

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re:	:	Chapter 9
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CITY OF CHESTER, PENNSYLVANIA,	:	Case No. 22-13032
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Debtor.	:	Judge Ashely M. Chan
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**RESPONSE OF CITY OF CHESTER TO MOTION BY  
CHESTER WATER AUTHORITY FOR DECLARATION THAT  
AUTOMATIC STAY DOES NOT APPLY, OR ALTERNATIVELY,  
TO LIFT THE STAY RELATING TO PENDING STATE COURT APPEAL**

The City of Chester (“City” or “Chester”), the debtor in the above-captioned chapter 9 case (the “Chapter 9 Case”), submits its response to the *Motion by Chester Water Authority for Declaration that Automatic Stay Does Not Apply, or Alternatively, to Lift the Stay Relating to Pending State Court Appeal* [Docket No. 600] (the “Motion”) filed by the Chester Water Authority (“CWA”).<sup>1</sup>

**PRELIMINARY STATEMENT**

1. At its core, the longstanding litigation between the City and CWA focuses on the fundamental right of the City to exercise the same inalienable rights granted under the Pennsylvania Municipal Authorities Act (the “MAA”) to every other Pennsylvania municipality that has incorporated a municipal authority. The City seeks to confirm its rightful ownership over its assets and utilize those assets to craft a long-term solution to the City’s financial

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<sup>1</sup> The City is not responding to the joinder to the Motion [Docket No. 607] filed by the “Ad Hoc Committee of Ratepayers of the Chester Water Authority” (the “Ad Hoc Committee”). The Ad Hoc Committee is nothing more than a proxy for the CWA. Additionally, this Court has already concluded that CWA’s ratepayers are not parties in interest in this Chapter 9 Case. See Jun. 13, 2023 Hrg. Tr. at 12:20-13:3; Docket No. 384.

distress. Continued efforts to deprive Chester of its assets will only serve to perpetuate the litany of injustices to which Chester residents have been subjected for years.

2. The City created the CWA in 1939 and, until an eleventh-hour legislative coup in 2012, appointed its board. The City and the CWA have been locked in litigation for the last five years, beginning when the CWA attempted to complete the process of stripping the City of its interest in the assets of the CWA without compensation by transferring its assets to a trust. That litigation culminated in a decision by the Pennsylvania Commonwealth Court correctly holding that the City presumptively owns the CWA assets under the MAA and may transfer and/or convey those assets without the CWA's consent or the approval of CWA's board. *See In re Chester Water Auth. Tr.*, 263 A.3d 689 (Pa. Commw. Ct. 2021) (the "CWA Decision"). The CWA then appealed the CWA Decision to the Pennsylvania Supreme Court, resulting in various cross-appeals (the "Appeals").

3. The City and the CWA agree on very little, but they do agree that the automatic stay should be modified to allow the Appeals to continue so that the City's ability to exercise the same rights as every other Pennsylvania municipality which incorporates an authority can be confirmed once and for all. To be clear, the City only agrees that the automatic stay should be lifted as to the Appeals pending before the Pennsylvania Supreme Court, not the myriad litigation underlying those Appeals.

## **FACTUAL BACKGROUND**<sup>2</sup>

### **A. The Scandal-Plagued Origins of the CWA.**

4. Prior to 1939, the Chester Water Service Company, a subsidiary of Federal Water Services Company,<sup>3</sup> provided the residents of Chester with “foul-tasting odoriferous water.”<sup>4</sup> The mayor of Chester urged City Council to purchase the Chester Water Service Company because municipal ownership would allow the water company to be locally managed and better financed.<sup>5</sup> In June of 1939, City Council adopted an ordinance pursuant to the MAA of 1935<sup>6</sup> establishing the Chester Municipal Authority, which was to be managed by a five-member board appointed by City Council.<sup>7</sup> In December of 1939, the Chester Municipal Authority issued \$5,910,000 in municipal bonds to finance the purchase and improvements to the water system, of which \$1,050,000 was paid to acquire the Chester Water Service Company.<sup>8</sup>

5. However—in a pattern that would repeat itself 73 years later—the City’s purchase of the Chester Water Service Company was plagued by a scandal involving Delaware County’s

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<sup>2</sup> The City is providing this factual background to: (i) refute the CWA’s self-serving and inaccurate recitation of facts and law in the Factual Background section of the Motion, and (ii) allow the Court to see the arc of history leading to the City’s dispute with CWA. Like the CWA, the City is not asking the Court to resolve any issue of fact or law, apart from modifying the automatic stay to allow the Appeals to proceed. *See* Motion at p. 5 n.1.

<sup>3</sup> *See* John Morrison McLarnon III, *Ruling Suburbia: John J. McClure and the Republican Machine in Delaware County, Pennsylvania 139* (Rosemount Pub. & Printing Corp. 2003) [“McLarnon”].

<sup>4</sup> *See* The History of Chester Water Authority 1866-1985, 57-62 (1986) [“CWA History”], available at [https://chesterwater.com/wp-content/uploads/2023/06/CWA\\_HISTORY\\_FULLBOOK.pdf](https://chesterwater.com/wp-content/uploads/2023/06/CWA_HISTORY_FULLBOOK.pdf).

<sup>5</sup> *Id.* at 61. *See also* McLarnon at 135 (“Mayor Peoples promised that the acquisition of the water system would lead to an improvement in the water supply while affecting neither city tax rates nor the ability of the city to borrow money.”).

<sup>6</sup> *See* CWA Decision at 692.

<sup>7</sup> *See* McLarnon at 135.

<sup>8</sup> *Id.* *See also* CWA History at 62.

Republican political machine (the “Machine”), then ruled by Chester political boss John J. McClure.<sup>9</sup>

6. As subsequently revealed, the City did not buy the Chester Water Service Company directly from Federal Water Services Company.<sup>10</sup> Rather, Chester purchased the Chester Water Service Company from a strawman acting for a cabal led by McClure.<sup>11</sup> The McClure conspirators purchased the Chester Water Service Company from Federal Water Service Company for \$750,000 and then immediately sold it to the City for \$1,000,000, profiting by \$250,000.<sup>12</sup> Efforts to criminally prosecute McClure and his cronies and to recover their ill-gotten profits failed.<sup>13</sup> Thus, the CWA began its existence with corrupt political operatives swindling \$250,000 (equal to over \$5.6 million in 2024)<sup>14</sup> from the citizens of Chester.

