THE EVOLUTION OF NEGOTIATION IN LOCAL GOVERNMENT BANKRUPTCIES: CAN MANDATED MEDIATION PREVENT MUNICIPAL BANKRUPTCIES?

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Amy Marie Durbin

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Abstract

of

THE EVOLUTION OF NEGOTIATION IN LOCAL GOVERNMENT BANKRUPTCIES: CAN MANDATED MEDIATION PREVENT MUNICIPAL BANKRUPTCIES?

by

Amy Marie Durbin

In 2011, Governor Brown signed AB 506 (Wieckowski), which established a mandated mediation process as a pre-condition to filing for municipal bankruptcy in California. Historically, municipal bankruptcies were a rare occurrence; when three municipalities within the state filed for bankruptcy protections in the summer of 2012, focus on the negotiation process within insolvent municipalities further magnified. To answer whether mandated mediation can prevent municipal bankruptcies and to determine how negotiation applies specifically in these situations, I applied a negotiation condition framework to case studies of California's recent municipal bankruptcies. Using various public sources of data, including news articles and court statements, my thesis discovered two negotiation conditions affect the process more than any other factor: willingness to participate in negotiations and the complexity of contractual issues at stake. In addition, charting the changes in negotiation conditions over the case studies highlighted an evolution of those two conditions. The ultimate finding recognized that

willingness to negotiate in municipal bankruptcies relies on court rulings answering contractual questions related to stakeholder inclusion in the overall adjustment of debts process. Therefore, in municipal bankruptcies, litigation cannot be prevented with mediation; it in fact assists mediation.

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Chapter 1

INTRODUCTION: THE EVOLUTION OF INSTANCES OF MUNCIPAL BANKRUPTCY IN CALIFORNIA—CAUSES, STEPS, AND SPECIFIC CASES

The Great Recession has caused a multitude of local and state problems, but California's municipalities seem to be some of the hardest hit in the nation. Since federal bankruptcy law was amended in 1937 to allow local governments the ability to file for bankruptcy protection, few have actually had to resort to the drastic measure that comes with a host of negative consequences, including the time and money it takes just to go through the process (Legislative Analyst's Office [LAO], 2012). Therefore, when three municipalities in California declared bankruptcy during just one summer – Stockton, Mammoth Lakes, and San Bernardino – a focus on the actual bankruptcy process magnified. Despite specific mandated mediation steps recently required by state level bankruptcy procedures, two of the three cases are now battling with creditors in court. It appears that with each new case, perceptions are shifting and in general the use of negotiation in reorganizing the cities' contracts is failing, highlighting the need to understand how negotiation, which can also be referred to as mandated mediation as within state code, applies specifically to local government bankruptcy. Given California's enactment of mandated mediation prior to being able to file for municipal bankruptcy, using variables from the literature on what conditions benefit negotiation, I assess past and present municipal bankruptcy efforts in the state to answer the following question: Can mandated mediation prevent local government bankruptcies? The findings

provide useful insight to assist both concerned state leaders and insolvent local governments advocating and utilizing negotiation measures.

This chapter provides municipal bankruptcy background beginning with a brief description of its different causes to provide perspective on the perceived issues and players involved in such negotiation processes. I then provide an overview of municipal bankruptcy's purpose and procedures related to negotiation prior to putting the concepts in context by briefly discussing the most recent municipal bankruptcy cases in California. The next chapter analyzes the literature on the topic, showing the evolution of federal and state legislation leading up to mandating mediation prior to filing for municipal bankruptcy. After showing the rising role of negotiation in California's legislation in contrast to other states' municipal bankruptcy laws, I discuss the academic research on negotiation conditions and effectiveness. Together, these first two chapters provide the foundation for understanding and studying the changing factors facilitating negotiation within local government bankruptcy.

Efficiency is needed in contract reorganization, and mediation is capable of garnering such efficiency. However, the literature stresses certain conditions need to be met within the process to enable both the ability to negotiate and the likelihood of mutual agreements (Innes & Booher, 2010). The chapters following the literature review evaluate how the conditions facilitating negotiation have evolved with each municipal bankruptcy case, starting with explaining the collection of municipality and negotiation variables to create the framework for assessing the cases in the third chapter. The fourth

chapter discusses the results by presenting an expanded case study of each recent California bankruptcy from the summer of 2012, in addition to the noteworthy Orange County case, highlighting the data found and negotiation conditions occurring in each instance. The final chapter concludes with implications and suggestions for future research.

Causes of Municipal Insolvency: One Time versus Structural Fiscal Crises

Mentioned previously, municipal bankruptcies have typically been a rare occurrence. When they have occurred, they are usually in smaller district municipalities, for instance sanitation districts (LAO, 2012) with significant one-time fiscal crises, or larger municipalities with similar crises such as Jefferson County in Alabama (risky sewer system borrowing) and Desert Hot Springs and Mammoth Lakes in California (developer lawsuits) (Knox & Levinson, 2009; Lambert, 2008). To put the frequency in perspective, there have been 31 municipal bankruptcy filings in the United States since the beginning of 2010, but only seven were counties, cities, or towns; three of those seven were in California ("Bankrupt Cities," 2013).

The dollar signs represent filings by counties, cities, and towns; the flags show smaller municipalities such as sanitation, utility, and hospital districts that have filed within the last three years ("Bankrupt Cities," 2013; "Local Government Bankruptcies," 2013).

Figure 1. Local Government Bankruptcies from 2010-2013

California's issues with muncipal insolvency are generally more complicated than one-time fiscal crises. This complexity follows the municipality and its creditors to the negotiation table, which can affect the negotiation process. Therefore, to understand how negotiation functions have evolved in local government bankruptcy, I briefly discuss the root causes of municipal insolvency in California.

In regard to complexity, the rise in recent municipal bankruptcies in California has been attributed primarily to structural crises, including the state's complex relationship with its local governments, revenue-generating limitations, and massive employee compensation packages and debt. With each new case, more concerns and controversies arise, resulting in conflicting conversations about the causes. While many agree municipal employees and unions deserve an efficient and fair process within bankruptcy negotiation, others believe that if public employees had received lower

compensation promises all along, the fiscal state of these municipalities would not have become so distressed (Greenhut, 2010). Other arguments state the root of the problem lies with fiscal austerity measures such as Proposition 13, which limited municipal ability to raise taxes when recessions and similar circumstances restrain incoming revenue. Each argument carries important points, such as the fact that California's local governments have little control over much needed revenue generation and dispersion (LAO, 2011; Multari, Coleman, Hampian, & Statler, 2012), while municipality's number one costs – generally 60% of their budget – are typically government- employee salaries, pensions, and benefits (Greenhut, 2010). Overall, however, the recent causes of municipal bankruptcy are multifaceted and structural; one cause does not fit all.

Each cause can evolve into an additional factor affecting municipalities' finances as well, especially in regard to reliance on more volatile revenue sources. In response to high expenses and revenue limitations, local entities have also become more reliant on bond markets, which can lead to revenue fluctuations because of susceptibility to interest rates in addition to increasing amounts of debt. Additionally, larger local governments turned to smaller local governments to increase revenue specific to certain functions (mainly special districts and redevelopment agencies), increasing fragmentation while decreasing financial accountability (Kirkpatrick & Smith, 2011).

Clearly, there is a multitude of reasons why municipalities end up in bankruptcy. Some practice risky investment and budgeting strategies, some face costly lawsuits, others have large amounts of debt and over-spending/borrowing problems, but most have

a combination of issues that when aligned with a recession result in fiscal distress (LAO, 2012). Depending on the reasons, there are a variety of parties affected and blamed in municipal bankruptcies. This animosity among stakeholders creates a lack of trust that can greatly hinder negotiation processes, which I discuss further in later sections. I now offer an overview of municipal bankruptcy processes, including its purpose and negotiation requirements.

Municipal Bankruptcy Purpose and Processes

The basis behind bankruptcy "is to provide a financially distressed municipality protection from its creditors while it develops and negotiates a plan for adjusting its debts. Reorganization of the debts of a municipality is typically accomplished either by extending debt maturities, reducing the amount of principal or interest, or refinancing the debt by obtaining a new loan" (Assembly Committee on Local Government, 2011, p. 14). Essentially, filing bankruptcy halts official fiscal deterioration to allow time for negotiation to meet certain requirements.

Federal Bankruptcy Requirements

First, federal statutes – Title 11 of the United States Code (U.S.C.), Section 101, paragraph 40 – declare a municipality to be "a political subdivision or public agency or instrumentality of a state" (Assembly Committee on Local Government, 2009, pp. 6-7). In other words, any town, city, county, special district, school district, or community college district (LAO, 2012) can file for municipal bankruptcy, according to federal statutes. In addition to being a municipality in a state that explicitly allows Chapter 9

bankruptcy filings, embarking upon the federal municipal bankruptcy process requires it to be insolvent, use the route as a proven last resort, and show willingness to design a reorganization plan. Determining insolvency requires the entity to confirm it cannot afford to pay its present debts or those owed over the following fiscal year.

Concerning last resort, the municipality must try every other route to mitigate its insolvency to no avail, including meeting with groups they owe money to attempt renegotiating their debts and/or cutting spending or raising taxes within reason. In regard to negotiation, they should show they have "in good faith" tried to reach some level of agreement with those owed a majority of the debts to be affected, or have determined and shown negotiation to not be feasible. Lastly, the municipality should show a genuine need and participation on its behalf to deal with the insolvency versus possible strategic use to get out of paying what they owe (Assembly Committee on Local Government, 2011; LAO, 2012). Willingness is an important factor I discuss further in later chapters, as it is vital to negotiation but has evolved substantially with each new case. Together, the three requirements encompass the main ideas behind a justifiable need for municipal bankruptcy, but are largely open-ended to allow for varying circumstances, such as when negotiation can work and when it cannot. The state requirements are much more specific and greatly tighten the above guidelines.

California's Municipal Bankruptcy Negotiation Process

Attempts to negotiate prior to filing for municipal bankruptcy have always been required as can be seen above, but the passage of AB 506 (Wieckowski) (Assembly

Committee on Local Government, 2012) in 2011 formalized the requirement and some of the steps within it. Overall, the bill grants a municipality the ability to file if it has either completed the formal "neutral evaluation process" or proclaimed a fiscal emergency, publicly and with a majority vote, as an alternative to the neutral evaluation process. The specific steps and definitions are in the Appendix, but details focus largely on the process of picking the "neutral evaluator," which all parties should be agreeable to and who should have a mediation background including legal bankruptcy and/or municipal finance experience. Also, given focus in the requirements is the timeline of the process, which begins once the evaluator is chosen and ends 60 days later, unless the municipality or a creditor majority decides to remain in negotiation for 30 more days or less. The process can also end if the entities need less time, if not all entities joined the process, or if a fiscal emergency becomes imminent (Assembly Committee on Local Government, 2011).

The neutral evaluator (or mediator/facilitator/third party) and the deadline are focus points in the literature regarding negotiation. Federal requirements do not specify these points in the process, but negotiation must occur under both sets of statutes. The role of the mediator, however, is largely different from the judge; under state law, the mediator can merely serve to recommend routes to agreement, rather than rule routes to agreement as a judge can in federal bankruptcy court. This is an evolution of negotiation practices in California local government bankruptcies that is addressed in the

methodology and case-study sections. Next, I provide a brief case study specific to the causes of California's most notable cases to add additional context going forward.

Introduction to the California Cases and their Causes

Orange County

In 1994, California's Orange County filed for bankruptcy as the biggest local government to ever do so in the United States until Jefferson County, Alabama in November 2011 (Baldassare, 1998; National Association of State Budget Offices, 2012). Known for its opulence, this was an interesting turn of events predicated by an influx of immigrants, few ways to increase revenue, and a lack of local government organization and oversight. Expecting help from the state during a time of economic downturn and raising taxes were out of the question since the state had nothing to give and the voters had restricted the ability to raise taxes in many ways. Therefore, Orange County searched for new routes to revenue (Baldassare, 1998). Their treasurer, Bob Citron, believed the solution was "a risky investment strategy" (Baldassare, 1998, p. 5), and it was for a short time while the county was receiving large returns. But then interest rates began to rise. Other investors began selling off their holdings while Citron stuck with his strategy, expecting interest rates to go back down (Baldassare, 1998). Unfortunately, that did not happen before he ended up losing around $1.5 billion of local Orange County governments' money (Baldassare, 1998), causing the county to file bankruptcy on December 6, 1994 (Baldassare, 1998). In discussing Baldassare's book on the topic, the Public Policy Institute of California (PPIC; 1998) argues largely the same point: although

the risky investment strategies are obviously to blame, the complex state and local government relationship and limitations on taxes stemming from Proposition 13 are the underlying causes of Orange County's bankruptcy.

City of Vallejo

Vallejo also suffered from a lack of tax funds, but the ultimate breaking point pushing it into bankruptcy in 2008 was skyrocketing pension costs. Prior to Stockton, Vallejo was the largest city to file for Chapter 9 protections. Despite Vallejo's attempts to cut where it could – 60 police officers and monies for community organizations for children, seniors, and the arts (Greenhut, 2010) – the city was spending around 74% of its budget on public safety employee compensation, leaving Vallejo with a $17 million budget shortfall, $135 million in retiree healthcare costs, and $84 million in pensions costs. Vallejo also had debt around $200 million, so while pensions were a main factor, they were not the only factor (Kirkpatrick & Smith, 2011).

City of Stockton

In a scenario similar to Vallejo, Stockton had granted increased benefits to public employees, particularly public safety, over the past 20 years ("Stockton tries a Chrysler," 2012) that, combined with excessive spending to rejuvenate its downtown, led it file for Chapter 9 bankruptcy in June 2012. The largest city to file for bankruptcy, Stockton was also the first to utilize AB 506 mandated mediation, as it faced $700 million in debt even after making drastic spending cuts in the amount of $90 million over the past few years (White, 2012).

Town of Mammoth Lakes

Mammoth Lakes fit the past stereotype of Chapter 9 bankruptcy more easily and typically, as it did not have structurally based root causes like the other recent cases. However, it too had to file for bankruptcy after unsuccessful prior mediation in August 2012. A small ski-resort town, Mammoth Lakes had a one-time cost issue when sued by a developer for $43 million for apparently violating an agreement with the land company. With a yearly budget of only $19 million, the town was obviously unable to pay (Church, 2012). The developer then refused to negotiate after the town turned down a proposed payment plan of $2.7 million over three decades, knowing they would have to end up in court anyway (Church & Nash, 2012).

City of San Bernardino

Third to file in the summer of 2012 was the city of San Bernardino in Southern California. San Bernardino went a different route provided under AB 506 than Stockton; it declared a fiscal emergency to bypass mandated mediation and go directly to federal bankruptcy court. With a nearly $46 million budget shortfall, the city cited causes relating to pensions, the recession, low tax revenues, and the seizing of redevelopment agency funds by the state legislature ("San Bernardino Bankruptcy," 2012).

The complexity of issues involved in each case affects stakeholder dynamics while contributing to varying negotiation results that evolve with each new case and with each new court ruling. While some of the results are still unknown, those that are known affect those that will be known. Therefore, aspects I assess in Chapter 3 include

municipality characteristics and causes just discussed in addition to the specific conditions behind the evolving use of negotiation in local government bankruptcies.

Conclusion

With the recent rise in municipal bankruptcies in California, the importance of studying such cases in relation to negotiation processes rises as well. While causes are complicated, literature shows negotiation as a solution to complex problems. However, as cases and negotiations evolve, conditions affecting the likelihood of negotiation change as well. Therefore, it would be useful to understand negotiation's role directly in relation to this current and evolving problem.

The next chapter, covering the literature, begins with the rising role of negotiation within California municipal bankruptcy legislation. After briefly discussing the additional routes employed in other states, I address the literature on negotiation purposes, pitfalls, and plans of approach. Nevertheless, lacking in literature on the topic is a specific understanding of how negotiation works within local government bankruptcies. Therefore, this thesis attempts to add to the knowledge by pulling out and examining specific variables from the literature and different California municipality bankruptcy undertakings to address how the processes have evolved over each occurrence. The variables, data collection, and analysis are discussed in the methodology section following the literature review, prior to covering the results, conclusions, and policy implications of the findings.

