

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Frederick C. Siger, in his capacity as	:	
Secretary of the Department	:	
of Community and Economic	:	
Development,	:	
Petitioner	:	
	:	
v.	:	No. 336 M.D. 2020
	:	
City of Chester,	:	Heard: June 5, 2025
Respondent	:	

BEFORE: HONORABLE MATTHEW S. WOLF, Judge

**MEMORANDUM & ORDER**

Before the Court is the Modification of Amended Recovery Plan (Plan Modification or Modification), filed by Michael T. Doweary, in his capacity as Receiver (Receiver) for the City of Chester (City), wherein the Receiver seeks to amend the City’s fiscal recovery plan pursuant to Section 703(e) of the Municipalities Financial Recovery Act (Act 47), Act of July 10, 1987, P.L. 246, No. 47, *as amended*, 53 P.S. § 11701.703(e).<sup>1</sup> In his Plan Modification, the Receiver proposes to add two initiatives to the existing Amended Recovery Plan that relate directly to the Stormwater Authority of the City of Chester (SAC), and one initiative to clarify ethical obligations of City employees. SAC has filed objections to the Plan Modification, asserting that the proposed initiatives lack a fiscal recovery purpose and fall outside the Receiver’s purview under Act 47. Following an evidentiary hearing on June 5, 2025, and for the reasons articulated below, the Court confirms the Receiver’s Plan Modification.

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<sup>1</sup> Section 703 of Act 47 was added by the Act of October 20, 2011, P.L. 318.

## **I. Act 47 and the City's History of Financial Distress**

The City's history of financial distress is well documented in prior Memorandum and Orders in this case, and in the Pennsylvania Supreme Court's decision in *Siger v. City of Chester*, 309 A.3d 698 (Pa. 2024). For context, we recount some of that history here. The City has been designated a financially distressed municipality since 1995. After many unsuccessful attempts to improve its financial condition, former Governor Tom Wolf issued a declaration of fiscal emergency under Act 47 on April 13, 2020. This Court subsequently approved the appointment of the Receiver in June of 2020. In October 2020, this Court confirmed the Receiver's initial recovery plan pursuant to Act 47. Since then, this Court has approved two modifications thereto. *See Davin v. City of Chester* (Pa. Cmwlth., No. 336 M.D. 2020, filed June 7, 2021) (*Davin I*);<sup>2</sup> *Weaver v. City of Chester* (Pa. Cmwlth., No. 336 M.D. 2020, filed Jan. 31, 2023) (*Weaver*), *aff'd sub nom. Siger*. The initial plan, plus the approved modifications, are hereinafter collectively referred to as the Amended Recovery Plan.

A brief overview of Act 47 is also appropriate. The General Assembly enacted Act 47 to “foster the fiscal integrity of municipalities” by enabling municipalities to “provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial

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<sup>2</sup> Following *Davin I*, the Receiver filed a writ of mandamus pursuant to Section 709(a) of Act 47, added by the Act of October 20, 2011, P.L. 318, *as amended*, 53 P.S. § 11701.709(a), asking this Court to direct City elected officials to comply with the Amended Recovery Plan and with two prior orders of the Receiver. The writ was granted in part and denied in part. *Davin v. City of Chester* (Pa. Cmwlth., No. 336 M.D. 2020, filed Mar. 22, 2022) (*Davin II*).

accounting procedures, budgeting and taxing practices.” Section 102(a) of Act 47, 53 P.S. § 11701.102(a).

In advancing this goal, Section 706(a) of Act 47 enumerates various powers to the Receiver, including, in relevant part, the power:

(1) To require the distressed municipality or authority to take actions necessary to implement the recovery plan under [S]ection 703 [of Act 47].

(2) To modify the recovery plan as necessary to achieve financial stability of the distressed municipality and authorities in accordance with [S]ection 703 [of Act 47].

....

(5) To require the distressed municipality or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed municipality’s or authority’s assets in accordance with [S]ection 707 [of Act 47<sup>3</sup>].

....

(7) To direct the distressed municipality or authority to take any other action to implement the recovery plan.

....

(9) To file a municipal debt adjustment action under the [United States] Bankruptcy Code (11 U.S.C. § 101 et seq.) and to act on the municipality’s behalf in the proceeding.

....

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<sup>3</sup> Section 707 of Act 47 was added by the Act of October 20, 2011, P.L. 318.

Added by the Act of Oct. 20, 2011, P.L. 318, *as amended*, 53 P.S. § 11701.706(a)(1), (2), (5), (7), (9).<sup>4</sup>

Act 47 requires that a receiver's recovery plan and all modifications thereto continue to provide "vital and necessary services" to residents. Section 703(b)(1)(i) of Act 47, 53 P.S. § 11701.703(b)(1)(i). Vital and necessary services are defined as:

Basic and fundamental municipal services, including any of the following: (1) Police and fire services. (2) Ambulance and rescue services. (3) Water supply and distribution. (4) Wastewater services. (5) Refuse collection and disposal. (6) Snow removal. (7) Payroll and pension obligations. (8) Fulfillment of payment of debt obligations or any other financial obligations.

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<sup>4</sup> In turn, Section 706(b) does not grant the Receiver power to:

- (1) Unilaterally levy taxes.
- (2) Unilaterally abrogate, alter or otherwise interfere with a lien, charge, covenant or relative priority that is:
  - (i) held by a holder of a debt obligation of a distressed municipality; and
  - (ii) granted by the contract, law, rule or regulation governing the debt obligation.
- (3) Unilaterally impair or modify existing bonds, notes, municipal securities or other lawful contractual or legal obligations of the distressed municipality or authority.
- (4) Authorize the use of the proceeds of the sale, lease, conveyance, assignment or other use or disposition of the assets of the distressed municipality or authority in a manner contrary to [S]ection 707 [of Act 47].

53 P.S. § 11701.706(b).

Section 701 of Act 47, added by the Act of October 20, 2011, P.L. 318, *as amended*, 53 P.S. § 11701.701.