## **B. The Expansion of the CWA.**

7. The New Chester Water Company, a predecessor to the Chester Water Service Company, was serving boroughs outside of Chester as early as 1885.<sup>15</sup> In 1907, the New Chester Water Company was providing service in Lower Chichester Township and Marcus Hook.<sup>16</sup> By

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<sup>9</sup> McLarnon at 16-18. The Machine of McClure’s time operated through a secretive partisan “War Board” that “slated candidates, set policy, dispense patronage and settled important political questions.” *Id.* at 18. The Machine is not synonymous with any particular governing body, though in its heyday it controlled the governing bodies of both Chester and Delaware County. *See id.* at 17. For a summary of the operation and history of the Machine, *see* PA Voter Information Network, John McLarnon Discusses His Book Ruling Suburbia of the Delco GOP (Mar. 2018), *available at* <https://www.youtube.com/watch?v=8p0ES2I-DOW>.

<sup>10</sup> McLarnon at 137.

<sup>11</sup> *Id.* In fact, McClure used his political clout in Harrisburg to have the MAA amended in 1939 to allow third class cities, like Chester, to purchase water companies. *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 140; 144.

<sup>14</sup> *See* <https://www.usinflationcalculator.com/>.

<sup>15</sup> *See* CWA History at 40.

<sup>16</sup> *Id.* at 44.

1911, the New Chester Water Company had 8,875 customers.<sup>17</sup> Thus, by 1939, the Chester Water Service Company had thousands of customers and provided service well beyond the boundaries of the City. The CWA completed initial construction of the Octoraro Reservoir and began supplying the City with water from the reservoir in 1951.<sup>18</sup> By the early 1980s, the CWA was already a regional water authority, providing water throughout Delaware and Chester Counties.<sup>19</sup> CWA served ratepayers throughout Delaware and Chester Counties for decades prior to 2012.

**C. History Repeats Itself: The Machine Seizes Control of the CWA Board Through an Eleventh-Hour Legislative Coup Against the Will of the City and Without Any Compensation to the City.**

8. McClure died in 1965, but the Machine lived on. Writing in the mid-1990s, Professor McLarnon observed:

Despite a steadily growing minority population, Chester has remained almost as staunchly Republican . . . . In municipal contests . . . the Republicans have dominated. Between 1904 and 1991, no Democrat won the mayor’s office, and the city has never elected a Democratic majority to either the school board or the city council . . . .<sup>20</sup>

9. That political hegemony in Chester began to crack in 2009, and collapsed in 2011. In 2009, Democrats defeated incumbent Republicans for two of five seats on City Council.<sup>21</sup> In November of 2011, Democrats captured the Mayor’s seat and the two remaining seats on City

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<sup>17</sup> *Id.* at 45.

<sup>18</sup> *See id.* at 82-90 (detailing the history of construction of the reservoir).

<sup>19</sup> *Id.* at 138-39.

<sup>20</sup> McLarnon at 17-18. McLarnon notes that the McClure created the “illusion of democracy.” *Id.* at 18. The CWA does much the same, such as by orchestrating the Ad Hoc Committee of Ratepayers and “Save CWA,” an organization that appears to be a community-led initiative to prevent the CWA from privatizing, but whose e-mail address is “savecwa@chesterwater.com”. The CWA’s website/domain name is chesterwater.com.

<sup>21</sup> *See Receiver for the City of Chester, Who Owns the CWA? Part 1: How CWA Board Control Was Taken from Chester* (Sep. 24, 2024), 39 [“MFRAC”], available at <https://static1.squarespace.com/static/66b0dc5f2ca26d3b6f8c7b6a/t/66f447eafb823d72a5291a3f/1727285227460/MFRAC+-+How+CWA+Board+Control+Was+Taken+from+Chester+-+9-24-24.pdf>.

Council.<sup>22</sup> The Machine’s control in Chester was over. But City Council still had the authority to appoint the board of the CWA, and the Machine still controlled Delaware County Council,<sup>23</sup> while Republicans controlled the Governor’s office, both houses of the General Assembly, and held the majority of Chester County Commissioner seats.

10. In February of 2011, the Republican former Mayor of Chester and then-leader of the Pennsylvania Senate introduced SB375, which sought to amend the MAA to restrict the use of funds by authorities established under that statute. The draft bill had nothing whatsoever to do with the composition of the board of a municipal authority established under the MAA.<sup>24</sup> SB375 was amended twice in April of 2011, in ways that had no impact on the board of any municipal authority established under the MAA.<sup>25</sup>

11. On June 12, 2012, SB375 was drastically altered to add language that vaguely modified the board of a “water authority or sewer authority incorporated by one municipality,”<sup>26</sup> but in a manner such that the amendment applied to just one municipal authority: the CWA.<sup>27</sup> That amendment packed the board of CWA against City’s will<sup>28</sup> from five members appointed exclusively by City Council to nine members; three appointed by the City, three appointed by

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<sup>22</sup> *Id.* at 40.

<sup>23</sup> *Id.* at 41.

<sup>24</sup> See SB375 (Feb. 4, 2011), available at <https://www.legis.state.pa.us/cfdocs/legis/home/bills/> (select 2011-2012 Regular Session and search for SB375).

<sup>25</sup> *Id.* See also MFRAC at 15-18.

<sup>26</sup> MFRAC at 14-18 (summarizing the legislative history of SB375).

<sup>27</sup> See *id.* at 15-18.

<sup>28</sup> In perhaps an unwittingly, yet damningly candid reference, Chester County refers to this legislative action as creating an “involuntary joint authority”—a fictitious concept fabricated by Chester County that is extraordinarily offensive given the fact that in reality the concept would apply to only one Pennsylvania municipality and the authority it created—the City of Chester and the CWA.