Chapter 2

LITERATURE REVIEW: THE EVOLUTION OF MUNICPAL BANKRUPTCY LEGISLATION AND COVERAGE OF NEGOTIATION CONDITIONS

This chapter begins by covering the history of municipal bankruptcy legislation, showing the rising role of negotiation in California in contrast to other states' municipal bankruptcy laws and literature on such alternatives. Federal and state legislation regarding municipal bankruptcy arose to give local governments the opportunity to renegotiate unmanageable debt. Recent laws, however, seem to have arisen due to a lack of trust in local governments to utilize the route appropriately (Assembly Committee on Local Government, 2011), showing the effects of perception on the overall process.

I then discuss the academic research on negotiation purposes, pitfalls, and plans of approach to show underlying conditions that can either hinder or help its success. For instance, a lack of trust is a hindering underlying condition that has evolved along with the cases of municipal bankruptcy and legislation, although an appropriate third party can often assist in addressing it (Straus, 2002). This review of negotiation conditions gathers the majority of information vital to this thesis's methodology and evaluation of how to utilize negotiation specifically in municipal bankruptcy.

Legislative Motivations: Evolution of Distrust

As discussed in Assembly Committee on Local Government's (2009) analysis of AB 155, municipalities were allowed to file for bankruptcy during the Great Depression when financial issues aligned similarly to those currently facing the country. The general

understanding became that this route would be a last resort to give local governments an opportunity to restructure their financial commitments and properly pull themselves out of insolvency without disrupting access to public services in the meantime. Following Orange County's filing for bankruptcy, federal amendments to the bankruptcy code were enacted mandating state authorization to allow municipalities usage of Chapter 9. After these occurrences, multiple bills were proposed, but not passed, in California ranging from matching state definitions of municipality to federal definitions and providing municipality Chapter 9 filing authority broadly or with legislative approval. Finally in 2002, Senate Bill 1323 (Ackerman) was enacted, officially authorizing California's local governments access to Chapter 9. After Vallejo in 2008, however, perceptions evolved and state officials became worried about how future municipal bankruptcies could affect other entities, the state as a whole, and government employee contracts in particular (Assembly Local Government, 2011; Senate Committee on Rules, 2010).

Perceptions: Evolution of Contagion and Willingness Concerns

Contagious Credit Ratings

One of the main concerns regarding filing for bankruptcy is it can damage a municipality's credit rating and ability to borrow (Knox & Levinson, 2009). Since states provide municipalities monies, credit effect worries run up the chain to the state as well (Coe, 2008) and to other municipalities within the state (Tung, 2002). Labeled "contagion", the concept is discussed by Gillette (2012) as the threat of one municipality's insolvency spreading to others, as well as to the state, since it signals

financial problems that could apply to all, while markets take notice. Therefore, with more municipal bankruptcies, more credit rating concerns are raised. Gillette (2012) adds, however, that contagion "is a consequence of a perception;" therefore, any influence is more theoretical than actual and difficult to prove (pp. 303). Still, perceptions can largely affect legislative language and passage, in addition to ironically limiting the negotiation that can occur between stakeholders holding such perceptions. The evolution of local government bankruptcy factors, including rising concerns and new precedents being set in court, increasingly influences negotiation conditions.

Willingness Deficiencies

Some authors argue the increase in municipal bankruptcies represents an unwillingness to pay on the local government's part (Gillette, 2012). Assumptions have arisen that if current judicial rulings mirror the precedent set in Vallejo, when the federal bankruptcy judge threw out collective bargaining agreements, municipalities will want to file just to get out of public employee salary, pension, and benefit agreements (Kirkpatrick & Smith, 2011; National Association of State Budget Offices, 2012; Weyl & Xue, 2012). The above arguments may contribute to the lack of trust among municipal stakeholders, thereby decreasing willingness to negotiate as well.

The state can fall into this so-called "moral hazard" if the state takes a "bail out" position in response to municipal insolvencies. Hence, if local entities know the state feels obligated to save them, it may additionally decrease their willingness to pay and negotiate. The National Association of State Budget Offices (2012) notes that states

taking this position may want to clarify in which circumstances a state bailout will occur, such as only in one-time crises rather than those resulting out of structural crises. The point being, certain municipal bankruptcy laws in place within a state can affect not only credit ratings but also a willingness to negotiate. For example, during Central Falls, Rhode Island's insolvency, the state passed legislation giving general obligation bonds precedence over other debts within a financially struggling local government. As can be predicted, credit rating agencies viewed this act as justifying a credit rating upgrade (National Association of State Budget Offices, 2012).

In contrast, California state law prioritized in the opposite direction with the passage of Proposition 162 in 1992, which essentially made pensions and California Public Employees' Retirement System (CalPERS) members the number one priority (Shull & Shull, 2012). This now is at the heart of the battle in Stockton's bankruptcy case, as bondholders purport Stockton and CalPERS allegedly did not negotiate in good faith. Vallejo also did not negotiate with CalPERS (Weyl & Xue, 2012), and it has yet to be seen what will occur in San Bernardino's case as well. As the evolution of actions affecting local government bankruptcies continues, it will be interesting to see further reactions by the courts and credit rating agencies to California's priority stance. Meanwhile, the evolution of stances appears to have already affected negotiation and trust among these stakeholders.

Regardless of these concerns and possible outcomes, Knox and Levinson (2009) offer a general gauge of when capital markets will again look favorably upon a once-

bankrupt municipality based upon the plan adopted, those stakeholders involved in the agreement, communication regarding financial figures, and how reorganizations treated debt holders. As Stockton and San Bernardino's legal battles heat up, rating agencies are affirming that the more equally all contracts involved are restructured, the more quickly ratings will improve (Weyl & Xue, 2012). In addition, if the municipality maintains clear communication with bondholders, it creates an element of trust that should serve the municipality beneficially both within negotiations and once out of the bankruptcy process (Knox & Levinson, 2009). However, an important consideration to keep in mind is that while filing for Chapter 9 can damage a municipality's credit rating, it does give the municipality power to induce fair participation in mediation (National Association of State Budget Officers, 2012).

To summarize, the evolution of perceptions has highlighted the importance of limiting contagion and willingness concerns, thereby limiting distrust, through a largely equal and fair structuring of the agreement, proper stakeholder inclusion, clear communication, and balanced power roles. These are all conditions of focus within negotiation literature as well. Prior to addressing such conditions further, I discuss the three major municipal bankruptcy bills that have arisen along with the evolving perceptions surrounding the topic.

AB 155

To ensure municipalities genuinely used Chapter 9 as a last resort, and not simply as a way to renegotiate contracts or avoid creditors, legislators began working on

enacting authorization requirements and conditions that must be met to officially file for municipal bankruptcy. The first measure, Assembly Bill 155 (Mendoza), was crafted in 2009 and failed in 2010 (Assembly Committee on Local Government, 2011). AB 155 would have made the California Debt and Investment Advisory Committee the gatekeeper for municipal bankruptcy, requiring their evaluation and approval prior to allowing a municipality the ability to file. Amendments were accepted to allow another route to bankruptcy after the State Auditor's review (Senate Committee on Rules, 2010). Nevertheless, AB 155 eventually failed. AB 506 followed it in 2011.

AB 506

As the Assembly Committee on Local Government (2011) and Senate Committee on Rules (2010) covered in their analyses, AB 506 and AB 155 had the same oversight and limitation goals stemming from the belief that the state needed to establish some checks on this largely unregulated municipal ability. Sponsors and supporters of each bill, the California Professional Firefighters and California Labor Federation in particular, argued that Vallejo's use of municipal bankruptcy, and subsequent court costs, left the city, businesses, and taxpayers in worse financial positions than when they filed. They said current requirements did not offer any direction or assistance to local governments to help them properly weigh whether Chapter 9 was the best choice (Assembly Committee on Local Government, 2011; Senate Committee on Rules, 2010). Therefore, Assembly member Bob Wieckowski introduced AB 506. What made AB 506 different from AB 155 was it did not go the gatekeeper route but gave local governments a little more

control by requiring them to partake in a "neutral evaluation process" prior to being able to file for Chapter 9 bankruptcy protection. As mentioned in the first chapter, this new legislative approach was not too different from the federal requirements. In addition, combined with the continuing recession, evolving arguments about statewide contagion concerns – dropping credit ratings – (Assembly Committee on Local Government, 2011) garnered more support this time around. Municipal stakeholders realized the policy window for such a measure had opened. Meanwhile, a level of trust was created by offering them an alternative giving them more authority. Therefore, they came to the bargaining table to make sure they contributed to the legislative result.

The California League of Cities worked with the author of AB 506 to find a mutually acceptable piece of municipal bankruptcy legislation. The League's primary concern was making sure the negotiation conditions remained fair and did not favor one party over another. Specifically, they demanded the negotiation process remain timely and mediator neutral (Assembly Committee on Local Government, 2011). Since the purpose of bankruptcy is to provide municipalities an immediate freezing of debts while they try to reorganize and negotiate, attempts at stalling this process could eliminate the main benefit of municipal bankruptcy as a whole. As discussed in the first chapter, stakeholders agreed to an extendable 60-day negotiation process prior to being able to file (Assembly Committee on Local Government, 2011).

The role of the mediator was also fundamental to cities, as they wanted to make sure the position served primarily as a facilitator and did not have any decision-making or

forcing ability. Nevertheless, sponsors had specifically hoped to equip the mediator with this power. For instance, previous language had spelled out that the neutral evaluator could declare whether negotiations had taken place in good faith. However, the chaptered version ensured the more neutral facilitator role, giving them recommendation ability only. Also vital to the removal of the bill's opposition from cities was the exception allowing municipalities to proclaim a fiscal emergency – publicly and with a majority vote – as an alternative to the neutral evaluation process (Assembly Committee on Local Government, 2011).

As Assembly Committee on Local Government (2011) analyses show, after many amendments, AB 506 did not accomplish as much as supporters had hoped in the beginning. Before AB 506, federal local government bankruptcy law already mandated mediation "in good faith" and similar requirements to be granted the ability to receive municipal bankruptcy protections. The analysis mentions this in reference to the understanding that AB 506 may be "duplicative of what is already required" (Assembly Committee on Local Government, 2011, pp. 19-20). There are still differences, as the steps to AB 506, shown in the Appendix, are much more specific and formalized. The biggest difference between AB 506 and well-established Chapter 9 bankruptcy laws, in addition to the neutral evaluator in place of the federal bankruptcy judge, is the extendable delay for mandated mediation put in place prior to being able to file. Both are important ingredients to forms of negotiation as is discussed is the next section of this

chapter; therefore, it is a variable this thesis pays close attention to in its methodology and analysis.

AB 1692

The passage of AB 506 is not the end of California's current municipal bankruptcy legislative story. Initial versions of AB 506 were reincarnated into AB 1692 the following year. AB 506, as the California League of Cities stated in opposition to AB 1692, "was a notable compromise in the Legislature, because it had been preceded by three years of intense legislative battles. When [the League] agreed in good faith to the compromise…the expectation was that the matter ha[d] been resolved" (p. 9). AB 506 stakeholders and agreements were brought together largely by the Chair of the Senate Governance and Finance Committee Senator Lois Wolk, the Governor, and other local governments. AB 1692 retracted many of those agreements, the argument being that the City of Stockton's usage of AB 506 brought to light some issues AB 1692 would solve.

The changes, however, were exactly what local government stakeholders had fought against in AB 506. They redefined neutral evaluation to embolden the mediator with decision-making abilities while also extending the timeline indefinitely by no longer providing the municipality a role in deciding whether an extension was mutually agreed to be necessary (Assembly Committee on Local Government, 2012). Therefore, whatever trust had been built among municipal stakeholders during the designing of AB 506 was destroyed with the introduction of AB 1692.

Eventually reaching the Senate, AB 1692 officially stalled with Senate President Pro Tempore Darrell Steinberg declaring it unnecessary, considering AB 506 processes had not been given enough time to play out to truly evaluate if problems were present (Van Oot, 2012). Again begging the question of how negotiation is evolving in municipal bankruptcy cases and before turning to the relevant literature on the topic, this chapter discusses laws in other states and literature on these alternatives to help put California's legislation in context.

Bankruptcy Laws in Other States

Thirteen other states require a municipality to meet certain conditions before filing but mostly through "gate-keeping" statutes. Gatekeeping statutes can include having a particular committee or the Governor approve and/or appoint a financial manager to assist the municipality in restructuring. Three states only allow filings in certain circumstances, such as just for certain districts or if their financial issues do not involve certain types of debt. Twelve states offer complete Chapter 9 authorization with no restrictions, and 20 states have no statutes allowing or regulating municipal bankruptcy at all (Assembly Committee on Local Government, 2009; "Municipal Bankruptcy," 2013). Georgia is the only state explicitly banning Chapter 9 filings (Tung, 2002). Prior to 2011 and AB 506, California was one of the complete authorization states, as are other states of similar population size such as Texas and Florida, that allow municipalities to file bankruptcy with no restrictions (Assembly Committee on Local Government, 2009, 2011).

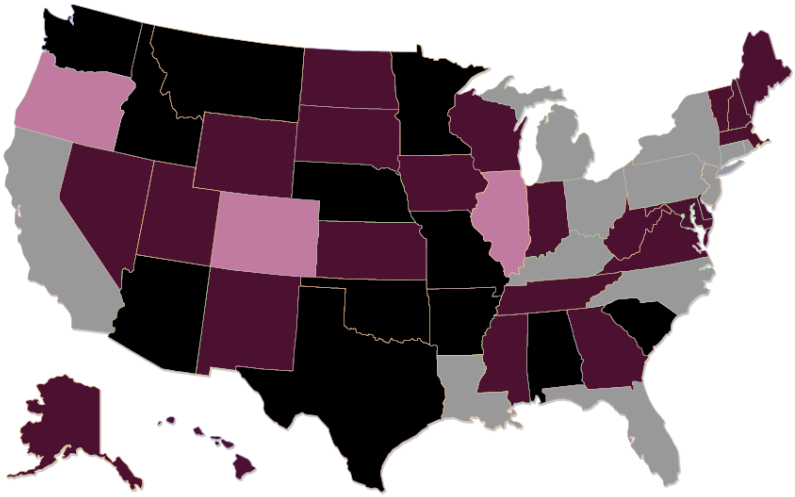

Figure 2. State Municipal Bankruptcy Laws.

Black states have complete authorization; gray states require certain conditions prior to being able to file; purple states don't have any authorization or completely prohibit the act; lavender states only allow filings in certain circumstances ("State Municipal Bankruptcy Laws," 2013; "Municipal Bankruptcy," 2013).

If attempting to utilize the gatekeeper route, Tung (2002) recommends the Governor be the gatekeeper, either allowing while also possibly imposing conditions, or completely disallowing municipal bankruptcy. Some states also establish mandatory audits; restrictions on debt, taxes, and spending; and additional monitoring sometimes leading to state support (Coe, 2008). Gillette (2012), while generally endorsing the idea of a state bailout, specifically suggests giving the federal bankruptcy court more power to impose on municipalities – such as forcing "resource adjustments" – to make sure they file with the best of intentions and truly as a last resort. Excluding preventative and monitoring solutions, however, the California Law Review Commission (2001) assessed

the literature on general bailing out, gatekeeping, and stronger authority suggestions and concluded they had "not found any consensus in favor of substantive reforms" (p. 157).

Therefore, while most states appear to have distrust as the motivator behind their legislation similar to those of California, there is no verified consensus on the best alternative – including mandating mediation. Still, negotiation is the only consistent requirement among states with well-documented abilities, albeit not directly related to municipal bankruptcies but further increasing the need for understanding the process specific to such cases. I undertake that need in this thesis and now shift attention to the literature on negotiation.