Once this Court receives a plan modification, it “shall confirm the modification within 60 days of receipt of notification of the modification unless it finds clear and convincing evidence that the recovery plan as modified is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency in the distressed municipality.” Section 703(e) of Act 47; 53 P.S. § 11701.703(e). With this historical background and Act 47 overview in mind, we turn to the Receiver’s Plan Modification.

## **II. Receiver’s Plan Modification**

On May 13, 2025, the Receiver filed the Plan Modification seeking to add three initiatives to the Amended Recovery Plan. Each of the initiatives relate to ongoing issues with SAC, which was incorporated by Chester City Council under the Municipality Authorities Act, 53 Pa.C.S. §§ 5601-5623 (MAA), on October 12, 2016. Joint Stipulation of Facts (J.S.F.) No. 5. According to the Receiver, SAC’s Board is operating with an excess number of Board members, some of which are also City elected officials, and each of those Board members is receiving

unauthorized compensation. The parties agree that SAC's Board is currently structured as follows:

Name	Title	City Elected Official?	Appointed	Salary	Term to Expire
Livia Smith	Board Member/ Chair	N	Original Member	\$26,400	10/28/26
Portia West	Board Member/ Vice Chair	Y	Original Member	\$19,800	10/28/24
Joan Neal	Board Member/ Secretary	N	Original Member	\$13,200	10/28/25
William Riley	Board Member/ Treasurer	N	Original Member	\$13,200	10/28/27
Susan Dennis	Board Member	N	Added 12/13/23	\$13,200	10/28/28
Daubri "Fred" Green <sup>1</sup>	Board Member	Y	Added 2/12/20	\$13,200	10/28/26
John Shelton	Board Member	N	Original Member	\$13,200	10/28/28
Joy Taylor	Board Member	Y	Added 2/12/20	\$13,200	10/28/26
Elizabeth Williams	Board Member	N	Added 12/13/23	\$13,200	10/28/27

J.S.F. No. 20.

The Receiver maintains the Board's composition and the compensation of its members violates the MAA, the City's Home Rule Charter, SAC's Articles of Incorporation,<sup>5</sup> and SAC's By-Laws.<sup>6</sup> In order to bring SAC into legal compliance,<sup>7</sup> the Receiver requests confirmation of the following three initiatives:

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<sup>5</sup> Plan Modification, Ex. B.

<sup>6</sup> Plan Modification, Ex. C.

<sup>7</sup> The Receiver explains that between February 2024 and October 2024, he raised concerns with SAC regarding SAC's Board composition and compensation to members thereof through individual meetings, bankruptcy court filings, comments at City Council meetings, and public presentations. Plan Modification at 10-12; Joint Stipulation of Facts (J.S.F.) No. 13. When SAC (Footnote continued on next page...)

**Initiative SAC 01: Ceasing Salary Payments to SAC Board Members**

*All salary payments by the Stormwater Authority of City of Chester (“SAC”) to its board members and Board members who are also officers shall cease immediately. This initiative only applies to ceasing current and future salary payments. The Receiver reserves the right to seek recoupment of unauthorized salary payments made to these individuals, or unauthorized payments made to other individuals.*

**Ethics Initiative 02: Confirming Prohibition in Home Rule Charter Against City Elected Officials Serving on a Local, State, or Federal Board or Authority in a Paid Capacity**

*The City of Chester Ethics Code shall include a provision that no City of Chester elected official may serve on a local, state, or federal board or authority in a paid capacity during the terms of office of the elected official. Reimbursement of expenses shall not be considered serving in a paid capacity.*

**Initiative SAC 02: The number of SAC Board Members**

*The number of members on the Board of the Stormwater Authority of the City of Chester (“SAC”) shall be limited to five (5) as specifically provided in SAC’s Articles of Incorporation.*

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took no action to bring the Board into legal compliance, the Receiver issued an order on March 18, 2024, pursuant to his authority under Section 708 of Act 47, added by the Act of October 20, 2011, P.L. 318, *as amended*, 53 P.S. § 11701.708, directing it to immediately cease all salary payments to six board members. J.S.F. Nos. 18-19. SAC did not comply with the Receiver’s order. This ongoing noncompliance prompted the instant Plan Modification.

The Receiver notes that he could have petitioned this Court to issue a writ of mandamus under Section 709(a) of Act 47, 53 P.S. § 11701.709(a). However, he explains that he chose instead “to file this Plan Modification to preempt any argument that the initiatives were not provisions of the Modified Recovery Plan.” Plan Modification at 5 n.2.

Plan Modification at 15, 21, 28. We discuss each initiative in turn.

**A. Initiative SAC 01: Ceasing Salary Payments to SAC Board Members**

The Receiver maintains that there are three categories of Board members at SAC, each of which are improperly paid for separate reasons. The three membership categories are: (1) non-officer Board members; (2) officer Board members; and (3) Board members who are also City elected officials.

**i. Non-officer Board members**

Section 5610(d) of the MAA requires the “governing body of the municipality”—in this case the City Council—to set board member salaries. 53 Pa.C.S. § 5610(d).<sup>8</sup> Here, the Receiver argues there is no evidence that the City Council ever authorized or determined SAC Board member salaries in accordance with that statutory requirement. The Receiver states that the City Solicitor reviewed all City Council actions since 2016—the year SAC was incorporated—and the Solicitor could not find any resolutions authorizing SAC Board member salaries. Additionally, the Receiver sought the information directly from SAC as part of ongoing bankruptcy proceedings, and SAC too could not provide any City resolutions authorizing Board member compensation. Because City Council never approved salaries for non-officer Board members, those salaries, and all associated salary increases, are unauthorized.

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<sup>8</sup> Consistent with the MAA, SAC’s By-Laws provide that “all compensation of board members is determined by the establishing Municipality . . . .” Plan Modification, Ex. C § 7.9.