Delaware County and three appointed by Chester County – all without any compensation to the City.

12. SB375, as amended to strip the City of its control over the board of CWA, was passed by the Pennsylvania Senate on June 13, 2012 and the Pennsylvania House on June 19, 2022.<sup>29</sup> The floor debate regarding SB375 before the Pennsylvania House was negligible and vague, making no mention of the fact that the legislation applied exclusively to the board of the CWA.<sup>30</sup> Indeed, the legislation was so occluded that the representative for Chester, and its future (and now former) Mayor, voted for SB375 without knowing what he was voting to approve.<sup>31</sup>

13. The reason given for the eleventh-hour seizure of appointment power over the CWA board from the City was that the amendment “ensure[d] that all ratepayers have representation on the board of any water or sewer authority which was incorporated by a single municipality but serves residents in multiple municipalities and multiple counties.”<sup>32</sup> That explanation beggars belief. The CWA had served customers throughout Delaware and Chester Counties for more than 30 years before the 2012 amendment and there had been no public outcry over the composition of the CWA’s board during that time. Moreover, conveniently, the new members of the CWA board appointed by Delaware County Council were entirely Republicans, including the Republican incumbent who lost the Chester mayoral election in 2011.<sup>33</sup> All of the

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<sup>29</sup> *Id.* at 29-30.

<sup>30</sup> *See id.* at 31.

<sup>31</sup> *See id.* at 33.

<sup>32</sup> Delco Times, *Former Chester Mayor Wendell Butler Picked for Chester Water Authority Board by Delaware County Council* (Aug. 31, 2012), available at <https://www.delcotimes.com/2012/08/31/former-chester-mayor-wendell-butler-picked-for-chester-water-authority-board-by-delaware-county-council/> (requires login).

<sup>33</sup> *See id.* *See also* MFRAC at 41. Why the Delaware County Council would appoint a resident of Chester to the CWA board if the purpose of the 2012 amendment was to expand representation on the board beyond Chester remains unexplained.

new members appointed by the Republican-controlled Chester County Commissioners were also Republicans.<sup>34</sup>

14. Within the span of a week, the Machine had stripped Chester of control over the CWA board without compensation. Just as McClure used subterfuge to steal the equivalent of \$5.6 million from Chester residents in 1939, the Machine took control of the CWA's board from the City without disclosing what they were doing and without compensating the City.

**D. The Provisions of the MAA Providing the City Exclusive Authority to Dissolve the CWA and the Amendment Through Which the Board of CWA Was Commandeered.**

15. At the heart of the dispute between the City and CWA are certain provisions of the MAA, including the provision surreptitiously added in 2012 to strip the City of control over the board of CWA without compensation.

16. A municipal authority under the MAA begins its existence when a municipality adopts a resolution or ordinance signifying their intention to create the municipal authority. Specifically, the MAA provides:

(a) Resolution of intent. — Whenever the municipal authorities of any municipality singly or of two or more municipalities jointly desire to organize an authority under this chapter, they shall adopt a resolution or ordinance signifying their intention to do so. No such resolution or ordinance shall be adopted until after a public hearing has been held, the notice of which shall be given at least 30 days before the hearing and in the same manner as provided in subsection (b) for the giving of notice of the adoption of the resolution or ordinance.<sup>35</sup>

The municipal authority then files articles of incorporation with the Secretary of the Commonwealth, which must be executed by each incorporating municipality by its proper officers and under its municipal seal.<sup>36</sup> The term “municipal authorities” in section 5603(a) of the MAA

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<sup>34</sup> See MFRAC at 41.

<sup>35</sup> 53 Pa. C.S. § 5603(a).

<sup>36</sup> *Id.* §§ 5603(c) and (d).



does not mean that multiple municipalities must incorporate a municipal authority. Rather, the term “municipal authorities” refers to the governing body of the municipality.<sup>37</sup>

17. Section 5622(a) of the MAA describes the process by which a municipal authority created under MAA may be acquired by the municipality that created that municipal authority.

That provision states:

(a) Project. — If a project established under this chapter by a board appointed by a municipality is of a character which the municipality has power to establish, maintain or operate and the municipality desires to acquire the project, it may by appropriate resolution or ordinance adopted by the proper authorities signify its desire to do so, and the authorities shall convey by appropriate instrument the project to the municipality upon the assumption by the municipality of all the obligations incurred by the authorities with respect to that project.<sup>38</sup>

The term “project” means, in relevant part, “any structure, facility or undertaking which an authority is authorized to acquire, construct, finance, improve, maintain or operate, or provide financing for insurance reserves under the provisions of this chapter, or any working capital which an authority is authorized to finance under the provisions of” the MAA.<sup>39</sup>

18. The Commonwealth Court has consistently held that the correct interpretation and application of section 5622(a) of the MAA is that the municipality that creates a municipal authority—not the board of that municipal authority—has exclusive power to acquire the “project” held by the municipal authority.<sup>40</sup>

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<sup>37</sup> See CWA Decision at 695-96 (discussing *Clearfield Borough v. Clearfield Borough Park Auth.*, 285 A.2d 532 (Pa. Commw. Ct. 1971), *aff’d*, 301 A.2d 372 (Pa. 1973)). See also *Carulli v. N. Versailles Twp. Sanitary Auth.*, 216 A.3d 564, 574 n.5 (Pa. Commw. Ct. 2019) (“the legislature, via the [MAA], authorized the creation of municipal authorities, but it is the municipality that creates authorities”) (citing 53 Pa. C.S. § 5603; *Se. Pa. Transp. Auth. v. Union Switch & Signal, Inc.*, 637 A.2d 662, 664 (Pa. Commw. Ct. 1994)).

<sup>38</sup> 53 Pa. C.S. § 5602(a).

<sup>39</sup> See *id.* § 5602.