Negotiation: Purposes, Pitfalls, and Plans of Approach

Overview of Needed Negotiation Conditions and Purposes

The specific form of mediation referenced in AB 506 is a type of alternative dispute resolution (ADR) that serves to solve arguments by inducing stakeholder participation using "interest-based" practices to find positive solutions for all parties before going to court. While it has a good settlement record in certain fields, 78% of environmental cases studied, studies show stakeholders need ample ADR experience, a genuine motivation to participate, buy-in by all involved, and typically a neutral facilitator, which literature stresses should be a third party agreed upon by all relevant stakeholders (O'Leary & Raines, 2001; Torell, 1994) to help form a much-needed problem/goal agreement (Straus, 2002). However, deciding as a group who should be the

neutral third party can be difficult, and Anderson (1985) suggests appointment by a judge as a good route.

In addition, Anderson (1985) stresses the importance of a deadline, which is even that much more important to municipalities in the event of impending fiscal insolvency, as can be shown in the previous policy fights discussion. If AB 1692, as proposed, removed the deadline established in AB 506, this could possibly put the municipality into an indefinite legal battle that with few resources obviously puts them in a difficult and powerless-in-negotiation position. As Anderson (1985) also states, without power and the possibility to advocate for a mutually acceptable agreement, there is no incentive to participate. As can be recalled, AB 506's language somewhat meets the findings discussed thus far; however, the group picks the mediator and only the mediator is required to be familiar with ADR; additionally, genuine motivation, problem/goal agreements, and power balances are harder to mandate.

ADR success is predicated on understanding the other side's point of view by being truly willing to listen. Additional reasons to cooperate in the process are that ADR is usually found to be more efficient and the solutions reached are more well rounded and sustainable (Innes & Booher, 2010). Nevertheless, without making sure everyone is on board with the route, problems can arise. The proper incentives must be in place – stakeholders should all see the "possibility of gain" (Anderson, 1985) – and those involved should be able to make concrete decisions throughout the process while

focusing on trusting and listening to others. Ultimately, everyone must be determined to reach an agreement (Torell, 1994).

Pitfalls to Negotiation

ADR is not a one-size-fits-all process, and agencies trying to practice ADR techniques are found to hit many roadblocks due to lack of understanding and willingness to participate, often because they are used to the normal procedures and feel the ADR process would require giving up some authority (Manring, 1994; O'Leary & Raines, 2001; Torell, 1994). Most cases of studied ADR processes are rooted in environmental disputes. The United States Forest Service began using ADR in 1990 after Congress passed the Negotiated Rulemaking Act and Administrative Dispute Resolution Act (Manring, 1994), while the United States Environmental Protection Agency (EPA) championed the approach beginning in the 1980s (O'Leary & Raines, 2001).

Innes and Booher (2010) point out that negotiation is useful in these types of environmental instances due to the nature of land-use and resource conflicts requiring those with a stake in the issue to communicate and work together. Still, many within EPA were comfortable and confident about litigation over ADR, which bred a distrustful sentiment within others involved (O'Leary & Raines, 2001). The Forest Service was equally satisfied with its level of control without ADR implementation, but as Manring (1994) purports, there is a difference between procedural decisions and implemented outcomes based upon such decisions; without overarching support from all stakeholders, implementation is inherently limited.

Other concerns arose regarding the EPA's attempt to limit those included in negotiation (O'Leary & Raines, 2001). True collaboration should be as inclusionary as possible (Innes & Booher, 2010; Leach, 2006; Straus, 2002) and include all appropriate players in the process from the very beginning to increase buy-in at the very end. Then again, Anderson (1985) points out that if too many interests are involved, negotiation becomes that much harder to accomplish. He advocates no more than 20 parties involved while stressing an equally small amount of issues to be covered; this is an important factor, considering there are many parties in municipal bankruptcy cases, not all are required to be involved, and those included are not always genuinely motivated to reach agreement.

The literature stresses that one of the most significant signs of imminent ADR failure is if people are not willing to play fairly, which happens often. Melling (1994) points out that assessing everyone's standpoint prior and subsequent to mediation is important because his or her best alternative to negotiated agreement, or BATNA, should not be the absence of negotiated agreement. As Fisher, Ury, and Patton (1991) say, BATNAs show what to "expect from the negotiation" (p. 105). Sometimes one side has such a strong BATNA that negotiations are pointless, but if there is some room to gain, you have to know what the other side considers a gain to negotiate as productively as possible.

Plans of Approach

Studies show ways to test negotiation's potential prior to starting the process. Leach (2006) discusses a framework for measuring the actual collaborative benefits present in a case and possible barriers by looking for strong levels of certain ideals: inclusiveness, representativeness, impartiality, transparency, deliberativeness, lawfulness, and empowerment. O'Leary and Raines (2001) recommend using a similar method to decide whether ADR is worthwhile on a case-by-case basis. They cite instances within EPA that may not be agreeable to ADR, such as if a stakeholder is hoping to establish judicial precedent. Ansell and Gash (2007) offer similar factors or "starting conditions" to assess prior to embarking on a hopefully collaborative process, such as the historical relationship between the players, what motivations may exist to bring them together, and authority inequities. Lumineau and Malhotra (2011) performed an interesting study on inter-firm disputes specific to contract content and structure, showing that additional detail and power imbalances among those disputing can determine the likelihood of reaching resolution.

Innes and Booher (2010) discuss measuring "conditions for collaborative rationality" through "diversity of interests among participants, interdependence of the participants, who cannot get their interests met independently, and engagement of all in a face to face authentic dialogue meeting" (DIAD) (p. 35). Building on such concepts, the authors refer to the process used by the California Center for Public Dispute Resolution at California State University, Sacramento, which typically begins by composing a conflict

assessment for the potential client to assess whether the case is appropriate "for a consensus-based process" (p. 45). Therefore, there are appropriate measures found in the literature on how to negotiate effectively, but the first step is assessing if the instance is conducive to the act.

Assessing the effects of negotiation requires a focus on what cases and which issues within them can be mediated rather than litigated. The roadblocks hit within agencies become even larger when bringing in the complex group of people affected by possible municipal bankruptcy. Not only are there private parties at the table, such as creditors upon whom one is dependent for investment in one's community going forward, those who directly provide vital services are at the table as well, most specifically public employees. There is not typically just one contract or issue to dispute; there are multiple concerns to address.

The complex nature of the case does not negate negotiation; however, complexity is an important ingredient to negotiation. The issue becomes viewing the problem as a whole, not from the individual standpoints (Innes & Booher, 2010). As Fisher et al. (1991) state, attempts should be made to "separate the people from the problem" and "focus on interests, not positions" (pp. 10-11). The goal is to work together, look at the bigger picture, and to discover solutions that help all involved. Concerning municipal bankruptcies, Knox and Levinson (2009) suggest a focus on costs by all; for if negotiation brings agreement quickly and prior to filing, municipalities can avoid

additional bankruptcy costs, thereby increasing the amounts available to pay back creditors.

To deal with the pitfalls of negotiation and understand overall effective strategies, Innes and Booher (2010) use DIAD as criteria to measure varying instances of already attempted or completed collaborative efforts. Specifically, they look at the following variables: "context, how they were started, their structure and process, their first order results, implementation strategy and second and third order effects and system adaptations that resulted," and lastly "what processes" contributed to such results (p. 11)." They analyzed six cases, respectively related to planning in the fields of both regional and state water plans, public safety and race relations, macro-level state planning, growth management, and converting military bases. Based on their analysis, they determine the most important factors related to negotiation and collaboration to be the involvement of stakeholders – who to involve; how to induce them to participate; the size of the group and possible creations of subgroups and task forces; creation of a "negotiating document" composed of all perspectives and points to begin and guide the process (p. 95); the role of power; and most importantly, "authentic dialogue" (p. 97).

Concerning the last point, the authors find "a community of inquiry" must be created where anecdotes and reframing techniques assist stakeholders in participating and viewing the negotiations from a communal standpoint (pp. 11-12). In local government bankruptcy negotiations, the task of creating such a community environment could and should likely lie with the mediator. Along with that role, the mediator is there to

ultimately guide the process while making sure all information is conveyed equally and civilly.

In reviewing the literature on negotiation purposes, problems, and possible strategies, many important variables arise. These factors began with a focus on finding mutual interests and a genuine willingness to participate in the process, choosing an appropriate mediator to assist in goal agreement, and the use of a deadline. To address pitfalls related to lack of mutual interests and willingness, clear communication is needed to develop trust among an inclusive group of stakeholders; although, size and issue complexity can hinder negotiations with too large of a group and too many contract details. While negotiation overall can have many positive outcomes, it is not always possible to the degree mandates convey. Therefore, before requiring and employing mandated mediation in potential local government bankruptcy cases, it is important to understand whether beginning the process with an initial assessment to determine the extent negotiation processes can be effective is truly the best alternative. This thesis builds on such concepts to provide an evaluation of evolving negotiation conditions specific to municipal bankruptcies.

Conclusion

This chapter began by stressing a fundamental concern among many California elected officials leading to mandating mediation within legislation that municipalities may not be trusted or perceived to use their bankruptcy filing ability as a genuine last resort, meanwhile causing statewide repercussions. Some states share the same concern,

which is shown through their own measures. However, due to a lack of consensus on alternatives, the only consistent ingredient among them remains some form of negotiation as required at the federal level.

Nevertheless, mandating distinct mediation usage and steps to guide the indistinct variety of municipal bankruptcy cases may not always be effective. California is a complex state with complex issues, municipal bankruptcy being one of the latest and greatest. While negotiation literature shows it can work well in complex problem situations, it has not yet been examined directly in relation to municipal bankruptcy. Therefore, what is lacking within the current literature just discussed is an understanding and assessment of negotiation effectiveness particular to the evolving nature and perceptions of local government bankruptcies.

To provide an evaluation and guide of negotiation processes to utilize in instances of local government bankruptcy, negotiation factors from the literature are applied to municipal bankruptcy cases. I studied and documented the different cases by assessing the aspects of the negotiation occurring. I make other observations regarding the fiscal state and attributes of the municipality, but my analysis is based on a created framework specific to negotiation conditions as criteria. Each of these characteristics are described as follows:

Negotiation Process Conditions

- Stakeholders
- Complexity of contracts

- Willingness: To Pay and to Participate
- Third Party
- Deadline

In evaluating these characteristics and results from previous and current cases, this thesis captures the evolution of the important ingredients guiding negotiation specific to municipal bankruptcy. The findings reached will serve to assist financially struggling local governments attempting negotiations while suggesting the appropriate stance to be taken by the state legislature concerning mandating mediation and conditional access to municipal bankruptcy protections.

Chapter 3

METHODOLOGY: CREATING THE CRITERIA FOR THE CASE STUDIES

The end of the literature review section stressed the strategic use of an initial assessment before attempting to employ negotiation processes, essentially to find appropriate instances where issues can be mediated rather than litigated. To evaluate the possible benefits of negotiation, I turned that process around by performing a post-assessment of municipal bankruptcy cases in California, utilizing the same conditional variables shown to be vital to negotiation. The cases introduced in Chapter 1 are the subjects of analysis: Orange County, Vallejo, Stockton, Mammoth Lakes, and San Bernardino. Specifically, with my methodology, I seek to answer: can mandated mediation prevent municipal bankruptcies?

This chapter begins by presenting the rationale behind the variable collection method and cases chosen. I then discuss the specific criteria variables collected as my negotiation framework, including why they were chosen and how they will be evaluated. The list of criteria is repeated below:

Negotiation Process Conditions

- Stakeholders
- Complexity of contracts
- Willingness: To Pay and to Participate
- Third party
- Deadline

My evaluation uses these individual conditions to assess the overall negotiation process in each case. Breaking negotiation down by its individual conditions allows for discovery of how conditions have evolved with each new municipal bankruptcy situation. As mentioned in Chapter 2, with bankruptcy becoming more common in California, changing perceptions concerning municipalities utilizing bankruptcy led to legislation intended to indicate whether bankruptcy was truly necessary. While the legislation mandating mediation has not prevented Chapter 9 filings in the recent cases in which it was applied – leading to the inferred conclusion that bankruptcy was necessary – my analysis assists in determining how negotiation works in these circumstances.

Collection of Data

I reviewed the cases to find negotiation conditions and collected information from publicly available sources, including news articles, interviews, studies, and legal analyses of the cases. I believe this collection method to be appropriate for this thesis, for it is the public consumption of such sources that influences many of the interests and perceptions present in instances of municipal bankruptcy negotiations. In other words, these sources relay information and assumptions about issues negotiated, which influences the overall negotiation.

Cases: The Famous Five

I answer the thesis question through a case-study review and a narrative presenting a discussion of each condition examined. I chose these five California cases because they are the most recent and also the most publicized and influential cases. I am

staying specific to California, given the large number of high-profile municipal bankruptcies and its recent enactment of legislation focusing on mandated mediation. Additionally, only including California cases controls for unrelated variances in how negotiation conditions are evolving in instances of municipal bankruptcy. Two cases are ongoing and, thus have incomplete information, but they may show the most recent evolution of negotiation conditions. In addition, including Mammoth Lakes – a one-time fiscal crisis in a small town – provides a comparative case to assess against the largely structural occurrences in much larger municipalities. The comparison assists in determining how evolving negotiation conditions apply in municipal bankruptcy. Finally, the selection lends itself to evaluating the recent role of mandated mediation in local government bankruptcies.

Process Criteria: Negotiation Conditions

Covered in the second chapter, many perceptions and factors (in addition to many potential pitfalls) affect negotiation.. To address pitfalls, the literature stresses real and transparent communication with a focus on stakeholder inclusion and understanding underlying interests. The literature also found the complexity of contracts could inhibit renegotiation of obligations. Specific to municipal bankruptcies, some of the major perceptions and, therefore, pitfalls to negotiation are distrust and a lack of willingness. The literature and state mandated mediation requirements have shown the use of a neutral third party and deadline to be vital factors as well. Therefore, I evaluate all of the above

conditions to determine how they have evolved in municipal bankruptcies and how this addresses the question of whether mandating mediation can prevent such occurrences.

Stakeholders

In collecting information for this variable, I looked for the top creditors in each case to determine whether all necessary stakeholders were included and what, if any, underlying interests may have been focused on during negotiation, in addition to whether any other stakeholder management techniques from the literature were utilized. I also looked at whether any relevant relationship imbalances among stakeholders were discovered.

Complexity of Contracts

Studies show additional contract details can increase the complexity of contracts and, therefore, any renegotiation processes. I searched for circumstances in each case that could possibly lead to increasing the complexity of contracts. Known and unknown clarifications in laws surrounding the ability to renegotiate certain contracts can be evaluated as contributing to the complexity of negotiation as well.

Willingness: To Pay and to Participate

I explored possibly one of the most important variables in the context of municipal bankruptcy negotiations, willingness to negotiate, concerning both willingness to pay (municipality) and willingness to participate (stakeholders). These are essential conditions, considering a perceived unwillingness to pay on the behalf of the municipality contributed to the creation of legislation mandating mediation. In addition,

willingness to participate and negotiating in good faith have been at the center of court arguments in the current cases. I determined levels of willingness based upon statements and interviews by participants found in the press, in addition to arguments made in court by judges, credit rating agencies, and additional stakeholders. Trust, clear communication, and transparency are underlying willingness variables as well; therefore, I determined a willingness level ranging from low to high when public comments and transparency in information were utilized and provided,. If the case information shows no negotiation has been attempted by a relevant party, they receive a low willingness level. A medium or average level shows some effort on behalf of the party rated, and a high level indicates efforts to negotiate in good faith.