**ii. Officer Board members**

The MAA treats officer Board members differently. Per Section 5607(d)(8), an authority is permitted to fix the compensation of its officers. 53 Pa.C.S. § 5607(d)(8).<sup>9</sup> However, the Receiver submits that the officer Board member salaries suffer from the same defect as the non-officer Board members—namely, that the SAC Board never properly passed a Board resolution authorizing officer salaries. As part of the bankruptcy court process, the Receiver requested and was provided all SAC meeting minutes. Nowhere in the minutes is reference to a resolution or other Board action fixing officer salaries. Accordingly, the Receiver maintains that the officer Board members are also receiving compensation without any legal basis.

Regardless of whether SAC properly fixed the compensation of its officers, the Receiver reaffirms the need to cease all officer and non-officer Board members' salaries given the financial condition of SAC and the rates at which it is charging its ratepayers. The Receiver points specifically to minutes from an October 10, 2023 SAC Board meeting, where the Board was informed that SAC's previous Executive Manager and his church loaned SAC \$15,000 and \$25,000, respectively, in order for SAC to meet payroll obligations. Plan Modification at 25, Ex. F. The Receiver submits that SAC could not make payroll because it could not afford the debt service payments on the approximately \$34,000,000 in loans it had taken since 2017. The October 2023 personal loan occurred on the heels of a major SAC rate increase that became effective September 11, 2023. The September 2023 rate

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<sup>9</sup> Consistent with the MAA, SAC's By-Laws provide that "[d]irectors may receive such compensation, if any, for their services, and such reimbursement of expenses, as may be determined by resolution of the board of directors to be just and reasonable." Plan Modification, Ex. C § 7.9.

increase raised stormwater rates by 56% - from \$10.25/month to \$16.00/month per household. *Id.*, Ex. T.

The Receiver highlights the gravity of the rate increases by noting that City ratepayers are among the poorest in the Commonwealth and already pay the second highest resident earned income tax rate therein. In just 2023 and 2024 alone, SAC Board member salaries totaled \$112,000 and \$138,600, respectively. “At \$16/month per household, this translates into 583 Chester households needed to support Board member salaries in 2023 and 721 Chester households needed to support Board member salaries in 2024.” Plan Modification at 26. Further, high stormwater rates incentivize businesses to leave the City, while disincentivizing new businesses from relocating to the City, which is another concern for the Receiver. The Receiver submits the Board members’ salaries must stop not only because they are legally unauthorized, but also because of the corresponding impact they are having on City residents.

### **iii. City elected officials serving as Board members**

Outside of the MAA, the Receiver cites an additional legal basis for the cessation of certain Board member salaries. The Receiver submits that the City’s Home Rule Charter prohibits City elected officials from sitting on any Board in a paid capacity. Plan Modification, Ex. Q (Home Rule Charter). The relevant provision of the Home Rule Charter states:

No Council Member shall, during the terms of office of the Council Member, hold any other compensation position in the City of Chester government. This prohibition shall not preclude a nonpaying position with any local, state, or federal board or authority. Reimbursement of expenses shall not be considered compensation.

Home Rule Charter § 11.2-203. The Receiver maintains that the City Solicitor has consistently opined that this provision expressly permits City elected officials to serve in nonpaying board or authority positions, while prohibiting paid ones. Thus, in addition to being unauthorized under the MAA, certain Board members' salaries also violate the City's Home Rule Charter.<sup>10</sup>

For these reasons, the Receiver asks this Court to confirm Initiative SAC 01.

### **B. Ethics Initiative 02**

Proposed Ethics Initiative 02 provides:

***Ethics Initiative 02: Confirming Prohibition in Home Rule Charter Against City Elected Officials Serving on a Local, State, or Federal Board or Authority in a Paid Capacity***

*The City of Chester Ethics Code shall include a provision that no City of Chester elected official may serve on a local, state, or federal board or authority in a paid capacity during the terms of office of the elected official. Reimbursement of expenses shall not be considered serving in a paid capacity.*

Plan Modification at 21.

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<sup>10</sup> The Receiver submits that on February 15, 2024, the City Solicitor emailed members of City Council with his opinion that the Home Rule Charter prohibits elected officials from serving in a paid capacity on a board or authority. Plan Modification, Ex. D. In response, the three SAC Board members who also serve as elected officials—Daubri “Fred” Green, Joy Taylor, and Portia West—all resigned from the SAC Board shortly thereafter. Despite these resignations, the Receiver submits that these individuals remain on the SAC Board and continue to receive salaries. Plan Modification at 20-21. The Receiver argues that the continued compensation of these individuals that have purported to resign their Board seats is yet another reason their compensation is improper.

Related to the concerns above regarding City elected officials serving as paid SAC Board members, the Receiver also seeks the approval of Ethics Initiative 02. Through that initiative, the Receiver seeks to codify the City Solicitor's interpretation of the Home Rule Charter. Plan Modification, Ex. D.

The Receiver asserts that the development, implementation, and enforcement of an ethics policy was confirmed in *Weaver* and subsequently affirmed by the Supreme Court in *Siger*.<sup>11</sup> Since the Supreme Court handed down its *Siger* decision, the Receiver and City elected officials have attempted to reach an agreement on an ethics policy, but the issue of whether elected officials may serve in a paid capacity on local, state, and federal boards and authorities remains unresolved. The Receiver submits that Ethics Initiative 02 would place the Home Rule Charter's prohibition squarely in the Amended Recovery Plan to ensure that the Charter's intent is followed and that City elected officials comply therewith.

Even if there is disagreement with the City Solicitor's reading of the Home Rule Charter, the Receiver submits that Ethics Initiative 02 must be approved

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<sup>11</sup> The ethics initiative reads:

**Initiative: Development, Implementation and Enforcement of Ethics Policy  
(Plan Modification p. 50)**

The Receiver, Chief of Staff and City elected officials shall work in good faith to develop a City-wide ethics policy for City elected officials and City employees. Such a policy shall cover areas including but not limited to conflicts of interest, personnel decisions, and disclosure. In the event that the Receiver, Chief of Staff and City elected officials cannot agree on such a policy, the Receiver will submit the policy or policies to Commonwealth Court in the form of a Plan Modification. In such proceedings, the City elected officials shall be represented by the City Solicitor. The Chief of Staff shall ensure the implementation and enforcement of such an ethics policy. City officials and employees shall be required to comply with any ethics policy.

