**[Pension Trusts and Municipal Bankruptcy](http://pensiondialog.wordpress.com/2014/02/11/pension-trusts-and-municipal-bankruptcy/)**

February 11, 2014

As anticipation mounts that Detroit will file [a plan to adjust its debt with the U.S. Bankruptcy Court next week](http://www.reuters.com/article/2014/02/10/usa-detroit-bankruptcy-idUSL2N0LF10S20140210) and with the ongoing confusion of [public pensions, bond holders, and in the case of Detroit, art](http://www.bondbuyer.com/issues/123_16/detroit-bondholders-see-legal-hurdles-to-state-plan-1059236-1.html), PensionDialog spoke with Mr. Robert D. Klausner to better understand the basics of municipal bankruptcy.

Mr. Klausner’s firm, [Klausner, Kaufman, Jensen & Levinson](http://robertdklausner.com/), represents state and local retirement systems in more than 20 states. He has assisted in the drafting of many state and local laws on public employee retirement throughout the United States. Following is a recap of our conversation.



***PD*: What is the significance of the pension contributions of employees and employers, as well as the interest earned on investments, being a separate legal trust?**

Klausner: The significance of the trust is that the assets are not City assets. In the same way that banks or investment houses do not own the assets of their clients held in trust, the pension trust has a separate legal existence. In the context of a bankruptcy, it means the assets of a trust which are not city assets are not available for claims of creditors.

This is why, in the case of Detroit, the pension funds, as separate legal entities, are creditors of the City. The pension funds are owed unpaid contributions for work already performed by Fund participants.

***PD:* What is the difference between a solid figure owed today – say to service providers or bond holders – and that which is owed over a number of years to retirees?**

Klausner: Since pension benefits are paid for life, one won’t know the exact value of a benefit until the pensioner dies. Actuaries project the value of benefits (which are subject to a fixed formula) based on life expectancy. Like all future projections, these are estimates based on scientific data. The actuarial projections for life expectancy are not pure conjecture but are based on known data up to this point in time. As a result, the projected future benefits have a reasonable degree of certainty. Remember, cities can call bonds early so that may affect the amount a bondholder receives.

***PD:* In general, is there a way to adjust how much money is owed to a trust – i.e., to the pension fund?**

Klausner: The money owed to a pension trust is for work already performed. Accrued pension benefits represented deferred wages. An employer, such as Detroit, hires employees with the understanding that they will receive over-all compensation of $X. This amount – $X – is divided into salary paid bi-weekly and deferred salary, which is the pension, and should be funded bi-weekly according to the projected sum necessary to fund the benefit paid over a projected lifetime. The only way to alter that sum is not to pay the bill. This results in a worker being told after he or she has performed the work that the employer either cannot or will not pay him or her. So, the answer to the question is no.

***PD:* How does the contract clause of the U.S. Constitution come into play in the case of Detroit or elsewhere?**

Klausner: There are a number of constitutional provisions at issue here; not just the contract clause. The U.S. Constitution says no state shall pass a law impairing the obligation contract. Yet, Michigan passed PA 436 which allows a bankruptcy filing for the purpose of violating the pension contract guaranteed by the Michigan Constitution. So the issue in Detroit is whether PA 436, which is the basis for allowing the bankruptcy filing, impairs the obligation of contract. Also at issue is whether Michigan can pass a law allowing bankruptcy to impair a contract which is guaranteed by the Michigan state constitution which prohibits laws impairing pension contracts. Lastly, at issue is whether the bankruptcy provisions conflict with the federalism clause in the 10th Amendment of the U.S. Constitution. The 10th Amendment provides that all powers not granted to Congress are reserved to the states. Congress does not regulate state and local government pensions due to this Amendment. How then, can it regulate them through the bankruptcy law?

Mr. Robert D. Klausner is the principal in the law firm of Klausner, Kaufman, Jensen & Levinson. For 36 years, he has been engaged in the practice of law, specializing in the representation of public employee pension funds. The firm represents state and local retirement systems in more than 20 states. In 2008, Mr. Klausner successfully represented the Commonwealth of Kentucky and the Kentucky Retirement Systems in the United States Supreme Court in *Kentucky Retirement Systems v. Equal Employment Opportunity Commission, 128 S. Ct. 2361 (2008)*.