Third Party

Literature shows that a third party can assist in creating an environment conducive to negotiation and communication among distrustful parties. Prior to AB 506, the main third party involved in municipal bankruptcy was a federal bankruptcy judge. In the creation of AB 506, there was a focus on ensuring the role of the "neutral evaluator" or mediator as a purely facilitative role undertaken by an unbiased individual. The main difference, therefore, between the third party prior to AB 506 and after AB 506, is that while a judge can make actual decisions concerning attempted agreements, a mediator can only make recommendations. The intent of my analysis is to discover how to recognize that value in cases of municipal bankruptcies, especially due to the apparent failures in recent cases, which still ended up in court. My hypothesis is that in combative

and complex cases, a party that can impose legal decisions is the most facilitative in spurring negotiation.

Deadline

As mentioned in the literature, a deadline can help force negotiation willingness. A deadline was also stressed in the relevant pieces of legislation, as a short timeline is very important to a municipality. Again, this is largely related to the purpose behind filing for Chapter 9 protections – to stop time and renegotiate debts. My analysis, while observing the timeline of cases, attempts to discover how deadlines, especially the new 60-90 day mediation deadline, affect municipal bankruptcy negotiations.

Conclusion

After gathering the information regarding the above conditions from various sources, I discuss the findings through a case-study analysis in Chapter 4. Applying each negotiation condition to the case information assists in providing an overall understanding of how negotiation has evolved over time in cases of municipal bankruptcies and, most importantly, whether it can prevent municipal bankruptcies. The final chapter evaluates what the findings mean for the future of local government negotiations and relevant policy discussions.

Chapter 4

FINDINGS: THE EVOLUTION OF NEGOTIATION IN MUNICIPAL BANKRUPTICIES

I now turn to assessing each case. Overarching analyses and conclusions overlapped; therefore, I discuss these findings in relation to implications in the final chapter.

Orange County

As mentioned in the first chapter, Orange County ended up in bankruptcy in 1994, largely due to risky investment practices. These risky practices were employed to address decreases in incoming revenue and limitations on raising additional revenue, a structural problem affecting most California local governments. Once interest rates rose, the investment practices expected to generate 35% of the county's $3.73 billion general fund instead led to a loss of $1.5 billion. The initial losses were distributed between the county and its local government investors, with the county directly losing $360 million and cities, schools, and special districts losing $865 million. Public infrastructure and public employees took the brunt of immediate costs in the form of cuts while many fees were also increased (Baldassare, 1998).

Stakeholders

The main stakeholders in Orange County were its local governments, bondholders, and vendors. As mentioned above, direct investments and losses of $865 million warranted the inclusion of local governments. The county had many debts to

remaining stakeholders, including $100 million to vendors and almost $1 billion in other obligations and claims (Baldassare, 1998).

Orange County officials utilized various stakeholder management techniques, such as separating stakeholders into subgroups, as they negotiated with major parties. As discussed by Baldassare (1998), Orange County began employing this technique with guidance from the Governor, a federal bankruptcy judge, and a business leader task force. First, in restructuring the county's officials, many new individuals were brought in, such as the Salomon Brothers investment firm. Governor Wilson also sent Tom Hayes, a former state treasurer and auditor-general, to head the Orange County Investment Pool with assistance from the Board of Supervisors. The Board then created an Operations Management Council to work with agencies in restructuring budgets, while the federal bankruptcy judge created the Orange County Pool Participants Committee with all agencies and districts that had invested funds into the pool represented. The following stakeholders were included: Orange County Sanitation District, City of Irvine, Orange County Water District, Transportation Corridor Agencies, Orange County Transportation Authority, Orange County Department of Education, and City of Mountain View, in addition to legal counsel (Baldassare, 1998). Baldassare (1998) wrote of the benefits of this process:

> The committee structure created by the bankruptcy court was what allowed the cash to flow from the funds to the local government investors to the needed local services. It also created cohesion among a diverse group of pool participants.

> Moreover, it joined the county government and the local governments in a cooperative venture. It prevented lawsuits. These positive experiences laid the groundwork for the more complex issues that would take place in the negotiation of an overall pool settlement. (p. 133)

It is important to note that different negotiating methods were utilized in gaining agreements from each subsection of stakeholders. The third party was vital in pool-investor negotiations, while perceived messages and willingness were vital in reaching bondholder agreements. Therefore, different issues within each case dictate differing stakeholder and negotiation managing techniques.

For example, the final agreement reached was structured so schools would receive their money owed more quickly, which showed an apt recognition of their underlying interests and alternatives to agreement. Essentially, their agreement was predicated on the following understandings: one, they had "more pressing financial needs;" two, they were "involuntary participants in the county pool;" and three, if they did not buy in to the agreement, the county knew the schools had the political clout to go to the state for their own deal. Meanwhile, the state would likely not agree to the plan if schools were not on board (Baldassare, 1998). Mentioned in the literature, those constructing this agreement and managing negotiations paid proper attention to the power balances among the stakeholders relating to their best alternative to negotiated agreement (BATNA). Schools had a different BATNA than other stakeholders; if they were not happy with the proposed agreement, they could likely find a better one elsewhere. In addition, without them on

board, the state would not have approved the deal. Therefore, the stakeholder schools needed to be included and induced to participate by presenting them the best agreement possible, which Orange County did successfully.

Based on my analysis, Orange County's negotiations included each of its top creditors. The county negotiated with its creditors in good faith after entering bankruptcy. The use of stakeholder management techniques and an understanding of underlying interests assisted the stakeholder inclusion process as well.

Complexity of Contracts

Based on the review of the stakeholders and obligations, I determined the main contract complexity for Orange County to be repayment obligations in addition to general expenses. These were not ongoing contracts as they were with bondholders and vendors, but they also were not agreements that posed legal renegotiation questions such as those with unions and CalPERS. Therefore, the contract issues in Orange County were distinct but not overly complex.

Willingness: To Pay and to Participate

While all negotiation occurred post-bankruptcy filing, a perceived willingness to pay on the part of the municipality through their communications, actions, and messages sent to bondholders and local governments truly led to a willingness to participate. For instance, Baldassare (1998) wrote that Orange County knew from the beginning that a tax increase measure would fail among the conservative voter base. The purpose of the proposal, therefore, was purely to convey their willingness to pay; it "was a way to send a

message to the bond investors and the pool investors that the county government was making a good-faith effort to pay its debts" (pp. 163-164). While news outlets did not relay the message in the same way, instead casting Orange County as a bunch of "wealthy 'deadbeats,'" a second option ended up back on the negotiating table. Investors agreed to push back their bond payment due date, for additional interest, a week after the tax measure failed (pp. 163-164).

In addition, Walsh (2011) wrote that Orange County "sent reassuring signals" (para. 6) by offering bondholders the additional percentage point in interest. The conventional wisdom behind municipal bonds, or general obligation bonds, is they are "the safest" (para. 1) bonds. If issued, municipalities promise they will do whatever it takes to pay; it is a "full faith and credit" (para. 2) promise. Therefore, if they do not pay on time, courts typically rule on the creditors' behalf and force the municipality to raise taxes – not as applicable in the case of Orange County. In Orange County's actions and communications, however, they showed a commitment to their initial promise, which led creditors to negotiate with them based on their perceived willingness to pay.

In reaching agreement with local governments, Orange County garnered the same communication and willingness through their third parties, especially the federal bankruptcy judge and team of local business leaders. Bringing in those unrelated to the investment pool's demise created elements of respect and trust, and the local governments became willing to negotiate.

Overall, there were two main agreements made: one with the local pool investors and one with the bondholders. For the first agreement, all stakeholders would immediately receive 77 cents on the dollar for their initial investments into the pool. Schools, cities, and special districts would get the remaining 23 cents from recovery notes and repayment claims once additional money was borrowed and lawsuits against financial consultants were settled. The state eventually passed multiple bills to assist the county in dealing with its debts and need to borrow, considering their bankrupt status. In addition to the legislation involving municipalities within the county agreeing to shift around various funds, was the agreement by bondholders to postpone their payments for additional interest (Baldassare, 1998). Negotiated agreements with stakeholders were also predicated on waiting until the county won additional lawsuits against financial institutions, from which the county eventually received about $860 million (Cahill, 1999). Therefore, all major stakeholders were offered agreements to eventually be paid in full.

I found the county was willing to pay and, once included and managed appropriately, the main stakeholders willingly negotiated. Each party therefore receives high willingness levels, although it must be stressed that negotiation willingness arose after the county filed for bankruptcy.

Third Party

In addition to the federal bankruptcy judge watching the bankruptcy unfold was the Orange County Business Council (OCBC) (Baldassare, 1998). When agreement

between the county and local governments was needed concerning the investment pool settlement into which many local entities had contributed funds, OCBC created an ad hoc third party to guide negotiations. Three appointees made up the task force: Gary Hunt, Irvine Company; George Argyros, Arnel Development; and Tom Sutton, Pacific Mutual. Each was an extremely well-known, intelligent, and respected individual with established networks that lent them credibility (Baldassare, 1998) – along with the fact they were not directly related to the county's dysfunctional government. They held meetings with stakeholders each day while providing essential facilitation messages, which Baldassare (1998) described as "'reality checks' about the bankruptcy;" these included admonitions that in these situations, investors simply do not get all their money back in addition to what best-case scenarios were available. They emphasized a shared interest and goal – the sooner an agreement was reached, the sooner it would be over. Three weeks later, this negotiation concluded and the agreement was finalized.

When the state set an additional deadline on the county, they pulled the team back together to work with the county, cities, special districts, and schools in reaching a full agreement. Each stakeholder brought their individual ideas, which the team used as a starting point, eventually pulling pieces of each together into a "consensus plan" (Baldassare, 1998). By using the stakeholders' ideas, they had buy-in for the agreement from the beginning. As Baldassare (1998) pointed out, agreement also staved off potential lawsuits against the county by the local government investors. Throughout the process, this third party guiding negotiation in Orange County was crucial.

As mentioned in the stakeholder management section, bringing in new officials and creating task forces to meet with various stakeholders also created multiple additional third parties. They were each able to focus the groups appropriately on how to reach their underlying interests, how to receive the best deal possible involves working together. The judge was also an important third party, establishing the same necessary elements of trust and willingness in creating the Orange County Pool Participants Committee. In Orange County, there were many stakeholders and parties enveloped into different subgroups of negotiation, which helped achieve overall agreement.

Deadline

There were also multiple deadlines. While the new 60-90 day mediation deadline did not exist in this case, Orange County did face two other deadlines, which served them well in moving along negotiations. According to Baldassare (1998), the first deadline was the summer of 1995, the due date of $1 billion in bond payments. The county put all its cards on Measure R – a decade-long, half-cent sales tax increase – although they did compose a second payment option they offered to bond investors in the meantime. The other option was to move the due date a year later in return for additional interest. Investors refused; they wanted to be paid immediately. Unfortunately for them, over 60% of voters were against the tax increase, eventually leading investors to agree to the only remaining option.

In addition to the agreement with investors, there were additional agreements to be made with remaining stakeholders. Then Governor Wilson established another

deadline, stating if the county did not negotiate an entire recovery plan by the end of the Legislature's summer recess, about a three-week timespan, the state would impose its own, yet largely unknown, solutions. With the efficiency and trust backing the third-party business leaders, a plan was put together prior to the deadline. After the passage of needed legislation and court approval, it was all over within 18 months (Baldassare, 1998). As Baldassare (1998) wrote, "No one had expected in the dark days of December 1994 that the bankruptcy would end in such a short time" (p. 169). Obviously many conditions were at play in this municipal bankruptcy case but, for the purposes of my thesis, it appears the use of deadlines and discussions led by an efficient third party assisted in facilitating negotiation out of bankruptcy alongside the court process.

Conclusion

Through thorough stakeholder inclusion, perceived willingness, multiple third parties and deadlines, in addition to state legislation assisting in borrowing and the hope of winning lawsuits against financial institutions, the county was able to negotiate largely equal repayment agreements. The use of multiple subgroups, third parties, and deadlines highlight the variation in stakeholders and the context of contracts in this case. The contracts may not have been overly complex, which assisted in achieving negotiation willingness, but the extra obligations and relationships to balance, in addition to renegotiating the ongoing contracts, led to the need for variation in management techniques.

Orange County only needed a few years for their credit rating return to optimal levels (Knox & Levinson, 2009). In fact, Fitch Ratings recently said the County is "outperforming" both the state and country as a whole (Varghese, 2013). Baldassare (1998) credited the leadership of the business community in overcoming the hurdles of distrust and clear communication between various stakeholders and my analysis agrees. Nevertheless, my "post-assessment" may have deemed Orange County's bankruptcy as a fit for negotiation, but that does not necessarily mean it fits the umbrella of current mandated mediation statutes.

Negotiation in the county occurred post-bankruptcy filing and, therefore, within the court process. Baldassare (1998), while first noting that struggling municipalities should search for solutions not involving the costly bankruptcy process, also commented on the one benefit it can bring, "The bankruptcy court provided a structure around which the local government investors could organize…this court-imposed structure was essential to resolving the fiscal crisis since there had previously been little cooperation among these pool members" (p. 246). While it would be best to solve financial issues through negotiation outside of court or prior to court, negotiation in municipal bankruptcies may only be able to occur within the structured environment of court. In addition, Orange County showed the need for flexibility and variation in managing negotiations.

City of Vallejo

Vallejo filed for bankruptcy on May 23, 2008. The filing was based primarily on structural problems and declining revenues coinciding with high unemployment and home foreclosure rates. As mentioned in the first chapter, they were spending nearly 75% of their general fund on public safety compensation and had overall liabilities somewhere between $100 and $500 million, owing over $200 million to CalPERS. At the time, Vallejo purported they would have run out of general fund monies in less than a month had they not filed for Chapter 9 protections (Trotter, 2011). Again, this case study revolved around post-filing negotiation.

Stakeholders

The main stakeholders involved in Vallejo's number one negotiation fight were the following four unions: the International Association of Firefighters (IAFF), the Vallejo Police Officers Association (VPOA), the Confidential Administrative Managerial and Professional Employees of Vallejo (CAMP), and the International Brotherhood of Electrical Workers (IBEW). While each came to agreement with the city at various stages, IBEW withheld negotiation until the very end (Trotter, 2011).

Another major stakeholder was CalPERS; however, they were not included in negotiations, in court, or in any proposed or final agreements. Documents showed them as a major creditor and arguments were made publicly that they should be at the table, but they never officially negotiated a new agreement with the city – nor were they compelled to by the city or court. Possibly, their best alternative to negotiated agreement (BATNA)

was court, as seen in the discussion on willingness between the city and CalPERS.

Perhaps court was the BATNA for the unions prior to this case as well; however, in evaluating this and the next case, it is shown how one court ruling in a municipal bankruptcy can make a huge difference in evolving negotiation conditions. As Vallejo admitted, according to Trotter (2011), their purpose in going to court was to gain advantage against the unions; therefore, the unions had the leverage prior to court. However, the unions felt their arguments against contract rejection and modification would stand, they did not. Post-Vallejo ruling determining contracts can be thrown out, it seems the best route for unions may be to negotiate prior to court since court, for unions in a municipal bankruptcy case, can now mean no contract.

CalPERS, however, still has leverage. Their true BATNA, as seen in the willingness section, is suggesting going to court. I would assume after Vallejo's ruling no one is sure court will bring them the answer they are looking for, although we may find out more after current cases are resolved.

The other stakeholders in Vallejo included retirees receiving health care and Union Bank (Jensen, 2011), which seemed to have little leverage compared to the rest. These stakeholders simply wanted to receive what the city was willing and able to give them, and they largely fell into the shadows of the more powerful stakeholders. This case clearly dealt with major power imbalances among the stakeholders.

Based on negotiation conditions from the literature, representatives from all major parties should participate to receive the most sustainable agreements. Therefore, without

CalPERS involvement, not all stakeholders were sufficiently included in the negotiation. Despite the complications between the differing laws on the subject, how an agreement can be approved as equitable that does not include considerations of a major creditor remains an outstanding question.