Plan Modification at 22.

as it prevents conflicts of interest and ensures independent oversight on boards and authorities. In *Weaver*, this Court found

evidence of widespread nepotism within the City's government, [and] . . . a pattern of City officials taking care of their own and intentionally turning their backs on wrongdoing within their departments. Further exacerbating these problems is the Mayor's assignment of Council members as department heads based on their loyalty to City Council and the Mayor's own inclination in a particular year, rather than on the person's actual qualifications to oversee a particular area. These practices cannot continue.

*Weaver*, slip op. at 39. The Receiver states that allowing City elected officials to serve in a paid capacity on boards to which they have power of appointment provides a direct path for these troubling practices to flourish.

For these reasons, the Receiver asks this Court to confirm Ethics Initiative 02.

### **C. Initiative SAC 02**

Proposed Initiative SAC 02 provides:

#### ***Initiative SAC 02: The number of SAC Board Members***

*The number of members on the Board of the Stormwater Authority of the City of Chester ("SAC") shall be limited to five (5) as specifically provided in SAC's Articles of Incorporation.*

Plan Modification at 28.

Initiative SAC 02 relates to the Board's composition. Section 5610(a)(1) of the MAA provides that: "[i]f the authority is incorporated by one municipality, the board shall consist of a number of members, not less than five, as

enumerated in the articles of incorporation.” 53 Pa.C.S. § 5610(a)(1). Consistent with the MAA, SAC’s Articles of Incorporation enumerate five Board members. *See* Plan Modification, Ex. B. The Receiver submits that the SAC Board operated with five members from its incorporation on October 28, 2016, through February 12, 2020, when City Council passed three resolutions relating to SAC’s Board composition. *Id.*, Ex. O. The first appointed Daubri “Fred” Green (now City Councilmember) and Joy Taylor (now City Controller) for terms to expire October 28, 2021. The second reappointed initial Board member Portia West for a term to expire October 28, 2024. The third reappointed John Shelton for a term to expire October 28, 2023, and William Riley for a term to expire October 28, 2022. These resolutions raised the Board’s composition to seven members.

On December 13, 2023, City Council appointed two additional SAC Board members, bringing the Board’s composition to nine. Susan Dennis was appointed with a term to expire October 28, 2028, and then City Councilmember Elizabeth Williams was appointed effective January 1, 2024, with a term to expire October 28, 2027. Last, on December 23, 2020, City Council passed another resolution reappointing Livia Smith for a term to expire October 28, 2026, and Joan Neal for a term to expire October 28, 2025. The same resolution also reappointed Joy Taylor and Daubri “Fred” Green for terms to expire October 28, 2026.<sup>12</sup>

On February 13, 2024, the SAC Board attempted to amend SAC’s Articles of Incorporation through a resolution that increased Board membership from five to nine. Plan Modification, Exs. U & V. However, the Receiver maintains this attempted amendment is legally void under Section 5606(b) of the MAA.

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<sup>12</sup> The Receiver expresses confusion over City Council’s resolution as Taylor and Green’s terms on the SAC Board had not yet expired.

Section 5606(b) sets forth the following procedure for amending an authority's articles of incorporation:

**(b) Procedure.**--Every amendment to the articles shall first be proposed by the board by the adoption of a resolution setting forth the proposed amendment and directing that it be submitted to the governing authorities of the municipality or municipalities composing the authority. The resolution shall contain the language of the proposed amendment to the articles by providing that the articles shall be amended so as to read as set forth in full in the resolution, that any provision of the articles be amended so as to read as set forth in full in the resolution or that the matter stated in the resolution be added to or stricken from the articles. After the amendments have been submitted to the municipality or municipalities, such municipality or municipalities shall adopt or reject such amendment by resolution or ordinance.

53 Pa.C.S. § 5605(b). As the SAC Board did not submit its resolution to City Council for adoption or rejection, any purported resolution is void and legally ineffective.

The Receiver submits that the correct number and correct identity of Board members is critically important to SAC's function, as actions of improperly appointed Board members are void. Because SAC's actions over the last several years have strayed far from the dictates of the MAA, the Receiver recommends the Board be composed of the following individuals:

1. Joan Neal – with a term to expire October 28, 2025
2. Livia Smith – with a term to expire October 28, 2026
3. William Riley – with a term to expire October 28, 2027
4. John Shelton – with a term to expire October 28, 2028

5. Vacancy – with a term to expire the first Monday in January 2029.<sup>13</sup>

The Receiver submits this Board composition will bring the SAC Board as close as possible to compliance with the MAA and SAC’s governing documents.

#### **D. Legal Authority for Proposed Initiatives**

In support of modifying the Amended Recovery Plan, the Receiver directs this Court to the following legal authority. He submits that Act 47 clearly envisions the dictates of a recovery plan to extend to City authorities. The Act defines the term “authority” as:

[a] municipal authority, parking authority or any other authority or corporate entity that is directly or indirectly controlled by a distressed municipality or to which a distressed municipality has power of appointment. The term shall not include a joint municipal authority.

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<sup>13</sup> The Receiver’s justification for this Board composition is that

- (1) The appointments of Daubri “Fred” Green and Joy Taylor were void as there were already five Board members at the time of their appointment. Additionally, both submitted their resignations from the Board in February 2024[.]
- (2) The term of Portia West expired on October 28, 2024, and she had also submitted her resignation in 2024[.]
- (3) The appointments of Susan Dennis and Elizabeth Williams were void as there were already at least five Board members at the time of their appointment[.]

Plan Modification at 32-33.



