?
   
i. Absolute Bar on Municipalities’ Ability to File Chapter 9.

   ii. State Oversight or Control of Municipalities Facing Financial Challenges Through Appointment of Emergency Manager or Receivership or Through Other Gaiting Techniques That Curtail Filings By Mandating Satisfaction of Specified Pre-Conditions.

   iii. Limitations on the Municipalities’ Capacity to Reduce Claims of Certain Creditor Constituencies.
1. **IS THE PREDICTED WAVE OF MUNICIPAL DISTRESS HERE OR IS IT COMING?**

c. Why Has The Incidence of Municipal Failure To Date Not Been As Significant As Predicted?
   
i. Uncertainty About What Chapter 9 Requires to Achieve a Confirmable Plan.
   
ii. Fear of What the Bond Market Might Impose on The State or Nearby Cities If A Municipality Defaults or Seeks Bankruptcy Protection.
   
iii. Local Officials Fear of Reprisal: How Will the Citizenry-Voters React?
   
iv. Causes of Distress Have Been Significantly Mounting In The Last Year or Two.
2. SHOULD MY FIRM RAMP-UP TO HANDLE MUNICIPAL DISTRESS ENGAGEMENTS OR ARE THE OPPORTUNITIES MERELY LIMITED OR EPISODIC?

a. Anecdotal Observations: Do They Tell the Whole Story?
b. Provincialism vs. the Benefits of Independent Outsiders.
c. Differentiating Yourself From the Pack; Factors That Might Make A Difference.
d. Alliances of Financial and Legal Firms; What Level of Fees Will Cities or States Be Willing to Shoulder In Retaining Professionals?
2. SHOULD MY FIRM RAMP-UP TO HANDLE MUNICIPAL DISTRESS ENGAGEMENTS OR ARE THE OPPORTUNITIES MERELY LIMITED OR EPISODIC?

e. Payment of Fees; Can I Get Paid---A Political Problem More Than a Legal One.

f. Engagement by the Distressed Local Government or By the State.

g. Representing Creditors: Unions, Retirees, Bondholder Trustees or Insurers; Other Contractual Parties.

h. Different Considerations When Representing Special Districts or Authorities, As Opposed to Full Service Political Subdivisions.
3. CHAPTER 9 --- SOME KEY UNRESOLVED ISSUES:

a. What does “fair and equitable” mean in the context of a municipal bankruptcy; will a municipality be authorized to “cram down” creditor claims if it has the statutory power to theoretically raise property or other taxes as a mean of repaying its debts over time?

b. What level of bankruptcy oversight over a municipality’s elected officials does a bankruptcy court have in a Chapter 9?
3. CHAPTER 9 --- SOME KEY UNRESOLVED ISSUES:

c. Satisfying the “currently insolvent” standard to file for Chapter 9 protection; when is future impending doom sufficient to meet the filing requirement?

d. Are state statutes constitutional that seek to preclude municipalities in a Chapter 9 bankruptcy from modifying certain kinds of creditor claims (e.g., bondholders, retiree benefit claimants, claims based on collective bargaining agreements)?