Complexity of Contracts

To assist in answering that question, an appropriate focus on the complexity of contracts is required. While Orange County may have had additional agreements to make on top of renegotiating ongoing expenses, Vallejo's renegotiation process was stalled multiple times due to a lack of clarity in how certain contracts, collective bargaining agreements, can be renegotiated in a municipal bankruptcy. Therefore, to truly spur negotiation with unions, clarity in the contract and bankruptcy laws governing the situation was needed and provided by the judge. In municipal bankruptcies, understanding the context of complex contracts requires determining which laws guide and limit their renegotiation. Pension contracts can meet the definition of complex in this context as well, considering the varying opinions on which laws are appropriate to govern their modifications.

Willingness: To Pay and to Participate

Even though Vallejo was obviously facing financial insolvency, many questioned their willingness to pay. In addition, then Vallejo Councilwoman Schivley said one of the main goals going into the process "was to increase its leverage in the ongoing negotiations to adjust the City's obligations with public employee unions" (Trotter, 2011,

p. 74). Therefore, the city may have been willing to pay; they were just not willing to pay as much as they were currently. Considering the federal bankruptcy court supported their claim of insolvency, their position was not unwarranted. It was a position, nonetheless, that literature points out as a bad condition for negotiation. Beginning the bankruptcy process with such an admission upfront led to hostility among the parties mentioned, putting the unions purely on defense and destroying any possibility of trust. Of course, with or without Vallejo's filing, the unions felt they had leverage.

On June 17, 2008, less than a month after filing for bankruptcy, Vallejo filed to reject collective bargaining agreements with four of their unions to "unilaterally modify" (Trotter, 2011, p. 74) them. In response, three of those unions argued Vallejo was not truly eligible for bankruptcy, the court ruled in disagreement. The unions then argued Vallejo could not reject their agreements or modify them, but before the hearings occurred on those issues, two of the four unions negotiated agreements with Vallejo (Trotter, 2011). The fight between the remaining two unions and Vallejo revolved around which law was supreme: federal bankruptcy law allowing rejection and modification of contracts or state labor law, which largely protected the contracts while guiding how modifications could occur. On March 13, 2009, the court argued in favor of federal law, saying if state law should have supremacy in municipal bankruptcies, state law would have said so when it authorized municipalities within the ability to file. The court then told the unions to negotiate with Vallejo under judicially supervised mediation, and in August of 2009, one more union willingly came to agreement with the city. The

final union unwillingly came to agreement after the court continued to maintain the contract rejection and understanding that the city held the upper hand when it came to their need to renegotiate contracts in Chapter 9 bankruptcy (Trotter, 2011).

In sum, Vallejo's municipal bankruptcy case was rooted in oppositional litigation. While three of the four unions came to agreement prior to final rulings, they were as much forced into agreement as the final union. The court's orders were the only forces in this instance that spurred willingness to negotiate. There was no apparent utilization of underlying negotiation conditions or techniques, perhaps because this case was unable to be negotiated. It goes back to the literature and the understanding that some cases may not be applicable to such processes, and, as in some of the agency case, some parties were purely seeking court rulings to further precedent or prevent such rulings and consequent precedents. Vallejo is a vital case in that regard. Before this decision, due to the rarity of municipal bankruptcies across the country, it was unknown whether Chapter 9 granted municipalities the ability to reject union agreements. As Walsh and Glater (2009) later argued, the Vallejo decision ultimately conveyed that unions should negotiate with municipalities prior to finding themselves in bankruptcy court with no collective bargaining agreement whatsoever. The complexity of this type of contract was addressed in this case, thereby possibly decreasing its complexity concerning negotiation conditions going forward.

Another willingness factor came into play regarding what Vallejo owed in pensions. Greenhut (2010) argued Vallejo was unwilling to negotiate with CalPERS.

Vallejo City Council members argued somewhat differently. Councilwoman Stephanie Gomes, in reply to an article request for comment in 2011, stated, "In bankruptcy, the City considered a number of options regarding reductions in existing employee compensation, current retiree health care, and current retiree pension benefits" (Mendel, 2012, para. 23).

> So while the City considered pursuing reductions of current pensions of existing retirees, we had to make our decision in light of the legal issues (primarily California constitutional and statutory protections), equity/fairness issues, and cost issues (CalPERS would likely have devoted significant resources to challenge the ability of the City to modify current retiree pension benefits). (Mendel, 2012, para. 24)

"The 1,000-pound gorilla in the room when making our decisions was always CalPERS—they had a lot more time and money to fight us in court than we had available in the middle of bankruptcy" (para. 25). "So we chose to avoid expensive litigation and to pursue critical budget reductions within the existing rules and regulations" (Mendel, 2012, para. 26).

The phrase "existing rules and regulations" is important. Perhaps this is what dictates contract complexity and whether negotiation conditions can be met prior to filing for municipal bankruptcy. For example, if the relevant laws are unclear, the matter may be best handled in court, as they are the only body able to clarify current law. To

continue, CalPERS' spokesperson also replied to a request for comment on the same story as the Councilwoman:

> The CalPERS lawyer that worked on the City of Vallejo bankruptcy case confirmed with our outside counsel on the case, and the City of Vallejo's bankruptcy lawyer, that CalPERS did not make any threat to the City. We did inform the City that any attempt to reduce pension benefits in the bankruptcy case would go to the core of CalPERS mission and the CalPERS would respond accordingly. However, City of Vallejo never seriously contemplated cutting benefits and it quickly affirmed its contract with CalPERS. (Mendel, 2012, para. 20-21)

The relevant question for this thesis was not whether "respond accordingly" can be considered a threat, or whether pensions are truly protected in bankruptcy, but whether mandated mediation can prevent municipal bankruptcies, especially as negotiation conditions in California's cases evolve. In this case, combative statements and oppositional bargaining limited negotiations substantially, in essence stopping them completely with CalPERS, but again, this was post-bankruptcy filing.

Other creditors did not fare as well as CalPERS. Vallejo's final plan had some receiving 5-20% of what they were initially owed (Jensen, 2011). Vekshin and Church (2011) quoted Bruce Bennett, Orange County's bankruptcy lawyer, in saying that no municipality has ever used Chapter 9 to not pay creditors in full. Vallejo did relay its "regrets" through public statements highlighting their fiscal struggles; meanwhile, they

made each CalPERS payment even while under bankruptcy protection (Mendel, 2012). Vallejo also restructured bond debt with Union Bank, decreasing payments overall by about 40% (Jensen, 2011).

The overall ranking of willingness in this case is difficult. Concerning unions, the city largely appeared unwilling to pay while the unions appeared unwilling to negotiate, at least until the court made them negotiate. CalPERS was clearly unwilling to negotiate, but the issue of willingness to pay on the part of Vallejo could go either way. On the surface, Vallejo was willing to pay its pensions, made clear by the fact that they did not negotiate them down and met every payment deadline. Underneath, however, based on statements by certain councilmembers, they actually seemed unwilling to pay or perhaps unable, unable to pay the court costs that would come from attempting negotiations with CalPERS. Considering willingness to negotiate with other creditors, such as those receiving retiree health benefits, agreeing to such decreases in contracts showed a very high willingness to negotiate and low willingness to pay. Balancing each of these factors resulted in a rating of medium willingness to pay for Vallejo. While some unions had more willingness than others, as a whole they fought renegotiation right up to the judge's final ruling on the contract issue. Therefore, unions received a low level of willingness to negotiate, CalPERS received a low level, and the remaining creditors including bondholders received a high level.

Third Party

Since Vallejo's case was prior to AB 506, Vallejo's main third-party facilitator was U.S. Bankruptcy Judge Michael McManus (Mendel, 2012). Judge McManus ordered judicially supervised mediation during the process (Trotter, 2011), but in reviewing major studies, articles, and videos on Vallejo's bankruptcy, I did not find any additional parties that served to facilitate negotiation in this case. In addition, Judge McManus, while definitely guiding the process, did not appear to encourage or employ any literature-defined negotiation conditions, such as the use of subgroups or focusing parties on interests rather than positions, to spur communication. Nevertheless, that is not necessarily the role of a bankruptcy judge. It is the role of a bankruptcy judge to compel parties to negotiate a largely equal agreement, which in this case was done through the act of rejecting current agreements.

Deadline

This case of municipal bankruptcy did not appear to have or utilize any deadlines to benefit negotiation.

Conclusion

In Vallejo's municipal bankruptcy, underlying interests of stakeholders, the complexity of contracts, and uneven levels of power and willingness essentially destroyed the ability to utilize documented negotiation conditions. While I do believe there could have been improvements in the process, overall, my findings conveyed that Vallejo opened a door to untouched legal questions that could only be dealt with in a

courtroom. In addition, many of the parties involved preferred that venue, which literature says negates negotiation (O'Leary & Raines, 2001).

Vallejo's final reorganization plan was approved in August 2011 (LAO, 2012). Negotiation occurred but alongside the court process and not to the definitional extent as Orange County. Based on this case-study analysis, I predict that similar cases involving contract complexity are also unable to be resolved purely through negotiation methods. While mandated mediation prior to filing did not occur in this case, my post-assessment suggests it would have been unable to prevent a filing in Vallejo's situation.

City of Stockton

Stockton is the first municipal bankruptcy case in California to utilize AB 506's mandated mediation prior to being able to file for Chapter 9 protections. First entering into the neutral evaluation process in March 2012, they still filed for eligibility in June 2012 (LAO, 2012). U.S. Bankruptcy Court Judge Christopher Klein approved Stockton as eligible for Chapter 9 bankruptcy protections on April 1, 2013 (City of Stockton, 2013), making Stockton the largest city in the country to receive such protections. Contributing to their fiscal insolvency was a massive tax revenue decline, including a roughly 70% drop just in property taxes (Hagen, 2013a). Between 2008-2009 and 2010-2011, Stockton's general fund went from $203 million to $173 million (Eberhardt, 2013). In addition, as Judge Klein stated in his eligibility ruling, they had offered "overly generous" employee compensation packages with – in a number very similar to Vallejo – 77% of their general fund going to public safety employees. Judge Klein also noted

"excessive optimism" by the city in drastic redevelopment borrowing for various public projects (City of Stockton, 2013, pp. 555-556). By July 2012, Stockton was over $1 million in debt and facing a potential deficit between $20 million to $38 million (City of Stockton, 2013; Greenblatt, 2013).

Stakeholders

The three main stakeholders with outstanding obligations in Stockton's case were bondholders, employee unions, and CalPERS. The bondholders refused negotiation at the onset of the neutral evaluation process, soon after taking Stockton to court over their true bankruptcy eligibility. The bondholders consisted of National Public Finance Guarantee Corporation, Assured Guaranty, Franklin Advisers, Wells Fargo, and Indenture Trustee (City of Stockton, 2013). Together they were owed $165 million (Greenblatt, 2013). In refusing to participate in initial negotiations, their BATNA seems to have been court, for if they could get the court to rule that pensions need to be altered, and the time to address this issue does seem to be approaching, then they may receive more than they would have received in an agreement prior to court.

Most of the employee unions in this case, unlike those in Vallejo, were able to meet agreement through negotiation prior to entering bankruptcy court (City of Stockton, 2013). In Vallejo's case, the unions' underlying interests and BATNA were going to court, but their interests appear to have evolved prior to entering into negotiations with Stockton. The change in union willingness could be because their contracts were completely thrown out in Vallejo once they entered court, forcing them to renegotiate in

the end. Therefore, once the legal question determining whether such contracts can be rewritten was answered, this stakeholder became willing to participate in negotiations prior to entering bankruptcy court.

CalPERS, the creditor to which Stockton owed the greatest amount, approximately $900 million (Greenblatt, 2013), was not invited to initial negotiations with Stockton. With such a large portion of the city's obligations lying with this stakeholder, however, negotiation conditions would dictate their inclusion. In addition, without their inclusion in future reorganization plans, the court may not approve the plans. The judge alluded to this fact as well, in addition to alluding to the complexity of pension agreements (City of Stockton, 2013).

Complexity of Contracts

In applying negotiation conditions in this case, the complexity of contracts evolved from Vallejo to Stockton. Again, the complexity of contracts concerning employee union contracts decreased somewhat with Vallejo's court rulings. It was then understood that these contracts are rewritable in municipal bankruptcy cases; however, it is not yet understood whether pension contracts are rewritable in municipal bankruptcy cases. While Judge Klein seems poised to rule them eligible to be impaired in bankruptcy court (Hagen, 2013a), he stated in the conclusion of his eligibility ruling, "I do not know whether spiked pensions can be reeled back in. There are very complex and difficult questions of law that I could see out there on the horizon" (City of Stockton, 2013, p. 590). Therefore, complexity of contracts is again an issue for Stockton, although

only in regard to one group of contracts (pensions), not two as in Vallejo's case (collective bargaining agreements and pensions).

Willingness: To Pay and to Participate

The biggest shift in willingness to participate is recognized when comparing the cases of Vallejo and Stockton concerning union negotiations of collective bargaining agreements. The neutral evaluation process began with Stockton's "proposed plan of adjustment" (City of Stockton, 2013, p. 569), which can be considered a "guiding document" as negotiation literature refers to the concept. During the duration of this negotiation phase, Stockton reached agreements with unions on each of its unexpired collective bargaining agreements while making "progress" on remaining agreements. Unfortunately, agreements with bondholders during this time were not reached (City of Stockton, 2013, p. 570), showing another shift in willingness between Vallejo and Stockton.

The evolution of willingness as a negotiation condition appears predicated on litigation. In other words, unions became more willing to renegotiate complex contracts once more was legally understood regarding their contracts within the municipal bankruptcy process. Therefore, not enough may be known within current case law surrounding municipal bankruptcies to dictate renegotiating CalPERS contracts; however, that is what bondholders seek to discover. They took an oppositional stance that Judge Klein summarized as, if you do not "impair CalPERS, we're not going to talk to you." In the second bondholder meeting, Stockton said they did not plan to impair

their contracts with CalPERS; therefore, the bondholders left the neutral evaluation process (City of Stockton, 2013), eventually filing their objections to Stockton's overall eligibility for Chapter 9 protections.

A this point, Judge Klein came back to his eligibility ruling on at least two occasions when he asked bondholder attorneys if they "had an obligation to negotiate in good faith...the response back to [him] was, 'No, only the City has the obligation to negotiate in good faith'" (City of Stockton, 2013, p. 579). Judge Klein, citing California code as proof, disagreed and stated the bondholders were, therefore, the stakeholders not negotiating in good faith. He candidly added, "And, therefore, they do not have the ability to complain about eligibility" (City of Stockton, 2013, p. 579).

In accordance with Judge Klein's opinions on whether Stockton negotiated in good faith, I also found a genuine willingness to pay on the part of Stockton. First, as mentioned by Judge Klein, they could have opted for the fiscal emergency route to bypass the mediation process (per San Bernardino). However, they chose to enter the neutral evaluation process instead (City of Stockton, 2013), showing a certain level of willingness on Stockton's part. In addition, it has allowed the first official opportunity to evaluate how negotiation willingness works prior to entering bankruptcy court.

Judge Klein alluded in court that the numbers coming out recently in the media purporting Stockton only offered bondholders 17% of what they were initially owed to be false, stating, "And, of course, when a lawyer argues a case, one picks the number that helps that person's client the most" (City of Stockton, 2013, p. 570). Thus far, the

Judge's comments show distrust of Stockton on the part of the bondholders and allege possible dishonesty on the part of the bondholders.

There were three bonds in question, and Judge Klein relayed some of the proposed agreements the city offered. For instance, while payments would stop on some of the assets already seized by holders, the assets would remain in their care until they generated the amount of revenue owed. Additionally, while other payments would stop for defined periods, the city committed to eventual full payment (City of Stockton, 2013). The judge mentioned these offers to convey their overall fairness, therefore finding bondholders unwilling to negotiate and Stockton willing to pay.