53 P.S. § 11701.701. The Receiver’s jurisdiction over authorities such as SAC<sup>14</sup> is further confirmed by the language of Section 703(a) through (c), which discusses the issuance, content, and restrictions of a recovery plan. 53 P.S. § 11701.703(a)-(c). Section 703(b) specifically requires the Receiver’s recovery plan to provide for “the lawful financial obligations of the distressed municipality *and authorities*.” 53 P.S. § 11701.703(b) (emphasis added).

The Receiver argues his jurisdiction over authorities is further confirmed by Section 706(a)(5), which grants the Receiver the broad power “[t]o require the distressed municipality or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed municipality’s or authority’s assets in accordance with [S]ection 707.” 53 P.S. § 11701.706(a)(5). “As SAC is a City asset and as the Receiver has included SAC in the City’s plan of adjustment filed in U.S. Bankruptcy Court, the Receiver has an obligation to ensure that SAC is not inappropriately spending money and to preserve the value of that asset for the City’s residents.” Plan Modification at 5-6.

Finally, the Receiver notes that pursuant to Section 704(a)(4), “elected and appointed officials of the distressed municipality or an authority [have] a mandatory duty to undertake the acts set forth in the recovery plan.” 53 P.S. § 11701.704(a)(4). Accordingly, the Receiver asks this Court to confirm the Plan Modification in order to bring the SAC Board into legal compliance and clarify the ethical obligations of City elected officials.

### **III. SAC’s Objections**

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<sup>14</sup> The parties agree that City Council appointed the first members of the SAC Board and have appointed or re-appointed all Board members since. J.S.F. at 7. Thus, SAC is an “authority” of the City as defined in Act 47. 53 P.S. § 11701.701.

SAC filed objections to the Plan Modification, arguing that this Court should reject all three of the Receiver’s proposed initiatives. At the outset, SAC globally objects to the Receiver’s reliance on Section 706(a)(5) as a source of authority for the Plan Modification, arguing that SAC is not an “asset” of the City. Citing precedent from the Pennsylvania Supreme Court, SAC asserts that it is well settled that “the fundamental nature of [a municipal authority is] a corporate agency of the state, and not the child of a municipality.” *See* SAC’s Mem. of Law at 3 (citing *Simon Appeal*, 184 A.2d 695, 698 (Pa. 1962), and other cases). Because municipal authorities and the municipalities in which they are located are separate and distinct, SAC submits that the Receiver’s Plan Modification is based wholly upon the “fatally flawed premise that SAC is an ‘asset’ of the City,” and therefore must be rejected outright. SAC’s Mem. of Law at 4. While vigorously arguing SAC is not an asset, SAC “does not dispute that Act 47 contemplates that a municipal authority is obligated to comply with a properly prepared and judicially approved recovery plan.” SAC’s Mem. of Law at 4. SAC also generally argues that the Plan Modification lacks a nexus to the City’s financial recovery and is therefore outside the scope of the Receiver’s Act 47 powers.

Turning to the specific proposed initiatives, SAC objects to each as “arbitrary, capricious and wholly inadequate” to alleviate the City’s fiscal emergency.

**A. Objection to Initiative SAC 01**

As to Initiative SAC 01, SAC argues there is no link between ceasing Board member salaries and the fiscal health of the City. It notes that SAC—not the City—pays the Board members’ salaries, and if SAC were to forego that compensation, not a single additional penny would flow to the City’s treasury. Thus,

Initiative SAC 01 is wholly inadequate to alleviate the City’s fiscal emergency. SAC additionally argues the initiative is arbitrary and capricious. To the extent that the Receiver seeks to use SAC funds for non-SAC purposes, such action would open the City up to liability under the MAA. *See* 53 Pa.C.S. § 5612(a.1)(1)-(2).<sup>15</sup> SAC also takes issue with the Receiver’s general concerns that SAC Board members may be acting in their own self-interests or otherwise engaging in behavior that was admonished by this Court in *Weaver*. SAC maintains that the Receiver ignores the “factual presumption that municipal officers are properly acting for the public good,” *Whitemarsh Twp. Auth. v. Elwart*, 196 A.2d at 843, 848 (Pa. 1964), and offers nothing more than conjecture and speculation as to Board members’ motives. In sum, SAC argues the Receiver’s proposal to implement Initiative SAC 01 is an “extraordinary power grab” as “there is no legitimate nexus between the relief which he seeks and his statutory mandate to ‘achieve the financial stability of’ the City.” SAC’s Mem. of Law at 6-7.

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<sup>15</sup> Section 5612(a.1)(1)-(2) of the MAA provides:

**(a.1) Prohibition.--**

(1) Money of the authority may not be used for any grant, loan or other expenditure for any purpose other than a service or project directly related to the mission or purpose of the authority as set forth in the articles of incorporation or in the resolution or ordinance establishing the authority under section 5603 (relating to method of incorporation).

(2) A ratepayer to an authority shall have a cause of action in the court of common pleas where the authority is located to seek the return of money expended in violation of paragraph (1) from the recipient.

53 Pa.C.S. § 5612(a.1)(1)-(2).

## **B. Objection to Ethics Initiative 02**

Regarding Ethics Initiative 02, SAC highlights that article VI, section 2 of the Pennsylvania Constitution provides “[t]he General Assembly may by law declare what offices are incompatible.” Pa. Const. art. VI, § 2. As that power rests solely with the General Assembly, the judiciary has no constitutional role in determining the compatibility of offices. SAC’s Objections at 7 (citing *Commonwealth v. Lucas*, 632 A.2d 868, 879 n.4 (Pa. 1993)). SAC asserts that if the General Assembly intended to bar members of a governing body of a municipality from serving on a board or authority that operates within that municipality, it could have done so when it enacted or amended the MAA. SAC argues that “[t]he General Assembly’s silence on this issue speaks volumes to whether this Court should approve Ethics Initiative SAC 02.” SAC’s Objections at 7-8.