<sup>40</sup> See CWA Decision at 695-97 (citing *Clearfield Borough*, 285 A.2d at 534-35; *Forward Twp. Sanitary Sewage Auth. v. Twp. of Forward*, 654 A.2d 170, 174-75 (Pa. Commw. Ct. 1995); *Twp. of Forks v. Forks Twp. Mun. Sewer Auth.*, 759 A.2d 47, 54 (Pa. Commw. Ct. 2000); *Salem Twp. Mun. Auth. v. Twp. of Salem*, 820 A.2d 888,

19. The 2012 amendment to the MAA did **not** amend sections 5603 or 5622 of the MAA. Instead, it amended only section 5610, which addresses the composition of the board of a municipal authority. The language added in 2012 states:

(a.1) Water authorities and sewer authorities. — If a water or sewer authority incorporated by one municipality provides water or sewer services to residents in at least two counties and has water or sewer projects in more than two counties where the combined population of the served municipalities, excluding the incorporating municipality, is at least five times the population of the incorporating municipality, all of the following apply:

(1) Ninety days after the effective date of this subsection, the governing body in existence on the effective date of this subsection shall be replaced by a governing body comprised of the following:

(i) Three members appointed by the governing body from each county in which the services to residents are provided. A member under this subparagraph must reside in a town, township or borough, which receives services from the authority.

(ii) Three members appointed by the governing body of the incorporating municipality.

(2) A member serving under paragraph (1) shall serve for a term of five years.<sup>41</sup>

20. In the Motion, CWA asserts that, under section 5619 of the MAA, termination of the CWA can only be accomplished by a voluntary request from the CWA. *See* Motion at pp. 22-23 (citing 53 Pa. C.S. § 5619). That section of the MAA provides:

(a) Conveyance of projects.--When an authority has finally paid and discharged all bonds, with interest due, which have been secured by a pledge of any of the revenues or receipts of a project, the authority may, subject to agreements concerning the operation or disposition of the project, convey the project to the municipality creating the authority or, if the project is a public school project, to the school district to which the project is leased.

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890 (Pa. Commw. Ct. 2003)); *Cnty. of Del. v. Del. Cnty. Reg'l Water Quality Control Auth.*, 272 A.3d 567 (Pa. Commw. Ct. 2022).

<sup>41</sup> 53 Pa. C.S. § 5610(a.1).

(b) Conveyance of property.--When an authority has finally paid and discharged all bonds issued and outstanding and the interest due on them and settled all other outstanding claims against it, the authority may convey all its property to the municipality or municipalities or, if the property is public school property, then to the school district for which the property was financed, and terminate its existence.

(c) Certificate.--An authority requesting to terminate its existence must submit a certificate requesting termination to the municipality which created it. If the certificate is approved by the municipality by its ordinance or resolution, the certificate shall be filed in the office of the Secretary of the Commonwealth; and the secretary shall note the termination of existence on the record of incorporation and return the certificate with approval to the board. The board shall cause the certificate to be recorded in the office of the recorder of deeds of the county. Upon recording, the property of the authority shall pass to the municipality or municipalities or, if the property is public school property, then to the school district for which the property was financed; and the authority shall cease to exist.<sup>42</sup>

21. Nothing in section 5619 of the MAA suggests that only the CWA may terminate its existence. Indeed, the fact that the CWA would be required to submit any request to terminate its existence to “the municipality which created it”<sup>43</sup> clearly establishes that only the City can terminate the CWA. Moreover, section 5619 authorizes the CWA to transfer the project to only one entity: “the municipality creating the authority.”<sup>44</sup> Furthermore, section 5619 must be read *in pari materia*<sup>45</sup> with section 5622. Section 5619 requires the debt of a municipal authority to be satisfied if the project or its property is transferred to the municipality,<sup>46</sup> which is entirely consistent with section 5622, which requires the municipality to assume “all the obligations

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<sup>42</sup> *Id.* § 5619.

<sup>43</sup> *Id.* § 5619(c). CWA bolds, italicizes and underlines this language in the Motion, presumably believing it proves their point, when in fact it proves the opposite. *See* Motion at ¶ 67. Which should make this Court (and any other court) wary of CWA’s efforts at statutory interpretation.

<sup>44</sup> 53 Pa. C.S. § 5619(a) and (b).

<sup>45</sup> *See* 1 Pa. C.S. § 1932.

<sup>46</sup> *See Salem Twp. Mun. Auth.*, 820 A.2d at 891 n.5 (section 5619 requires the municipal authority to satisfy its debts before transferring project to municipality).

incurred by the authorities with respect to that project”<sup>47</sup> if the municipality terminates the existence of the municipal authority. CWA’s attempt to arrogate to itself the sole authority to terminate its existence through section 5619 of the MAA fails upon even the most perfunctory reading of that provision.

**E. The CWA’s Relentless Effort to Rewrite the MAA Through Litigation.**

22. In May of 2017, Aqua made an unsolicited bid to purchase the CWA for \$320 million, which was rejected by the board of CWA.<sup>48</sup> That offer gave rise to a dispute between the City and CWA over the authority of the City to terminate the existence of the CWA and sell its assets.<sup>49</sup> The City and CWA agreed to engage in discussions through December 31, 2018 to resolve that dispute.<sup>50</sup> As part of that process, CWA offered to pay the City \$60 million if the City agreed to the transfer of the CWA’s assets to a trust so that they could not be sold. The City and CWA never reached agreement.

23. Despite the City’s rejection of CWA’s proposal, on January 24, 2019, CWA executed a declaration of trust that contemplated the transfer of all of CWA’s assets to a trust without any compensation to the City, naming the CWA as settlor and three of its board members as trustees.<sup>51</sup>

24. On March 1, 2019, CWA filed a petition before the Court of Common Pleas for Delaware County (“CCP”), Orphan’s Court seeking approval of the declaration of trust and

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<sup>47</sup> 53 Pa. C.S. § 5622(a).

<sup>48</sup> CWA Decision at 693. *See also* CWA Press Release, Chester Water Authority to open talks with city about future (Mar. 19, 2018), *available at* <https://chesterwater.com/chester-water-authority-to-open-talks-with-city-about-future/> [“CWA Press Release”].