Until this case ended up in bankruptcy court, the public was unaware of how negotiation fares in a neutral evaluation process. In a telling statement, Judge Klein began laying out his eligibility arguments, noting, "It's inherent in this business that, particularly when lawyers hear what the other side is saying, they instinctively do not trust it" (City of Stockton, 2013, p. 550). The issues of trust and willingness in this case and all cases are therefore significant; these issues are also evolving as more municipal bankruptcies occur. For instance, they are now even more significant in Stockton's case than Vallejo's, as, in the end, the stakeholder arguing in court that the city had not negotiated in good faith with other stakeholders was actually found to be the stakeholder not negotiating in good faith. It has now become the role of the court to not just determine whether negotiation occurred but to decrease contract complexity and spur trust, communication, and overall willingness to negotiate.

Presentation of the process and arguments within court led me to find the City of Stockton had a high level of willingness to pay. Unions also appeared to have a high level of willingness to negotiate. While not all collective bargaining agreements have been negotiated, the fact that progress was made even prior to receiving Chapter 9 eligibility was significant to my analysis. However, the bondholders appeared to be hard bargainers unwilling to come to the table. They preferred litigation, possibly looking for some precedent setting rulings regarding pensions before considering negotiating. Therefore, bondholders received a low level of willingness.

The stakeholder they first asked to join them at the table, CalPERS, is another party whose willingness needs to be addressed. Judge Klein first relayed the fact that Stockton had already negotiated some pension changes in addition to making drastic cuts hurting public employees in the years leading up to its bankruptcy filing (City of Stockton, 2013). He then made an interesting argument that pointed out negotiating in good faith requires "agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan" (City of Stockton, 2013, p. 589). His point was that if Stockton did not plan to impair contracts with CalPERS, they then were not required to negotiate with them; but most of all, this does not excuse the bondholders from joining the negotiating table. Judge Klein then noted the potential to readdress the CalPERS issue at the point when Stockton comes back with an adjustment plan to be approved, then, creditors are allowed to contest the fairness of the proposal. In a warning to Stockton, he basically said they better either negotiate with

CalPERS or make their arguments stronger, otherwise he will have to "get down into the nitty-gritty of the CalPERS situation" (City of Stockton, 2013, pp. 589-590).

For the purposes of my analysis, CalPERS cannot technically be considered unwilling to negotiate, as the Judge clarified that at this point they have not been asked to negotiate. Stockton appears willing to pay CalPERS, shown through their continued pension contributions during their insolvency, unlike their bond payments (Hagen, 2013a). The stall in bond payments could signify some unwillingness to pay on Stockton's part but could also signify the complexity of pension contracts and current lack of legal understanding surrounding whether they can be renegotiated. More will be understood as the court process continues and levels of willingness evolve. In the meantime, I believe Stockton's high level of willingness to pay stands and CalPERS' willingness to participate cannot yet be rated.

Third Party

The first third party in this case – or as AB 506 refers to the role, neutral evaluator – was former bankruptcy judge, Ralph Mabey. Court transcripts referred to him as a well-known and respected individual who utilized literature-defined negotiation tactics such as meeting with stakeholder subgroups to find possible points of agreement. City lawyers said he employed "shuttled diplomacy," (City of Stockton, 2013, p. 569). The fact that Judge Mabey assisted in garnering some completed collective bargaining agreements and progress on others reflects well on his facilitation. Nevertheless, despite attempts to facilitate agreements with bondholders, it appears no fault can lie with the

third party in this case considering they never appeared willing to negotiate at any point of the process.

Before hearing arguments in the case, Judge Klein ordered mediation with another bankruptcy judge, Honorable Elizabeth Perris. While details of that mediation process were not reiterated in court transcripts, arguments against Stockton's eligibility confirmed no further progress was made (City of Stockton, 2013). In third-party Judge Klein's ruling, however, he alluded to rejecting an agreement not fairly including all creditors, which could possibly facilitate further negotiations with those excluded up to this point, bondholders and CalPERS. However, it is important to note any further negotiations would be occurring alongside the court process.

Deadline

The first case to face AB 506's 60- to 90-day mediation deadline prior to filing for bankruptcy extended the process, utilizing the entire 90 days. The deadline extension requires agreement by "a majority of the parties in interest" as long as the municipality concurs (City of Stockton, 2013, p. 569). Therefore, agreeing to extend the mediation deadline shows additional willingness to negotiate by the parties involved, which at this point were primarily the city and labor unions. Even with the extension, this deadline did not spur agreement with bondholders or CalPERS, with the latter not involved in the process whatsoever, despite, according to Greenblatt (2013), being the stakeholder to which Stockton owed the most. However, the deadline did seem to spur negotiation between the city and its unions, which is interesting considering the change in their

willingness from Vallejo's case. The change and overall distinction between the variations in agreement may bode well for future negotiations between stakeholders that have had any lack of clarity in the law already addressed by the court. Therefore, while a deadline may spur negotiation, there first needs to be willingness to negotiate and certainty regarding the contracts in question.

Conclusion

Stockton is now at the heart of the pension debate and, as a case for negotiation prior to entering bankruptcy court, it is also at the heart of my analysis. The main willingness finding is the level of change between unions in Vallejo and unions in Stockton. As suggested previously, this may be based upon the court's warning in Vallejo's case; not negotiating prior to court can result in no agreements at all. The question of whether collective bargaining agreements can be impaired in municipal bankruptcy had already been decided in bankruptcy court and not in the unions' favor. Therefore, this change in willingness could be seen with CalPERS and bondholders in the future, if court rulings clarify contracts further. If the complexity of contracts and obligations in the case are in question, it could mean litigation will be needed to spur negotiation.

The third party in this case did not play as significant a role as willingness in benefitting negotiation prior to going to court. While they and the deadline were beneficial, they were only beneficial to the parties willing to participate. Without the deadline, agreement with unions may not have been reached as quickly. However, it was

not completely reached with the entire stakeholder group and not reached at all with remaining stakeholders. In addition, Judge Klein even allowed extra time for negotiation by sending in another mediator. The Judge said, "And that's because, as I have said on multiple occasions in this case, in writing and in this room, a successful plan of adjustment will require very significant agreement among the parties and, therefore, is an ideal subject for continuing mediation" (City of Stockton, 2013, p. 574). The extra time, however, did not lead to further agreements. Therefore, not reaching negotiated agreements by the deadline was not because of the deadline or because the deadline was not long enough, but because the parties not coming to agreement were unwilling to voluntarily negotiate no matter how many opportunities were provided. Furthermore, those willing to voluntarily negotiate will likely do so with or without third parties and deadlines and within or without court. While not all stakeholders were included in the mediation process prior to court, the most important piece of the findings thus far seems to indicate that willingness guides negotiations in municipal bankruptcies but evolves based on court rulings clarifying contract laws.

Town of Mammoth Lakes

Mammoth Lakes embarked on the neutral evaluation process a month after Stockton, in April 2012. They filed for Chapter 9 in July 2012 after mandated mediation again did not result in agreement (LAO, 2012). As mentioned in the first chapter, Mammoth Lakes' situation is different from the other cases because its insolvency revolved around a developer suing them for an amount more than double the size of their

$19 million general fund (Church, 2012). In addition, a state court ruled in the developer's favor in February 2012, ordering Mammoth Lakes to pay the entire $43 million (LAO, 2012). The issue behind the suit was an alleged violation of a contract between the town and the land developer in 1997. The contract dictated the developer rights to build in an area by and within the local airport, from which the town eventually tried to withdraw when questions regarding compliance with federal and state laws came into question. The developer received a ruling in 2006 guaranteeing it $30 million, which became $43 million after interest and court costs were included (Church, 2012; Times Staff Report, 2012).

Stakeholders

While other developers were affiliated with the project, the main developer stakeholder in this case was Mammoth Lakes Land Acquisition, LLC (MLLA). Initial AB 506 negotiations also included employee union groups and bondholders (Marysheva-Martinez, 2012), and eventual restructuring plans post-settlement agreement would involve discussions with the same stakeholders (Sahagun, 2012). During the mandated mediation process, all stakeholders renegotiated or made progress on agreements except for MLLA, which refused to negotiate at that point (Marysheva-Martinez, 2012). Their BATNA seemed to be court, as previous court rulings had already gone in their direction.

Complexity of Contracts

Mammoth Lakes was struggling with a one-time fiscal crisis, not the structural problems the other municipalities faced. However, having to pay such a large judgment

meant the town would have to renegotiate its other obligations at the same time. The final settlement with MLLA consisted of $29.5 million to be paid over 23 years. With an interest rate of 5.17%, there is potential for the town to pay a total of $48.5 million. However, if they can receive additional financing, they could possibly pay sooner without reaching the full 23-year payout period (Times Staff Report, 2012). Reviewing the agreements made during the AB 506 process reveals equal cuts of about 10% to each participating creditor, namely unions and bondholders (Marysheva-Martinez, 2012).

The complexity of Mammoth Lakes' case led it to face both the ongoing obligations faced by the other municipalities in addition to the fiscal responsibility to the developer. The complexity of the situation is similar to Orange County's case; both had ongoing obligations in addition to other responsibilities to pay back local government investors. No real clarifications in the law were needed to limit complexity; therefore, the contract context did not seem to hinder the willingness of the other parties to negotiate prior to entering bankruptcy court. Regardless of contract complexity, and more in response to their BATNA, the developer remained unwilling throughout the process.

Willingness: To Pay and to Participate

First, the issue of Mammoth Lakes' willingness to pay seemed to be more of an issue of ability to pay. As suggested, the small town's general fund simply was not sufficient and they filed for bankruptcy protection arguing only one cause, they "could not afford to pay the developer" (Church, 2012, para. 6). Nevertheless, the town may not

have considered all possible legal hurdles before entering into the agreement, and they did appear unwilling to pay the entire amount the judgment dictated even after it was affirmed by a state court. Going forward by attempting to enter bankruptcy court at that point could signal an unwillingness to pay.

However, town documents showed that within the AB 506 neutral evaluation process, they came to agreement with the majority of creditors. It is because the main stakeholder in question refused to join the process that the adjustment plan could not be completed and the process concluded (Marysheva-Martinez, 2012), signifying the lack of willingness was on the part of the developer.

Alongside the court process, with guidance from the judge/mediator, they eventually reached a settlement plan with the developer prior to the bankruptcy court dismissing the case. MLLA, in agreeing to a settlement of $29.5 million paid over 23 years, appeared willing to negotiate, considering the amount was substantially lower than the $43 million. Nevertheless, since the plan included an interest rate of 5.17% over 23 years, the added interest would result in a grand total of $48.5 million (Times Staff Report, 2012). MLLA was unwilling to negotiate an alternative involving taking any less than what the court had already told them they deserved.

While the plan allowed for the town to find other financing, yearly payments of $2 million would strain their already small general fund (Times Staff Report, 2012), leading the town to propose a “restructuring plan” in addition to its settlement. The proposed restructuring plan included cutting nearly a dozen municipal positions and

seven police officers (Sahagun, 2012). Nevertheless, at this point in my analysis, I found the town to be outside of both the mandated mediation process and the entire municipal bankruptcy process. Therefore, any further discussion of ongoing negotiations regarding cuts does not clearly apply to my purposes.

Based on my analysis of the case, I gave the town a high willingness level, balancing their desire to enter court to pay less with their overall inability to pay. It was not until they realized bankruptcy court could result in even more costs down the line, especially if the court did not agree with their plan, that they agreed to settle outside of bankruptcy court (Times Staff Report, 2012). However, the fact that the town waived confidentiality of AB 506 neutral evaluation proceedings and negotiated deals with other stakeholders showed a genuine transparency and willingness in their actions (Marysheva-Martinez, 2012). The land developer received a low level of willingness based on their refusal to participate in the neutral evaluation process and their continued oppositional stance on receiving the entirety of what they were owed, even in the final settlement agreement.

Third Party

The first third party involved in this case was Judge David Coar, the mediator brought in during the mandated mediation process prior to court. A review of town documents showed that of the 16 creditors participating, agreement in some form was reached with each (Marysheva-Martinez, 2012). Judge Coar seemed to perform his

duties appropriately for those stakeholders present, although details on employing any literature-defined negotiation conditions as a third party are unknown.

Once in court, Judge Elizabeth Perris facilitated court-mandated mediation, as she did in Stockton's case. She ultimately guided the town toward reaching the settlement with the main developer. A press release from the town stated, "After receiving input and advice from a U.S. Bankruptcy Judge who became our court-appointed mediator, the Town has determined that this settlement, at $29.5 million, was a far better alternative than taking a chance in bankruptcy court" (Times Staff Report, 2012, para. 4). The third party in this was important, as without relaying potential costs moving forward, the town may have ended up paying even more (Times Staff Report, 2012).

I think this parallels the "reality checks" given by the third party in Orange County's case and shows the merit of the literature-defined requirement of bringing in a trusted third party to assist in focusing the stakeholders on a goal as well as how to reach it appropriately. In this case, it seemed apparent the developer must receive what the previous court had ordered, and the final third party in this case assisted in that process.

Deadline

Mammoth Lakes utilized the AB 506 mediation process for 60 days until it was understood their main creditor would not join, leading them to bankruptcy court. However, the town was still able to reach some form of agreement with other creditors by the deadline (Marysheva-Martinez, 2012); so in many ways, the deadline appeared useful in spurring negotiation. Nevertheless, it did not spur negotiation with the main

stakeholder, again highlighting the supremacy of willingness as a negotiation condition in municipal bankruptcy mediation processes.

Conclusion

Mammoth Lakes is different from the cases already analyzed because their filing and negotiation centered on a one-time fiscal crisis, similar to the overall history of municipal bankruptcy filings throughout the country. They too ended up in federal bankruptcy court, but agreements were made prior to that point and prior to any official court rulings, which predicated the court's eventual dismissal of the case. Overall, the mandated mediation process was not successful in preventing bankruptcy since the main creditor refused involvement. Eventually that creditor's oppositional bargaining got them a good deal while forcing other groups to deal with the losses.

Though this case had variations in its causes compared to Stockton, it did not have substantial variations in its negotiation conditions. Although contract complexity did not seem to affect willingness in this case in the same way as the others, willingness to participate, more than any other variable, still dictated whether negotiation occurred. Therefore, the causes of Mammoth Lakes' insolvency cause did not seem to predicate the evolution of negotiation conditions in this case or whether mandated mediation could have prevented municipal bankruptcy. Nevertheless, the sources of information for Mammoth Lakes' situation were very limited compared to the others, largely due to its differences not warranting as much publicity. Therefore, Mammoth Lakes' findings were harder to apply to ongoing cases and future cases, which remain the focus of both this

analysis and California's struggle with municipalities dealing with structural insolvency issues.

City of San Bernardino

In August 2012, San Bernardino filed for Chapter 9 bankruptcy protection (LAO, 2012). To bypass AB 506 mandated mediation, the city voted to declare fiscal emergency as a result of being over $1 billion in debt, including $195 million in pension payments and $61 million in retiree health benefits (Reid, 2012). They blamed the insolvency on causes similar to Stockton's and Vallejo's, namely the recession and receiving lower tax revenues ("San Bernardino Bankruptcy," 2012), and also on public safety compensation packages absorbing 73% of their typically $178 million general fund budget (Nash, 2012; Reid, 2012).

Stakeholders

The stakeholders in this case were essentially the same as Vallejo's and Stockton's, namely public employee unions, bondholders, and CalPERS. I only found information on negotiations with unions thus far, although bondholders and CalPERS have taken positions on the bankruptcy. In a role reversal from Stockton, according to Reid (2013), bondholders had previously been supportive of San Bernardino's decision since San Bernardino treated both CalPERS and bondholders equally by stalling payments to each, unlike Stockton only stopping bondholder payments. Meanwhile, CalPERS is understandably opposed to San Bernardino's decision.

However, San Bernardino announced, just days after Stockton's eligibility ruling, it would be resuming CalPERS payments in July (Nash, 2013). While the city's strategies behind these decisions can only be assumed, these actions do not bode well for consistently increasing trust and communication among stakeholders in future negotiations. Bondholders and CalPERS may wait for precedent to be set in Stockton prior to becoming too communicative with San Bernardino.