## **C. Objection to Initiative SAC 02**

SAC maintains that Initiative SAC 02 suffers from the same defects as Initiative SAC 01. It argues that the Receiver does not and cannot establish that the termination of four of the nine members of the SAC Board would in any way help alleviate the City’s fiscal emergency. Indeed, any savings that SAC may realize by ceasing compensation to some of its Board members would remain squarely in SAC’s coffers. Those funds would not flow to the City’s treasury or otherwise become a City asset. Accordingly, approval of Initiative SAC 02 could not possibly alleviate the City’s financial emergency and is by definition arbitrary and capricious. While the Receiver notes there is no evidence that City Council ever properly increased SAC Board’s membership from five to nine members, the Receiver ignores the fact that City Council appointed the individuals who occupy those four seats through resolutions. J.S.F. No. 7; Plan Modification, Ex. O. In so doing, SAC

argues the Receiver “ignores the ‘presumption that municipal officers perform their duties properly and take the steps necessary to give validity to their official acts.’” SAC’s Mem. of Law at 10 (citing *Dowds v. Zoning Bd. of Adjustment*, 165 A.3d 75, 80 (Pa. Cmwlth. 2017)).

#### **IV. June 5, 2025 Evidentiary Hearing**

The Court held an evidentiary hearing on the Plan Modification and Objections thereto on June 5, 2025. The Receiver presented the testimony of Vijay Kapoor, Chief of Staff to the Receiver, and documentary evidence in support of the Plan Modification.<sup>16</sup>

Mr. Kapoor testified that in his role as Chief of Staff to the Receiver, he is involved in nearly every aspect of the City’s financial recovery, including strategic decision making, researching, and plan drafting. Notes of Testimony (N.T.) at 10. He explained that he participated in drafting the current Plan Modification and provided some background as to the Receiver’s rationale for the proposed initiatives. Beginning with Ethics Initiative 02, Mr. Kapoor stated that as part of the Plan Modification approved by this Court in *Weaver*, the Receiver and City elected officials were required to work together to come up with an ethics policy. *Id.* at 11. The necessity for an ethics policy, Mr. Kapoor explained, was well laid out in this Court’s findings in *Weaver*, and the Supreme Court’s subsequent affirmance of that decision in *Siger*. *Id.* In attempting to reach an agreement on a policy, the Receiver met with the Mayor, the City Solicitor, and other elected officials in early 2024. *Id.* at 12. Throughout those discussions, the issue of whether City elected officials could serve in a paid capacity on a board or authority was frequently raised. *Id.* at 12-13.

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<sup>16</sup> Mr. Kapoor replaced Michael Doweary as the Receiver effective July 1, 2025. Notes of Testimony (N.T.) at 9; Cmwlth. Ct. Order, 3/25/2025.

In response, the City Solicitor issued an opinion in mid-February 2024 stating that the City’s Home Rule Charter prevents City elected officials from serving on a board in a paid capacity but permits unpaid board membership. Hr’g. Ex. D. Following receipt of the Solicitor’s opinion, three SAC Board members who were also City elected officials—Councilmember Portia West, Councilmember Fred Green, and City Controller Joy Taylor—submitted email resignations from their SAC Board positions. Hr’g. Ex. R. Mr. Kapoor testified that following those resignation letters, the Receiver thought that this issue was temporarily resolved. N.T. at 13-14. However, he later learned that despite those letters of resignation, Ms. West, Mr. Green, and Ms. Taylor remained on the SAC Board. *Id.* at 13-17.

At around this same time, the Mayor made the Receiver aware that SAC took out a personal loan from its Executive Manager and his church in 2023 in order to make payroll. N.T. at 13. Mr. Kapoor testified that he and the Receiver found this situation “concerning” and noted that he had never encountered something like this in his professional career. *Id.* at 18. Mr. Kapoor went on to explain that there are two reasons why SAC’s finances are of import to the Receiver. *Id.* First, Mr. Kapoor stated that in September of 2023, SAC’s rates increased significantly, from \$10/month to \$16/month per household. *Id.* Mr. Kapoor explained:

[Mr. Kapoor]: . . . the rates and the economic pressures on residents are a concern to us from the Receiver side because as any part of any type of plan adjustments or recovery plan, it’s very likely that residents may need to pay more. They have seen their per income tax rates increase in order to fund pensions. We have had to increase their trash rates. The fees they pay for municipal waste has gone up, will likely have to go up again as we redid our trash contract. And so, from the financial end, any – any increase to the amount of money that a [City] resident would pay is clearly of concern to us.

*Id.* at 19. Mr. Kapoor’s second concern was that the City is currently in bankruptcy. He stated that as part of the Receiver’s powers under Act 47 and Chapter 9 of the Bankruptcy Code,<sup>17</sup> he may monetize assets. *Id.* at 20. He stated that if one were to monetize an asset, the stability of that asset plays a key role in its value. *Id.* Mr. Kapoor also testified that the Receiver has obligations to creditors pursuant to the Chapter 9 bankruptcy proceedings. *Id.* While discussing SAC’s valuation generally, Mr. Kapoor clarified that “[a]t no point were we looking to take [B]oard members’ salaries and savings from that and fund City operations.” *Id.*

Based on these concerns about SAC, Mr. Kapoor specifically explained the rationales behind the SAC-related initiatives. In regard to Initiative SAC 01, Mr. Kapoor opined that the MAA requires the City Council to set salaries, and there is no evidence that the City Council ever did. N.T. at 33-34. Thus, the current salaries are not authorized by law. *Id.* Turning to the financial aspect, Mr. Kapoor again cited the concern regarding SAC’s rate increase and subsequent personal loan. *Id.* at 34. Additionally, when asked whether SAC had followed its own By-Laws in regard to Board member salaries, Mr. Kapoor opined that it had not. *Id.* at 36-37; Hr’g. Ex. C.