<sup>49</sup> *See* CWA Press Release.

<sup>50</sup> CWA Decision at 693.

<sup>51</sup> *Id.*

transfer of the CWA’s assets into the trust (the “Trust Action”).<sup>52</sup> The City and Aqua filed motions for judgment on the pleadings, arguing that as a matter of law, only the City had the power to transfer CWA’s assets under section 5622(a) of the MAA.<sup>53</sup> In April 2019, Aqua filed a complaint in CCP to enjoin the CWA’s January 2019 settlement proposal to the City.

25. In June of 2019, the City issued a request for proposals (“RFP”) to sell the CWA’s assets. The CWA filed another petition before the CCP on June 26, 2019, seeking to enjoin the City from issuing an RFP.<sup>54</sup>

26. On August 31, 2019, the City filed an action against CWA in the CCP seeking declaratory judgment (the “Declaratory Judgment Action”) that section 5622(a) of the MAA vested the City with statutory authority to unilaterally obtain and sell CWA’s assets.<sup>55</sup> The City also sought an injunction enjoining CWA from interfering with the City’s right to sell CWA’s assets, encumbering or dissipating CWA’s assets, and from burdening the CWA’s assets with any new debt.<sup>56</sup>

27. In February of 2020, the City and CWA entered into a stipulation permitting the City to issue an exploratory request for proposals to ascertain the value of the City’s interest in CWA’s assets. The City issued a request for proposals on February 12, 2020.<sup>57</sup> The City received

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<sup>52</sup> See *In re Chester Water Auth. Tr.*, Case No. O-217-2019 (Pa. Ct. Comm. Pl. Del. Cnty. Orphans Ct. Mar. 1, 2019). See also CWA Decision at 693.

<sup>53</sup> See CWA Decision at 693. See also 53 Pa. C.S. § 5622(a).

<sup>54</sup> See *Chester Water Auth. v. Aqua Pa., Inc. et al.*, Case No. CV-2019-005400 (Pa. Ct. Comm. Pl. Del. Cnty. Jun. 26, 2019).

<sup>55</sup> See *City of Chester v. Chester Water Auth.*, Case No. CV-2019-005976 (Pa. Ct. Comm. Pl. Del. Cnty. Jul. 17, 2019) See also CWA Decision at 693.

<sup>56</sup> CWA Decisions at 693.

<sup>57</sup> See <https://www.chestercity.com/wp-content/uploads/2020/02/CWARFPFeb2020.pdf>.

proposals from Aqua, Pennsylvania American Water, and the CWA and the purchase prices offered ranged between \$60 million and \$425 million.<sup>58</sup>

28. Displeased with having been the low bidder, the CWA filed yet another action in the CCP against the City on March 13, 2020, this time seeking to enjoin the City from closing on any transaction other than the CWA's low-ball offer.<sup>59</sup>

29. On April 24, 2020, the CCP denied the City's motion for judgment on the pleadings in the Declaratory Judgment Action and denied the motions for judgment on the pleadings filed by the City and Aqua in the Trust Action.<sup>60</sup> The CCP concluded that the 2012 amendment to the MAA adding section 5601(a.1) established the City, Chester County, and Delaware County as the governing body of the CWA and, therefore, any conveyance of the CWA must be authorized by the City, Chester County and Delaware County through that governing body.<sup>61</sup>

30. The CCP amended its orders in the Declaratory Judgment Action and Trust Action to allow for an immediate appeal from those orders, and on June 24, 2020, the Commonwealth Court granted permission to appeal from those interlocutory orders.<sup>62</sup>

#### **F. The Commonwealth Court Correctly Rules Against CWA on Appeal.**

31. On September 16, 2021, the Commonwealth Court issued the CWA Decision, overturning the decisions of the CCP in the Declaratory Judgment Action and Trust Action. *See* CWA Decision.

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<sup>58</sup> *See* Kathleen E. Carey, *Chester asks Receiver to approve purchase agreement with Aqua for Chester Water Authority*, DELCO TIMES (October 14, 2021).

<sup>59</sup> *See Chester Water Auth. v. City of Chester*, Case No. CV-2020-002566 (Pa. Ct. Comm. Pl. Del. Cnty. Mar. 13, 2020).

<sup>60</sup> *See* CWA Decision at 693.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 693.

32. The Commonwealth Court first reviewed 50 years of its precedent holding that section 5622(a) of the MAA vests authority to dissolve the municipal authority in the municipality that created the municipal authority, not the board of the municipal authority.<sup>63</sup> The Commonwealth Court “reaffirmed [its] case law” on section 5622(a) of the MAA that “as a matter of law, section 5622(a) confers upon a municipality, via a duly enacted ordinance, the power to dissolve an authority and obtain and later transfer and/or convey the authority’s assets as it deems fit, without any input on the part of the authority.”<sup>64</sup>

33. The Commonwealth Court then found that the General Assembly did not evince any intention to alter that precedent in the adoption of section 5610(a.1) of the MAA in 2012.<sup>65</sup> Specifically, the Commonwealth Court held that the adoption of section 5601(a.1) of the MAA “did not disrupt the continuity of” that court’s case law and that “section 5622(a) of the MAA continues to vest a municipality, such as the City in this case, with the power to acquire and dispose of the assets of an authority and an authority itself, such as the [CWA] in this case, without the advice or consent of the authority or, here, the [CWA].”<sup>66</sup>

34. Finally, the Commonwealth Court addressed, and rejected, the CWA’s contention that two decisions by the Pennsylvania Supreme Court provide the CWA with the authority to transfer its assets on its own accord.<sup>67</sup>

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<sup>63</sup> See CWA Decision, 263 A.2d at 695-97 (citing *Clearfield Borough*, 285 A.2d at 534-35; *Forward Twp. Sanitary Sewage Auth.*, 654 A.2d at 174-75; *Twp. of Forks*, 759 A.2d at 54; *Salem Twp. Mun. Auth.*, 820 A.2d at 890).

<sup>64</sup> *Id.* at 700.

<sup>65</sup> *Id.* at 697-703.