Complexity of Contracts

In addition to San Bernardino's issue of contract complexity in pension agreements, they also had unorganized financial records. Determining and understanding their true obligations and how they had been handled previously was undermined by the allegations of mismanagement and "falsified budget reports" over the last couple decades. The city also lost both its interim city manager and chief financial officer this year (Reid, 2012). With documents showing special funds were transferred into the general fund to purport a "balanced budget" (Nash, 2012), further complexities arose beyond those present in other municipalities, making renegotiations much more difficult.

Willingness: To Pay and to Participate

Currently, willingness to both pay and participate seems rather low on all sides, considering negotiation processes in this case have only recently begun. Since San Bernardino acted quickly in deciding to enter bankruptcy, they were not required to have proof of negotiations in good faith at the onset of filing. Municipal bankruptcy experts felt this will also make their eligibility hearing more difficult than Stockton's. For

instance, while Stockton had a history of making painful cuts and failed negotiations going into court, San Bernardino largely does not. Stockton continued paying CalPERS; San Bernardino quit payments to CalPERS and bondholders. In addition, Stockton brought an 800-page restructuring plan while San Bernardino has a 12-page plan (Reid, 2013). Meanwhile, the questions surrounding their financial documents and recent decisions highlight disorganization and dishonesty factors, bringing into question whether San Bernardino is trustworthy and whether they are willing to pay and willing to negotiate.

Nevertheless, the federal bankruptcy judge in this case made it clear she feels the city is insolvent, although she has yet to officially rule them eligible for Chapter 9 protections. In the meantime, the unions have been the main stakeholder with which negotiations have been attempted. The results have been mixed. In January 2013, four public employee unions agreed to cuts requiring them to pay higher portions of their retirement and terminating retiree health benefits for incoming employees. Three unions, however, did not come to agreement prior to the city vote, which applied the cuts to them as well. The three unions are now arguing a lack of negotiation in good faith, considering they heard about the negotiation "impasse" requiring the vote in the newspaper. The unions now hope to fight the un-negotiated cuts in court, which, according to the judge, may be addressed prior to eligibility determinations. Meanwhile, union attorneys are requesting the city submit more financial records and have financial officials testify in court, both of which appear to be a current struggle for the city (Ghori, 2013).

Ending payments to CalPERS and bondholders showed a lack of willingness to pay on the part of the city. Abandoning negotiations with some unions that Councilman Jenkins said "were close" to an agreement and then voting new contracts in place without agreement (Hagen, 2013b) showed unwillingness to negotiate, in addition to their decision to bypass AB 506's mandated mediation. The lack of communication with the unions prior to the vote, in addition to the hesitation to submit all relevant documents to the court, further supports a lack of trust, transparency, and willingness to pay. The decision to start paying CalPERS again could show some willingness, but the change could also be viewed as playing both sides against each other. Still, additional hearings will shed more light on willingness factors, as the city currently seems somewhere between unwilling and unprepared.

It is too early to give a willingness rating in this case, but San Bernardino's disorganization and lack of clear communication resulted in a low level of willingness to pay at this time. More information is desired to completely understand underlying interests going forward, as is the case with other stakeholders. Unions thus far appear willing to negotiate, as some have already come to agreement while others seemed poised for agreement prior to becoming oppositional in court. Therefore, unions received a medium level of willingness. At this stage we do not know how San Bernardino plans to treat bondholders or CalPERS or how those stakeholders will respond to negotiation, therefore those levels are unknown.

Third Party

Since they did not enter into the AB 506 neutral evaluation process, San Bernardino does not have an assigned neutral evaluator. While they have attempted mediation, it does not appear they have utilized a specific mediator. The only third party has been Judge Meredith Jury, hearing the case in Riverside's U.S. Bankruptcy Court (Ghori, 2013). There has been no indication that literature-defined negotiation conditions related to a facilitative third party have been used.

Deadline

Since San Bernardino bypassed the 60- to 90-day mediation process, this case of municipal bankruptcy does not appear to have any current deadlines in place to benefit negotiation.

Conclusion

San Bernardino's case was initially found to be similar to Stockton's and could possibly end similarly as well. However, thus far there has been a lack of consistency in willingness and communication in their treatment of stakeholders. While contract complexity concerning pensions is present as it is in Stockton, a parallel could possibly be drawn between the mismanagement and turnover in Orange County and San Bernardino. Orange County was able to reestablish trust and communication by removing some of the elected officials who were in office at the time of the investment loss. San Bernardino could attempt or already be attempting similar measures.

Without utilizing the mandated mediation process, including the neutral evaluator and deadline requirements of AB 506, it is hard to apply further findings from San Bernardino's case to those going forward. With more time and analysis, however, it would be important to address whether the lack of consistency and organization can be attributed to the different paths taken by Stockton and San Bernardino. Perhaps beginning the municipal bankruptcy process in mandated mediation, as did Stockton, does not prevent bankruptcy filings but can dictate a simpler court process.

Table 1

Evolving Negotiation Condition Findings

Municipality	Orange County	Vallejo	Stockton	Mammoth Lakes	San Bernardino
Criteria					
Willingness	Pay: High Participate: Municipalities: High Bondholders: High Vendors: High	Pay: Medium Participate: Unions: Low CalPERS: Low Bondholders: High	Pay: Medium Participate: Unions: High CalPERS: Unknown Bondholders: Low	Pay: Medium Participate: Developer: Low Unions: High Bondholders: High	Pay: Low Participate: Unions: Medium CalPERS: Unknown Bondholders: Unknown
Third Party	Ad hoc business team; Federal Bankruptcy Judge Both utilized proven negotiation conditions relating to stakeholder management	Federal Bankruptcy Judge; judicially supervised mediation Did not spur negotiation or utilize negotiation conditions	AB 506 "Neutral Evaluator"; Additional court-ordered mediator; Federal Bankruptcy Judge Some negotiation spurred and conditions utilized	AB 506 "Neutral Evaluator"; Additional court-ordered mediator; Federal Bankruptcy Judge Some negotiation spurred and conditions utilized	Federal Bankruptcy Judge; (AB 506 "neutral evaluator" process bypassed) None known at this time
Deadline	Two deadlines set; both deadlines met	None found	AB 506 deadline extended 90 days; some agreements met deadline	AB 506 deadline not extended; some agreements met deadline	None found (AB 506 deadline bypassed)

Table 1 (continued)

Municipality	Orange County	Vallejo	Stockton	Mammoth Lakes	San Bernardino
Criteria					
Stakeholders	All main groups included Top three: municipalities within county; bondholders; vendors	Not all main groups included; Top three: CalPERS, labor unions, bondholders	Not all main groups included in initial process; Top three: CalPERS, labor unions, bondholders	Not all main groups included in initial process: Top three: MLLA, unions, bondholders	Not all negotiations occurred; final inclusion unknown
Complexity of Contracts	Repayment obligations in addition to general expenses	General expenses including complex collective bargaining agreements	General expenses including complex pension agreements	Developer settlement in addition general expenses	General expenses: complex pension agreements: uncertain finances

Chapter 5

CONCLUSION: GOING FORWARD REQUIRES UNDERSTANDING THE RELATIONSHIP BETWEEN MEDIATION AND LITIGATION IN MUNICIPAL BANKRUPTCY NEGOTIATIONS

This thesis began by discussing the causes behind municipal bankruptcies, the purpose behind allowing municipal bankruptcy, and the processes guiding municipal bankruptcy. The fundamental focus has been addressing negotiation as part of the process to understand implications moving forward concerning current and future legislation on the topic. Specifically, I sought to answer the question: can mandated mediation prevent municipal bankruptcies? After analyzing the cases utilizing the new process, the answer appears to be no. Nevertheless, future local government bankruptcy negotiations likely depend on willingness to pay and participate, which can be addressed through clarifying contract complexity in some cases. Therefore, I discovered a relationship between mediation and litigation, showing it is through this relationship that negotiation in municipal bankruptcies occurs.

Overall, my findings aligned with the literature regarding when negotiation works and when it fails, highlighting that a willingness to mediate rather than litigate does seem to dictate the likelihood of favorable negotiation, yet the relationship is not mutually exclusive in municipal bankruptcies. I present the implications of my findings beginning with a discussion of all negotiation conditions found, followed by a specific discussion on how willingness and contract complexity have evolved throughout the cases. While the

additional negotiation conditions examined were shown to be beneficial to municipal bankruptcy, I determined the importance of willingness and contract complexity surpasses the benefits of the others.

The next section applies the findings to AB 506, specifically linking my results to the initial motivations behind the bill, to determine its general effectiveness. That section then leads to the limitations in my analysis and recommendations for further research and policy creators. I conclude with the concept of litigation assisting mediation.

The Role of Negotiation Conditions in Municipal Bankruptcies

Based on my analysis, the two conditions most impacting negotiation in municipal bankruptcies are willingness to participate and the complexity of the contractual issues at stake. The fact that they are also the conditions that evolved the most is telling as well, as it shows how susceptible negotiation in municipal bankruptcies is to other factors, such as comments made within the press and court. I discuss the major findings on the role of each of the conditions prior to showing the evolution of willingness and contract complexity and what it means going forward.

Willingness and Complexity

Although willingness and complexity are separate conditions within the previous few chapters, they are both listed first and combined in this section for purposes of stressing their importance and connection in my concluding thoughts. In this section, I recognize their connection within municipal bankruptcy negotiations and, thus the connection between mediation and litigation. My findings showed that spurring

stakeholders to willingly sit at the negotiation table can require court rulings on contract complexity. As shown in Vallejo and Stockton, once a judge rules on the contract in question, complexity can be reduced. In other words, a mandated meditation may begin municipal bankruptcy negotiations while an unresolved contractual question remains. Therefore, the court must then set the parameters for negotiation by clarifying and answering the contractual question. Consequently, if it is understood a contract can be renegotiated once in court, then a willingness to participate prior to court can be gained for future cases. Thus, as we resolve more issues, it would seem that the likelihood of avoiding court would increase. While the details of the contract, in addition to obligations and ongoing expenses, can complicate negotiation, complexity in municipal bankruptcies is a factor based mostly on a lack of legal clarity. The role of contract complexity in these cases is very important, as mandated mediation cannot attempt to prevent municipal bankruptcies until contract complexity issues, essentially unresolved stakeholder-inclusion questions, are answered by the court for each stakeholder group.

Willingness affirmed through limiting contract complexity, therefore, is the vital negotiation condition and relationship. Furthermore, a third party and deadline can benefit negotiation but applicable stakeholders will be affected by those remaining conditions only if it is first known the contract can be renegotiated. Nevertheless, perhaps these additional conditions can help speed negotiation in municipal bankruptcy.

Stakeholders

Concerning stakeholders, my findings showed it is best to try to include all main stakeholders at all stages of the negotiation; if some stakeholders are not included, the agreement made may not be fair enough to escape challenges in court. Not only does a court need to approve a largely equal contract but stakeholders that made concessions will not be happy if others are not equally conceding. In Stockton, the judge essentially said all main creditors should negotiate prior to presenting him with a readjustment plan; if my theory is correct, he will not approve a plan that does not include CalPERS. Even if that is not the case, he opened the door for bondholders to challenge at that point; therefore, in municipal bankruptcies, all stakeholders should be included, otherwise the court process will be both necessary and long.

It is here that recognizing underlying interests and BATNAs becomes important as well. In realizing these interests, municipalities and facilitators can try addressing them. For instance, facilitators in Orange County and Mammoth Lakes both provided reluctant stakeholders with "reality checks" to help them understand the need to negotiate and that doing so would result in the best deal for each. They also understood who the deal breakers were, such as schools in Orange County, which allowed them to truly present the best routes to agreement. Nevertheless, in the more combative cases, it should be understood that some stakeholders would prefer litigation over mediation. In municipal bankruptcy situations, there is an inherent lack of trust and communication, which is essential to negotiation. In these evolving situations, the trust and structure of

court becomes the vital negotiation condition. Mandated mediation, therefore, may be unable to prevent municipal bankruptcies, but it can work in concert with bankruptcy litigation.

Third Party

A third party or multiple third parties were found to be beneficial in spurring negotiation in Orange County and somewhat beneficial in Stockton and Mammoth Lakes. The fact that my analysis found more utilization of negotiation conditions by third parties in Orange County does not necessarily show AB 506's neutral evaluator had a major difference on negotiation in municipal bankruptcies. The many county agencies involved in this case and the interdependence among them could have assisted in spurring the overall willingness to participate in negotiations, nevertheless, having the additional facilitator and time to negotiate were not shown to harm or slow negotiation. The major differences come from willingness, for if a stakeholder is unwilling to negotiate, a third-party facilitator will likely have less of a spurring effect than a federal bankruptcy court judge, as shown in Vallejo and as being shown in Stockton. The facilitator in Stockton may have benefited the process with some stakeholders, but they had little motivating affect on bondholders or CalPERS, which do not feel they should have to negotiate at all.

Deadline

Deadlines play the same role as a third party in municipal bankruptcies. While beneficial in Orange County and somewhat in Stockton and Mammoth Lakes, only those stakeholders willing to negotiate were consistently able to make agreements ahead of a

deadline. The stakeholders unwilling to negotiate are unwilling because they believe the law protects their contracts and, until told otherwise, their BATNA is court. Still, deadlines are positive aspects in negotiation; the 60- to 90-day deadline can be as useful as a neutral evaluator moving forward, as long as the stakeholders they are facilitating have legal clarity and are willing to negotiate.

The Evolution of Willingness and Complexity Conditions

My findings have shown that the most impactful negotiation conditions—willingness and complexity of contracts—evolve from case to case based upon court rulings on contract issues. Such court rulings sometimes dictate the negotiation that will occur in the next case. The evolution of court rulings can possibly allow for predictions going forward while also showing that mandated mediation is not mutually exclusive to litigation in municipal bankruptcies.

Union and bondholder willingness to participate in negotiations shifted dramatically between the cases of Vallejo and Stockton. A focus on unions in my analysis did not arise until Vallejo's case; from Vallejo's case to Stockton's, union willingness to negotiate went from low to high. Considering the similarity in the bankruptcy causes, the main differences between the two are: a) Stockton participated in mandated mediation and b) in Vallejo's case, a judge ruled union contracts rewritable in municipal bankruptcies.

The evolution seems to be a response to the ruling rather than the mandated mediation process when assessing the shift in bondholder willingness from high in

Orange County and Vallejo to low in Stockton. Meanwhile CalPERS has stayed somewhere between low and unknown throughout each of the cases. I interpreted these results to mean that in municipal bankruptcies, willingness to negotiate is predicated on legal interpretations of conflicting laws governing contract renegotiation.

Union willingness to negotiate increased once the judge in Vallejo's case determined they had to negotiate, otherwise they may not have had a contract at all. By the time of Stockton's case, most had renegotiated their contracts prior to the city entering bankruptcy court. Bondholders, however, had previously understood they needed to renegotiate in municipal bankruptcies to get as much money back on their investment as possible. After receiving so little return in Vallejo, and recognizing CalPERS's refusal to participate (the biggest creditor in most of these municipalities), bondholders appeared to have given up on participating in municipal bankruptcy negotiation processes prior to a filing. They saw an absence of stakeholder inclusion and good faith negotiation. The perceived unfairness led them to seek clarity in court, which has yet to truly be gained since Stockton's most recent ruling postponed addressing the issue in its entirety. Therefore, it does not appear mandated mediation affected willingness to participate in negotiations in municipal bankruptcies more than the court rulings affected willingness to participate.

At some point in Stockton's case, we will likely learn what laws are supreme regarding renegotiating pensions with CalPERS, as we did in Vallejo's case with collective bargaining agreements. If my evolution theory on court ruling clarity spurring

willingness is correct, I hypothesize CalPERS and bondholders may become much more willing to negotiate in future cases.

Municipal bankruptcies have been historically rare and much is unknown when it comes to determining what laws are supreme, federal or state. It is a federal court making the determinations, and because private sector bankruptcies typically mean any contract is up for renegotiation, municipal bankruptcy law appears to be evolving in the same direction. Until that direction is resolved, however, various stakeholders will still need legal questions answered before they are willing to participate in a negotiation process involving their contracts.