Mr. Kapoor also explained the Receiver’s efforts to resolve this issue without this Court’s intervention. He stated that on March 18, 2025, the Receiver issued an order pursuant to his authority under Act 47 directing SAC to cease certain Board member salaries. N.T. at 43-45; Hr’g. Ex. K. On March 18, 2025, SAC responded to the order via letter acknowledging its receipt and identifying certain issues. N.T. at 45; Hr’g. Ex. L. The Receiver responded and noted the availability of his legal counsel to discuss the issues raised by SAC. N.T. at 46; Hr’g. Ex. M.

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<sup>17</sup> 11 U.S.C. §§ 901-946.

Despite the Receiver's order, to Mr. Kapoor's knowledge, SAC Board members continue to receive salaries. N.T. at 47. When questioned about the pertinence of Initiative SAC 01, and the potential impact of the cost savings for eliminating salaries, Mr. Kapoor explained:

[Mr. Kapoor]: Well, if you look at --- so there's a couple different ways you can look at this and there's a couple ways we did look at this. One is overall, if you go back to 2016, if you add all the [B]oard member salaries together, this is around \$816,000. And that did include what's happening in 2025. So from our perspective, that's pretty significant.

If you then just kind of look at other -- at kind of where we are going prospectively, if you look at this on sort of a per household basis, between 500 and 700 households in Chester who were paying for the [B]oard members' salaries. What also struck us here was we got information from the [SAC] as to the total number of employees that they had and you had [B]oard members making up 9 [] out of 24 employees. So there were 16 other employees of [SAC] and you had nine board members overall. Now, granted, [B]oard members are part time. We cleared all that. But just in terms of the overall scope of this, that also sort of struck us as being excessive.

*Id.* at 47-48.

Turning to Initiative SAC 02, Mr. Kapoor explained that SAC provided a document establishing that there are currently nine SAC Board members. N.T. at 48-49; Hr'g. Ex. N. Regarding the rationale for Initiative SAC 02, Mr. Kapoor testified:

[Mr. Kapoor]: In terms of the purpose for SAC 02 . . . obviously, follow the law. That's important to do it. The other thing that's important from our perspective is, there's two other things. One is these are not just [B]oard members. These are paid [B]oard members. So it's not nine [B]oard members in terms of the difference between five and nine. It's the difference between five paid [B]oard members and nine paid [Board] members. So I want to be clear about that, that you should



really think of SAC 01 and SAC 02 as together. . . . Under the Articles of Incorporation for the [SAC], there are only five members authorized. That was – that was filed back in October of 2016. And the way the [MAA] --- my understanding of the way the [MAA] works initially is that you have each of those [B]oard members appointed, one [B]oard member serves for five years, another serves for four, three, two and one. By having those staggered [B]oards, each council or each new council each new year, someone rolls off the [B]oard as you appoint it, you continue to move on.

That was also not followed here, that additional [B]oard members were added. Two additional [B]oard members were added right before the [C]ity went into receivership. And two additional [B]oard members were added right before what I'll refer to as a lame duck city council at that last meeting prior to a new council taking over. And so, you know, from our perspective, there is the question of following the law. Number two is a financial issue because the [B]oard members are five and nine. And then . . . we go back to following the law, it's [] staggering is, as our understanding of the MAA, is important. It allows experience as folks stay on to the law. It also prohibits, right, the idea of, like, for lack of a better term, court packing. Right. So if somebody decides to [] add a bunch of posts before they go, right, and keep control of the authority, when a new council or new mayor or a new group is coming in, there is a fundamental, again, in our perspective, making sure that any authority, especially when, from our perspective, the Receiver has jurisdiction over, is following the law. And for all of those reasons, that is why we included SAC 02.

N.T. at 49-51. Mr. Kapoor stated that while each specific initiative has various rationales, the overarching reason for the initiatives is to ensure SAC's compliance with the law. *Id.* at 31.

On cross-examination, Mr. Kapoor agreed that City Council appointed all nine SAC Board members by resolution. N.T. at 56. Mr. Kapoor clarified, however, that the Receiver takes the position that those City Council actions were unauthorized. *Id.* Mr. Kapoor also agreed that all funds that may be saved if Initiative SAC 01 and SAC 02 are approved would remain with SAC and would not be transferred to the City's treasury. *Id.* at 63-64. Nevertheless, Mr. Kapoor

explained that SAC's compliance with the law is an important part of alleviating the City's financial condition. He explained that it goes to the general notion that the City and its residents will be better off if the procedures of the MAA are followed, and if SAC is not spending dollars collected from City residents and businesses for unauthorized purposes. *Id.* at 97-98.<sup>18</sup>

On redirect examination, Mr. Kapoor clarified that through this Plan Modification, the Receiver is not attempting to (1) have SAC reduce its rates to City residents, (2) have SAC cease taking loans from any entity, or (3) prevent any City elected officials from serving on the SAC Board in a non-paid capacity. N.T. at 99. Mr. Kapoor concluded his testimony by explaining that the Plan Modification at issue, like prior modifications, seeks to address both the City's financial health and operational health. When asked about the impact of the Plan Modification, Mr. Kapoor responded:

[Mr. Kapoor]: [T]he responsibility of the Receiver of the plan is ultimately to ensure that the City provides vital and necessary services. There's a financial component to that and there's an operational component to that. There's also an economic development component to that. Some of the initiatives that are [in the Amended Recovery Plan] are directly financial. They have to do, you know, with the ability to minimize increases in certain ways. Others have multiple concepts. In our opinion, to get Chester to a place where it can be left in a strong financial condition and have the ability to operate in a way that provides an adequate level of vital and necessary services on an ongoing basis in a manner that is in the best interest of the residents, different initiatives have different aspects to it. The ones that we have in this plan right

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<sup>18</sup> During cross-examination of Mr. Kapoor, Receiver's counsel objected to SAC's standing to challenge Ethics Initiative 02. The Court overruled the objection without prejudice. N.T. 85-87. Upon further consideration and review of the parties' arguments in the filings, the Court overrules the Receiver's objection and concludes that SAC's interest is sufficiently substantial, direct, and immediate to confer standing to challenge this initiative. *Robinson Twp., Wash. Cnty. PA v. Commonwealth*, 83 A.3d 901, 920 (Pa. 2013).