<sup>66</sup> *Id.* at 702.

<sup>67</sup> *Id.* at 703-05 (addressing *Cnty. of Allegheny v. Moon Twp. Mun. Auth.*, 671 A.2d 662 (Pa. 1996); *Burke v. N. Huntingdon Twp. Mun. Auth.*, 136 A.2d 310 (Pa. 1957)).

### **G. The Appeals to the Pennsylvania Supreme Court.**

35. On April 11, 2022, the Pennsylvania Supreme Court accepted CWA’s petition to appeal and Chester County’s cross-petition to appeal from the CWA Decision. The Appeals have been consolidated for purposes of argument and disposition and are captioned *In re Chester Water Authority Trust*, 519-522 MAL 2021 and 569-572 MAL 2021. All briefing on the Appeals was completed as of September 6, 2022.

36. The City filed a suggestion of bankruptcy in the Appeals on November 11, 2022, and the Pennsylvania Supreme Court entered its own order staying the Appeals on November 17, 2022.

### **H. Mediation with CWA.**

37. On December 16, 2022, this Court entered an order (the “Mediation Order”) appointing the Honorable Mary F. Walrath as judicial mediator in the City’s chapter 9 case.<sup>68</sup> CWA is a “Mediation Party” under the Mediation Order.<sup>69</sup> Among the “Mediation Issues” remitted to Judge Walrath was “monetization of the Water Assets . . . and all related litigation.”<sup>70</sup> The City and CWA have been engaged in mediation since December 28, 2022.

### **I. Aqua’s Previous Attempt to Obtain Stay Relief Regarding the Appeals.**

38. On October 12, 2021, City Council discussed a resolution under which the City would sell its interest in CWA to Aqua.<sup>71</sup> That resolution was contingent upon the Receiver approving the sale to Aqua, which the Receiver has never done.<sup>72</sup> Despite the fact that City

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<sup>68</sup> See Docket No. 139.

<sup>69</sup> See *id.* at ¶ 3; Docket No. 16 at ¶ 16 (defining the term “Mediation Parties” to include CWA).

<sup>70</sup> Mediation Order at ¶ 3; Docket No. 16 at ¶ 18(a) (defining “Mediation Issues”).

<sup>71</sup> See Docket No. 106 at ¶ 26.

<sup>72</sup> *Id.* ¶¶ 26-28.



Council has never adopted a resolution authorizing the sale of its interest in CWA to Aqua, no asset purchase agreement has ever been signed between the City and Aqua, and the Receiver opposes selling the City's interest in the CWA to Aqua, Aqua injected itself into the litigation before the CCP and the Appeals and persists in injecting itself into this Chapter 9 Case, posturing as though it has an interest in the assets of CWA.<sup>73</sup>

39. On November 18, 2022, Aqua filed a motion (the "Aqua Motion") seeking relief from the automatic stay to allow the Appeals to proceed.<sup>74</sup> Both the City and CWA opposed the Aqua Motion, arguing, among other things, that Aqua lacked standing to bring the motion.<sup>75</sup> Aqua also argued that the automatic stay did not apply to the Appeals,<sup>76</sup> which the City refuted.<sup>77</sup> This Court denied the Aqua Motion, finding it was moot due to the entry of the Mediation Order.<sup>78</sup>

#### **J. A Different Approach to Addressing the City's Structural Financial Dilemma.**

40. The City has witnessed several failed attempts to resolve its thirty-year tenure under the Pennsylvania Municipalities Financial Recovery Act, Act of 1987 ("Act 47") through quick-fix large-scale projects, such as the City hosting Harrah's Casino or helping to fund the development of Subaru Park. While Harrah's Casino and Subaru Park are important parts of the City's future, neither solved the City's financial distress,<sup>79</sup> nor could they, because the City's

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<sup>73</sup> See, e.g., Docket No. 606 at 2 (falsely claiming that Aqua has a "direct interest" in the assets of CWA).

<sup>74</sup> See Docket No. 65. In the Aqua Motion, Aqua falsely claimed that the City was seeking "affirmation from the Pennsylvania Supreme Court of its right to sell to [Aqua] a water system for \$410,000,000." *Id.* at ¶ 3. This assertion is characteristic of the self-serving spin Aqua puts on every issue into which it injects itself in this Chapter 9 Case. It is obvious from the facts above that the City seeks affirmation of no such thing.

<sup>75</sup> See Docket Nos. 104 (Aqua) and 106 (City).

<sup>76</sup> Docket No. 65 at ¶¶ 20-25.

<sup>77</sup> Docket No. 106 at ¶¶ 42-53.

<sup>78</sup> See Dec. 15, 2022 Hrg. Tr. at 19:23-25; Docket No. 137. Although the Court did not address the merits of the Aqua Motion, implicit in the Court's denial of that motion is the conclusion that the automatic stay applied to the Appeals.

<sup>79</sup> See *In re City of Chester*, 649 B.R. 633, 638 (Bankr. E.D. Pa. 2023) ("In 2008, the City's situation temporarily improved when Harrah's Philadelphia Casino and Racetrack opened and provided the City with significant

financial problems are structural, not temporal. Simply put, the City lacks the tax base to provide the minimal level of essential services necessary for the health, safety and well-being of the City's residents and to adequately maintain the City's public infrastructure.<sup>80</sup>

41. The City's interest in the assets of CWA (the "Water Assets") and the Chester Stormwater Authority ("SAC"), and its reversionary interest in certain assets of the Delaware County Regional Water Quality Control Authority, are the primary assets available to the City to utilize in restructuring the City's long-standing financial and operational maladies, a fact that has been front and center since the beginning of this Chapter 9 Case.<sup>81</sup>

42. The simplest course for the Receiver to follow would be to sell the City's interests in the Water Assets to the highest bidder, declare victory and walk away. That is what the City's retirees and two of its unions favor.<sup>82</sup> However, selling off the City's interest in the Water Assets would be yet another large scale "quick fix" that would ultimately find the City right back where it has been since 1995—in financial distress—because doing so does not address the City's ongoing structural deficits. Moreover, privatization of the Water Assets would not be in the best interests of the City's residents. Privatization of water and wastewater assets in Pennsylvania has

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annual host revenues. Nevertheless, this infusion of revenue provided only temporary respite as revenues then declined and other sources of revenue remained stagnant."). *Id.* at 638-39 ("On June 27, 2010, Subaru Park opened, and while the City hoped its opening would be a catalyst for economic development, those expectations have not yet been realized.").