AB 506 – Perceptions as Motivator and Conclusions on Effectiveness

While mandating mediation has not prevented municipal bankruptcy filings as AB 506 supporters hoped, it does not necessarily mean it has not been effective in other ways. However, its effectiveness has not aligned with the initial motivations behind its enactment, and any improvement would likely have occurred without its enactment as the courts clarified conditions for the parties involved. Therefore, in discussing how my findings applied to the role of the legislation, I identified opportunities for further examination to discover whether other benefits since the bill's passage can be recognized.

First, I recount the initial motivations behind the legislation, beginning with how some argue that Vallejo filed for bankruptcy purely to get out of its employee pension contracts (Kirkpatrick & Smith, 2011). Unions and elected officials then worried that the perception of bankruptcy was changing, in that it no longer ruined a city's and its

officials' reputations but signaled an unwillingness to pay what it owed in a strategic use of municipal bankruptcy (Gillette, 2012). AB 506 resulted from credit contagion and cost concerns in addition to a desire to provide an option for municipalities struggling with insolvency prior to simply filing for bankruptcy (Assembly Committee on Local Government, 2011; Senate Committee on Rules, 2010). Therefore, the declared need for the bill was to guide insolvent municipalities away from bankruptcy, while ensuring their willingness to pay if they did eventually file for bankruptcy. In addition, in limiting municipality bankruptcy filings, it was also assumed credit contagion and cost concerns would be limited.

To judge the effectiveness related to willingness to pay as a motivation behind the legislation, I now present the evolution of those findings from my analysis. While overall willingness to pay did not seem to shift substantially in my initial review of case details, once cases were assigned levels of willingness, my analysis showed a decrease in willingness to pay. Orange County started off with a high level of willingness to pay; Vallejo, Stockton, and Mammoth Lakes were found to have medium levels, and San Bernardino is currently holding down the low end of the scale. More needs to be determined in San Bernardino's case regarding whether the level is a result of disorganization more than a lack of willingness; nevertheless, willingness to pay does appear to be somewhat decreasing on the part of municipalities. San Bernardino did not participate in mandated mediation so it was hard to discern the distinct role of the legislation in this process. One conclusion that can be made at this point, however, is that

AB 506's mandated mediation process has not yet guided municipalities away from Chapter 9 or increased their willingness to pay once within the process.

It may be assisting them, however, in preparing for bankruptcy. As seen when comparing Stockton to San Bernardino, Stockton has presented a strong and organized case thus far. Whether this is due specifically to partaking in AB 506's mandated mediation process, though, is also hard to determine. San Bernardino has been dealing with disorganization and corruption, which would be detracting from the strength of their case whether they took part in mandated mediation or not. With or without mandated mediation, municipalities can and do negotiate prior to filing for municipal bankruptcy. As brought up in the legislative process, the concern with AB 506 is it may be duplicative of what is already required in municipal bankruptcy (Assembly Committee on Local Government, 2011). Mandated mediation, therefore, may not be able to impart any benefits to negotiation purely on its own.

Limitations in Analysis

Proving concretely the role of any factor related to negotiation in municipal bankruptcies is difficult considering the many components, evolutions, and perspectives within the process. Although my analysis indicated mandated mediation did not prevent municipal bankruptcies, it also showed how the negotiation process as a whole works in such circumstances. Nevertheless, more time is needed to truly address whether it can be effective at limiting the aforementioned concerns that motivated its enactment.

In addition to time and the newness of the law as limitations in my analysis, I also relied on only publicly available sources. Although these are the sources affecting the perceptions determining how municipal bankruptcy negotiations occur, this resulted in variations in coverage and, hence, limitations in findings. For instance, there was far less coverage of Mammoth Lakes than of the other cases, as it was perceived as a less controversial case. In addition, coverage of Vallejo's case included union and collective bargaining agreements more than any other stakeholder and obligation. Meanwhile, Orange County also negotiated with unions, but since they were not a top three creditor, coverage was limited on how that negotiation occurred. Still, these limitations are partially addressed by the purpose of this thesis, as the purpose of this thesis was to discover directly whether mandated mediation can prevent municipal bankruptcy filings and indirectly how negotiation has evolved in these cases. Negotiation evolved based on perceptions influencing conditions, and such perceptions were purported through the media coverage. Therefore, what was not covered becomes largely irrelevant for these purposes. Finally, concerning limitations, willingness, and other conditions, determinations were made qualitatively, although as objectively as possible. The limitations in my analysis in addition to questions not addressed in my evaluations, lead to recommendations for further analysis.

Recommendations for Further Analysis

The focus of my analysis has been California municipal bankruptcies and the use of California legislation dictating the process. The likely recommendation would be for

further analyses to expand the size of their study of negotiation within municipal bankruptcies to include more than one state. In addition, I would recommend an analysis of the role of causes be further focused on California. It is rather remarkable that California has had so many structurally caused municipal bankruptcies, especially over such a short period of time. The entire country is struggling with the recession, so examining what makes California's local governments struggle more, in addition to how the causes affect negotiation in municipal bankruptcies, would be worthwhile.

While causes were not a focus of my analysis, including Mammoth Lakes, a one-time fiscal crisis, among the other structurally problematic municipalities did not show any significant change in the way negotiation occurs. Mammoth Lakes was unable to prevent a municipal bankruptcy filing through mandated mediation, just like the others. Variance in my cases, therefore, did not seem to show that structural versus one-time crisis causes dictate large variances in negotiation. Mammoth Lakes was also the only town included in the analysis, among one county and three cities, which highlights another recommendation going forward on further addressing the role of the municipality incorporation and size in local government bankruptcy negotiations. Determining willingness and contract complexity as the most important factors in municipal bankruptcy negotiations in California requires confirming that cause and size do not have a significant influence on evolving negotiation conditions.

While there was no indication in my analysis that AB 506 and mandating mediation harms negotiation in municipal bankruptcies, the issue of cost as a motivator

highlighted a concern in effectiveness. If mandated mediation cannot prevent costly municipal bankruptcy filings, then this additional step could be increasing costs for already struggling municipalities. Therefore, if AB 506 does not address the policy concerns it was initially created to address, and it is determined that it increases costs, the bill could prove to be harming the overall process.

If AB 506 can increase the timeliness of the process; however, that could be a major benefit to municipal bankruptcy negotiation. It is hard to currently determine the bill's role in the timeline of municipal bankruptcy, as mentioned when comparing the organization between Stockton and San Bernardino, but future analyses of this issue could help better understand what it takes to speed up a municipal bankruptcy process. In other words, if municipal bankruptcies cannot be prevented through mandating mediation, the additional step could help resolve them more quickly. The use of third parties and deadlines, as mandated within the bill, could also be recognized as vital to the timeliness of processes.

Despite limitations and recommendations for further analysis, my findings clearly showed the supremacy of willingness and court involvement in spurring municipal bankruptcy negotiations. The presence of these factors should assist in resolving municipal bankruptcies more quickly. In addition, involving the court now may open the door for mandated mediation to prevent municipal bankruptcies in the future.

Conclusion: The Relationship between Mediation and Litigation

There are many components to understanding how negotiation works in municipal bankruptcy, from causes, perceptions, and obligations to effects, relationships, and overlapping mediation and litigation processes. In addition, each component continues to evolve with each new case. We first saw that the court gave structure to Orange County negotiations; we then saw it create more equal leverage among stakeholders in Vallejo, once it clarified the contracts able to be renegotiated in the process. In Stockton, we saw that by clarifying contract law in Vallejo the court thereby created willingness to negotiate in future municipal bankruptcies for a specific stakeholder group. This evolution is significant as it shows that negotiation in municipal bankruptcies is not pure negotiation. In municipal insolvency circumstances, mandated mediation cannot prevent going to federal bankruptcy court, but federal bankruptcy court proceedings can spur willingness to negotiate in municipal bankruptcies. In Mammoth Lakes, my findings hinted at the fact that causes may increase contract complexity, and in San Bernardino, my findings hinted that mandated mediation may be able to speed up the municipal bankruptcy process. Going forward, I recommend further analysis of these points in addition to coverage of costs involved in mandated mediation.

It is hard to evaluate the effectiveness of AB 506, as it is such a new law employed by a limited amount of municipalities. It may be unable to prevent municipal bankruptcies now, but that is not bad based on my findings, as utilizing the court along with mediation is how agreements arise. This may negate the need for the bill, but

further analysis and time are needed to truly make that determination. At this point, it still allows those willing to negotiate from the beginning to do so without the threat of a judge throwing out a contract completely. In addition, with more time and more court rulings clarifying the legal parameters of primary bankruptcy issues, it may be determined that mandated mediation can prevent municipal bankruptcies.

However, until that time comes and outstanding contract questions are all addressed, future amendments to current statutes guiding the process should recognize the findings of this analysis. Those findings have shown the importance of willingness and contract clarity in addition to the court process. Municipalities need access to a process that does not limit the purpose but recognizes the way negotiation occurs in municipal bankruptcies alongside the court process.

APPENDIX

AB 506 Fiscal Emergency Steps, Mandated Mediation Procedures, and Definitions

1) Allow a local public entity to file a petition and exercise powers pursuant to applicable federal bankruptcy law, if either of the following apply:

a) The local public entity has participated in a neutral evaluation process, as specified; or,

b) The local public entity declares a fiscal emergency and adopts a resolution by a majority vote, as specified.

2) Allow a local public entity to file a bankruptcy petition if the local public entity declares a fiscal emergency and adopts a resolution by a majority vote of the governing board at a noticed public hearing that includes findings that the financial state of the entity jeopardizes the health, safety, or well-being of the residents of that jurisdiction or service area absent the protections of Chapter 9.

3) Require, prior to a declaration of fiscal emergency, that the local public entity place an item on the agenda of a noticed public hearing on the fiscal condition of the entity, in order to take public comment.

4) Specify that the resolution declaring the fiscal emergency must make findings that the public entity is or will be unable to pay its obligations within the next 60 days.
5) Allow a local public entity to initiate the neutral evaluation process if the local public entity is or likely will become unable to meet its financial obligations as and when those obligation are due or become due and owing.

6) Require the local public entity to initiate the neutral evaluation by providing notice by certified mail of a request for neutral evaluation to all interested parties, as defined and requires interested parties to respond within 10 business days of receipt of notice.

7) Specify that a local public entity and interested parties agreeing to participate in the neutral evaluation shall, through a mutually agreed upon process, select the neutral evaluator to oversee the neutral evaluation process and facilitate all discussions in an effort to resolve their disputes.

8) Allow, if the local public entity and interested parties fail to agree on an evaluator within seven days after the interested parties have responded to the notification sent by the local public entity, the public entity to select five qualified evaluators and provide their names, references, and backgrounds to the participating interested parties.

9) Allow a majority of participating interested parties to strike up to four names on the list, within three business days, and specify the following:

a) If a majority of participating interested parties strike four names, the remaining candidate will be the neutral evaluator; or,

b) If the majority of participating parties strike fewer than four names, the local public entity may choose which of the remaining candidates is the neutral evaluator.

AB 506 (continued)

10) Require the neutral evaluator to have experience in conflict resolution and alternative dispute resolution and meet at least one of the following qualifications:

a) At least 10 years of high-level business or legal practice involving bankruptcy or service as a United States Bankruptcy Judge; or,

b) Professional experience or training in municipal finance and one or more of the following issue areas:

i) Municipal organization;

ii) Municipal debt restructuring;

iii) Municipal finance dispute resolution;

iv) Chapter 9 bankruptcy;

v) Public finance;

vi) Taxation;

vii) California Constitutional law;

viii) California labor law; or,

ix) Federal labor law.

11) Require the neutral evaluator to be impartial, objective, independent, and free from prejudice and prohibits the neutral evaluator from acting with partiality or prejudice based on any participant's personal characteristics, background, values or beliefs, or performance during the neutral evaluation process.

12) Provide that if any party objects to the neutral evaluator, the party must notify all other parties, including the neutral evaluator, within 15 days of receipt of the notice from the neutral evaluator and requires the neutral evaluator to withdraw and a new neutral evaluator to be selected.

13) Allow the neutral evaluator, subject to his or her discretion, to make oral or written recommendations for settlement or plan of readjustment to a party privately or to all parties jointly.

AB 506 (continued)

14) Require the interested parties to maintain the confidentiality of the neutral evaluation process and prohibits the parties form disclosing statements made, information disclosed, or documents prepared or produced, during the neutral evaluation process at the conclusion of the neutral evaluation process or during any bankruptcy proceeding unless either of the following occur:

a) All person that conduct or otherwise participate in the neutral evaluation expressly agree in writing, or orally, as specified, to disclosure of the communication, document, or writing; or,

b) The information is deemed necessary by a judge presiding over a bankruptcy proceeding to determine eligibility of a municipality to proceed with a bankruptcy proceeding.

15) Prohibit the neutral evaluation process from lasting more than 60 days following the date the evaluator is selected, unless the local public entity or a majority of participating interested parties elect to extend the process for up to 30 additional days.

16) Prohibit the neutral evaluation process from lasting more than 90 days following the date the evaluator is selected, unless the local public entity and a majority of interested parties agree to an extension.

17) Provide that the local public entity shall pay 50% of the costs of the neutral evaluation, including but not limited to the fees of the evaluator, and provides that the creditors shall pay the balance, unless otherwise agreed to by the parties.

18) Require the neutral evaluation process to end if any of the following occur:

a) The parties execute a settlement agreement;

b) The parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge;

c) The neutral evaluation process has exceeded 60 days and neither the local public entity nor a majority of participating interested parties elect to extend the neutral evaluation process past the initial 60 day time period;

d) The local public entity initiated the neutral evaluation process but no responses from interested parties were received within the specified time frame; or,

e) The fiscal condition of the local public entity deteriorates to the point that a fiscal emergency is declared and necessitates the need to file a petition for bankruptcy.

19) Provide that if the neutral evaluation process does not resolve all pending disputes with creditors, the local public entity may file a petition if, in the opinion of the governing board of the local public entity, a bankruptcy filing is necessary.

AB 506 (continued)

20) Allow a county board of supervisors that places on its agenda a noticed public hearing to declare a fiscal emergency to require local agencies with funds invested in the county treasury to provide a five-day notice of withdrawal before the county is required to comply with a request for withdrawal of funds by that local agency.

21) Define the following terms:

a) "Creditor" means either of the following:

i) An entity that has a noncontingent claim against a municipality that arose at the time of or before the commencement of the neutral evaluation process and whose claim represents at least five million dollars or comprises more than 5% of the local public entity's debt or obligations, whichever is less; or,

ii) An entity that would have a noncontingent claim against the municipality upon the rejection of an executor contract or unexpired lease in a Chapter 9 case and whose claim would represent five million dollars or comprises more than 5% of the local public entity's debt or obligations, whichever is less.

b) "Debtor" means a local public entity that may file for bankruptcy under Chapter 9.

c) "Good faith" means participation by a party in the neutral evaluation process with the intent to negotiate toward a resolution of the issues that are the subject of the neutral evaluation process, including the timely provisions of complete and accurate information to provide the relevant parties through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the municipality's debt.

d) "Interested party" means a trustee, a committee of creditors, an indenture trustee, a pension fund, a bondholder, a union that, under its collective bargaining agreements, has standing to initiate contract or debt restructuring negotiations with the municipality, or a representative selected by an association of retired employees of the public entity who receive income from the public entity convening the neutral evaluation.

e) "Local public entity" means any county, city, district, public authority, public agency, or other entity, without limitation, that is a municipality as defined in the United States Bankruptcy Code, or that qualifies as a debtor under any other federal bankruptcy law applicable to local public entities. States that "local public entity" does not include a school district.

f) "Neutral evaluation" is a form of alternative dispute resolution that may be known as mandatory mediation. "Neutral evaluator" may also be known as a mediator.

(Assembly Local Government, 2011, pp. 1-6)

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