<sup>80</sup> *See id.* at 656.

<sup>81</sup> *See id.* at 646 ("As explained by the Chief of Staff's declaration, 'with the exception of the City's potential right to monetize the assets of [CWA], which is the subject of significant litigation, and the City's parking revenue potential, the City's assets are limited in number, suffer from years of deferred maintenance, and have little market value.'")

<sup>82</sup> *See* Docket Nos. 586, 587 and 590. *See also* Kenny Cooper, *If Chester's water assets must be sold, the city's retirees want them to go to the highest bidder*, WHYY (Sep. 20, 2024), available at <https://whyy.org/articles/chester-pennsylvania-water-assets-highest-bidder/>.

led to extraordinary rate increases of between 44.9% and 166.6%,<sup>83</sup> which Chester’s already financially burdened residents can ill-afford.<sup>84</sup>

43. Instead, the Receiver has proposed a chapter 9 plan [Docket No. 583] (the “Plan”) through which the Water Assets will remain in public hands while generating long-term revenue for the City.<sup>85</sup> The Plan contemplates that the City will undertake a request for proposals process (the “RFP Process”) seeking “proposals regarding the proposed sale, lease, disposition or other form of monetization of the . . . Water Assets . . . [that] shall provide that the [Water] Assets will remain publicly-owned.”<sup>86</sup>

44. Specifically, as to the CWA, the Plan provides that, pursuant to the MAA and the CWA Decision, on the effective date of the Plan:

(a) the legal existence of the CWA will be terminated, (b) all Water Assets shall revert to the City by force of Commonwealth law, (c) CWA’s outstanding liabilities shall be paid, repaid, prepaid, redeemed, defeased or assumed, and (d) the Water Assets shall be subjected to the RFP Process. The Board of Directors of CWA shall be dissolved and neither CWA nor its Board of Directors shall have any further authority over the Water Assets.<sup>87</sup>

45. In short, the Plan contemplates the City taking back the assets of CWA as expressly provided for under the MAA and as the Commonwealth Court has repeatedly found the City—as the municipality that created the CWA—has the authority to do.

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<sup>83</sup> See Prepared Testimony of Stephen M. DeFrank, Pennsylvania House Consumer Protection Technology & Utilities Committee (Dec. 12, 2023), *available at* [https://www.pahouse.com/files/Documents/Testimony/2023-12-11\\_091351\\_\\_Testimony%20on%201862,%201863,%201864,%201865.pdf](https://www.pahouse.com/files/Documents/Testimony/2023-12-11_091351__Testimony%20on%201862,%201863,%201864,%201865.pdf).

<sup>84</sup> See *Chester*, 649 B.R. at 646 (“[A]s of July 1, 2021, the Census Bureau estimated that the median annual income of all households in the City was \$32,867 and the median per capital annual income was \$18,856 per year, with over 30% of the population living below the poverty line. By way of comparison, for the period from 2016 to 2020, the median annual income of all households in Pennsylvania was \$63,627, and in Delaware County the median annual income was \$76,238.”).

<sup>85</sup> See Plan at Art. IV.A-D.

<sup>86</sup> *Id.* at Art. IV.A.

<sup>87</sup> *Id.* at Art. IV.D.1.

46. The Plan also seeks to radically alter the course of the City's history by: (i) placing the interests of the citizens of Chester ahead of entrenched political interests that have been taking advantage of City residents since the day the CWA was formed (which explains the strenuous objection those very interests have raised to the Plan);<sup>88</sup> and, (ii) seeking a long-term financial solution to the City's structural financial problems rather than simply adopting another short-term solution, such as selling the Water Assets.

47. The two-year anniversary of this Chapter 9 Case is fast approaching. The City's bankruptcy must move forward to a conclusion that addresses the City's obligations in a manner that benefits the City and its residents. To that end, the legal questions pending before the Pennsylvania Supreme Court must be decided expeditiously. Therefore, the City agrees that the automatic stay should be modified for the limited purpose of allowing the Appeals to proceed.

#### **LEGAL ARGUMENT**

48. Because the City agrees that the automatic stay should be modified to allow the Appeals to proceed, much of the legal argument made by CWA in the Motion is irrelevant, even if it were correct. Accordingly, the City will not belabor the point by refuting each and every argument made by the CWA. However, certain arguments may have an impact on this case going forward and cannot be left unanswered.<sup>89</sup>

#### **I. The Automatic Stay Applies to the Appeals.**

49. This Court previously held that the City's reversionary interest in the sewer system is property of the City's estate, subject to the automatic stay under section 362(a)(3) of the

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<sup>88</sup> See, e.g., Motion at ¶¶ 95-103.

<sup>89</sup> For the avoidance of doubt, the failure of the City to address any particular point raised in the Motion is not an admission, concession or waiver by the City.

Bankruptcy Code.<sup>90</sup> The City's right to terminate the CWA and retake possession of its assets under section 5622(a) of the MAA is functionally no different than the City's reversionary interest in the sewer system and, similarly, is property of the City's estate, subject to section 362(a)(3) of the Bankruptcy Code.<sup>91</sup>

50. CWA argues that section 362(a)(3) does not apply in chapter 9 cases because section 541 of the Bankruptcy Code is not incorporated into chapter 9 through section 901(a). *See* Motion at ¶¶ 112-15. CWA should have continued reading a little further into the Bankruptcy Code. Section 902(a)(1) defines "property of the estate" as "when used in a section that is made applicable in a case under this chapter by section . . . 901 of this title, means property of the debtor."<sup>92</sup> And section 362 of the Bankruptcy Code is incorporated in its entirety into chapter 9 through section 901(a).<sup>93</sup> Thus, CWA's argument is completely wrong; section 362(a)(3) clearly applies to all property of the City, including its reversionary interest in the assets of CWA.

51. CWA's attempt to shelter its assets in a trust to evade the City's reversionary interest in those assets under the MAA is an act to obtain property of the estate or exercise control over property of the estate; nothing could be more so than trying to eviscerate a debtor's property interest altogether, as the CWA is attempting to do in the Trust Action. And one of the orders from which an appeal was taken to the Commonwealth Court arose out of the Trust Action. Thus, the Appeals clearly implicate the City's reversionary interest in the CWA.

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<sup>90</sup> *See* Docket No. 351 at ¶ 27. Although on appeal, that decision remains the law of this case. *See, e.g., Metro Container Corp. v. Teamsters Local Union No. 676*, Civ. A. No. 86-6888, 1987 WL 15225, at \*5 (E.D. Pa. Aug. 4, 1987); *Cold Metal Process Co. v. E.W. Bliss Co.*, 21 F. Supp. 509, 510 (D. Del. Dec. 8, 1937).

<sup>91</sup> Additionally, implicit in the Court's denial of the Aqua Motion is the conclusion that the automatic stay applies to the Appeals.

<sup>92</sup> 11 U.S.C. § 902(1).

<sup>93</sup> *Id.* § 901(a).

52. CWA’s remaining argument is that the City has not intervened in every case involving CWA’s assets, so obviously that means that the City does not actually think section 362(a)(3) of the Bankruptcy Code applies. Motion ¶ 117. Nothing in the Bankruptcy Code requires a debtor asserting a property interest in the assets of a non-debtor to entangle itself in every piece of litigation involving the non-debtor entity in order for the debtor to assert that the automatic stay applies to protect the debtor’s property interest in the non-debtor.

**II. The Appeals are Not an Interpleader Action and Cases Holding that Interpleader Actions are not Subject to the Automatic Stay are Irrelevant.**

53. CWA claims that “[w]here another action seeks to determine whether property is actually part of the ‘res’ of the debtor’s estate—and therefore within the purview of the bankruptcy court—no stay applies under Section 362(a)(3) and the case can proceed.” Motion at ¶ 154.

54. The only case CWA cites for this proposition is *Shell Pipeline Corp. v. West Texas Marketing Corp.*, 540 F. Sup. 1155 (S.D. Tex. 1982), which was an interpleader action. *Id.* Other courts have recognized that the automatic stay does not apply to interpleader actions pending when the defendant in the interpleader action files a bankruptcy petition.<sup>94</sup> The rationale underlying this authority is that “[c]onsiderations of fairness and due process require a determination of whose ‘property’ the *res* is to be made’ before bankruptcy courts include that property within their jurisdiction.”<sup>95</sup> However, this exception to the automatic stay is narrow. Indeed, the court in *Caballero* refused to enter default judgment in an interpleader action against a debtor in bankruptcy because “permitting an interpleader plaintiff to secure a default judgment against an

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<sup>94</sup> See, e.g., *Wells Fargo Bank, N.A. v. Caballero*, Case No. 20-20868, 2020 WL 6870879, at \*1 (S.D. Fla. Jun. 16, 2020) (citing *Prudential Ins. Co. v. Moschella*, No. 8:12-cv-2423-T-33TGW, 2013 WL 2154880, at \*4 (M.D. Fla. May 17, 2013); *Komatsu Latin-Am. Corp. v. Frost Capital Bank*, Case No. 07-21930, 2007 WL 9702716, at \*2 (S.D. Fla. Sep. 19, 2007); *Shell Pipeline*, 540 F. Supp. 1155).

<sup>95</sup> *Id.* (quoting *Nat’l Co-op Refinery Ass’n v. Rouse*, 60 B.R. 857, 860 (D. Colo. 1986)).

interpleader defendant (who is also a bankruptcy debtor subject to an automatic stay) seems very much like a ‘race to levy upon or make claims’ against property which may (or may not) belong to the debtor — a race the bankruptcy stay is intended to prevent.”<sup>96</sup>

55. If any of the actions giving rise to the Appeals were an interpleader action, and if title to the assets of CWA were the issue being addressed by the Appeals, CWA’s argument might have some relevance. As the Appeals do not arise from an interpleader action and as title to the CWA’s assets is not the issue being addressed in the Appeals, it does not. The issue in the Appeals is whether CWA can evade the clear language of section 5622(a) of the MAA and 30 years of Commonwealth Court authority providing that the City—as the municipality that created the CWA—has the exclusive authority to dissolve the CWA and redistribute its assets. The *Shell Pipeline* case and similar cases arising out of interpleader actions are entirely irrelevant.

#### CONCLUSION

56. The City formed the CWA for the benefit of its residents. From its inception, however, the CWA has been used to take advantage of those residents, including as recently as 2012, when the City was surreptitiously stripped of control over the board of the CWA against the City’s will and without compensation. Similarly, various quick-fix projects have been proclaimed the solution to the City’s decades of financial distress, only to be followed by continued financial distress. The Receiver seeks to turn the tide of history; to exercise the same rights as every other Pennsylvania municipality that has incorporated an authority, to put the assets of the CWA to work for the benefit of the residents of the City, and to implement a long-term solution to the City’s financial distress. Achieving those goals requires the Pennsylvania Supreme Court to resolve the

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<sup>96</sup> *Id.* (quoting *Holland Am. Ins. v. Succession of Roy*, 777 F.2d 992, 995 (5th Cir. 1985)). See also *Inslaw, Inc. v. United States (In re Inslaw, Inc.)*, 76 B.R. 224, 238 n.26 (Bankr. D.D.C. 1987) (rejecting argument that cases such as *Shell Pipeline* stand for the proposition that disputed property does not become property of the estate and limiting *Shell Pipeline* to interpleader actions).

Appeals and, therefore, the City maintains that the automatic stay should be modified to allow the Appeals to proceed.

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Respectfully submitted,

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