now certainly have – they have a small financial impact. You know, we understand this is – this in and of itself is not going to solve the City’s financial problem just in and of itself. But overall, they lead to a very important point that we believe very strongly needs to be established before receivership ends, that there are procedures, there are laws, and that those things need to be followed across the board so that when the Receiver goes and when there’s a different type of oversight that first off, that the city is complying with the law, in the first place, and they people continue to do so in a way that will provide modern, necessary services. Because in so many situations, parts of the reason Chester has gotten to where it has in many cases is that it has not followed – and not just the city, unions, other have not followed what the law is supposed to be, and that has to stop. And we’ve tried our best through various portions of the [Amended Recovery Plan] where we do that. I think we’ve been successful so far in the city government in addressing a lot of these issues and retrospective, unfortunately, we see them happening – some of them happening with [] SAC.

*Id.* at 104-06.

SAC offered the testimony of Bruce Conner, Executive Director of SAC. Mr. Conner testified that as Executive Director, he has a comprehensive understanding of SAC’s operations and financial status. N.T. at 130. Mr. Conner stated that all SAC employees and Board members are paid directly from SAC revenues, and that SAC does not receive any contributions or infusions of cash from the City. *Id.* at 133-35. In regard to SAC’s debt, Mr. Conner testified that other than ongoing payments for salaries and benefits, SAC’s only other ongoing debt obligation is in the form of PennVEST<sup>19</sup> loans. *Id.* at 144. SAC is currently not in default on any of its debts. *Id.*

Mr. Conner also addressed the October 2023 loan from the previous Executive Manager and his church. He explained that at that time, there was a perception in the community that SAC was not a legitimate authority, and ratepayers

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<sup>19</sup> PennVEST refers to Pennsylvania’s Infrastructure Investment Authority.

stopped paying. N.T. at 145. Accordingly, the decision was made to take a loan in order to make payroll. *Id.* Mr. Conner testified that the consumer confidence issue does not persist today. *Id.*

SAC also offered the testimony of Joy Taylor, City Controller and Board member of SAC. N.T. at 151-52. Ms. Taylor testified that there is no commingling of funds between SAC and the City, and no payor/payee relationship between the two entities. *Id.* at 155-56. Ms. Taylor testified that she receives a salary as a member of the SAC Board. *Id.* at 158. SAC did not offer any documentary evidence.<sup>20</sup>

## **V. Parties' Closing Statements**

In his closing statement, the Receiver argues that SAC failed to present any evidence that the Plan Modification is arbitrary, capricious, or wholly inadequate to relieve the City's fiscal emergency. He notes that SAC concedes that it is an "authority" under Act 47, and that the Receiver's oversight extends thereto. Instead of establishing that SAC is following the law, it endeavored to shift the focus of the hearing by portraying the Receiver's Plan Modification as an attempt to control the Authority. However, each proposed initiative is carefully drafted to address SAC's knowing refusal to follow the MAA, the City Home Rule Charter, and its own Articles of Incorporation and By-Laws. Accordingly, the Receiver argues that Section 703(e) of Act 47 requires this Court to confirm the Plan Modification in full.

For its part, SAC argues that it established the Receiver's Plan Modification is wholly divorced from the City's fiscal recovery and goes well

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<sup>20</sup> At the close of the hearing, SAC withdrew its Motion to Strike filed June 4, 2025, on the record. Additionally, as SAC did not offer any exhibits into evidence, the Receiver's Objections to SAC's Proposed Exhibits, filed June 3, 2025, are dismissed as moot.

beyond what the General Assembly authorized the Receiver to do via Act 47. SAC takes issue with the Receiver's primary purposes for the initiatives, which it describes as (1) ensuring everyone in the City follows the law; and (2) alleviating the fiscal burden on the residents of the City. According to SAC, the first of those purposes goes beyond what is contemplated in the contents of a recovery plan under Section 703(b) of Act 47, especially in light of the limitations imposed on the Receiver's use and disposition of assets under Section 707. SAC argues the second purpose is also improper, as City residents have various remedies under the MAA and common law as it relates to service rates and Board member removal. *See* Sections 5607(d)(9), 5610(d), and 5612(a.1)(2) of the MAA, 53 P.S. §§ 5607(d)(9), 5610(d), 5612(a.1)(2); *see also Commonwealth ex rel. Waltman v. Graczyk*, 460 A.2d 1098 (Pa. 1983) (unlawful board appointments may be challenged through a *quo warranto* action).

Throughout its closing, SAC focuses on the authority cited by the Receiver in the Plan Modification under Section 706(a)(5) of Act 47—specifically, that he may require a distressed authority “to cause the sale, lease, conveyance, assignment or other use or disposition” of an authority's assets in accordance with Section 707. SAC argues that for the Plan Modification to pass muster, this Court must conclude that the Receiver intends to use SAC's funds in accordance with Section 707. SAC argues the Plan Modification is devoid of such intention, and the testimony of Mr. Kapoor failed to illustrate how the Receiver would utilize the funds that SAC would save if the Plan Modification were approved.

SAC additionally argues that the Supreme Court's recent decision in *Siger* does not require the approval of the Modification Plan. While *Siger* detailed Act 47's (highly) deferential standard of review, the specific issues which the

Supreme Court reviewed in that case are not present in this matter. Thus, while *Siger* is instructive regarding the standard of review, because the facts of this matter are different, *Siger* is not directly controlling. For these reasons, SAC argues that the Plan Modification must be denied under Section 703(e).

## **VI. Discussion**

### **A. Standard of Review**

As briefly explained above, when considering a plan modification, this Court applies the standard of review articulated in Section 703(e) of Act 47, which provides that:

The [C]ourt *shall confirm* the modification within 60 days of receipt of notification of the modification *unless it finds clear and convincing evidence that the recovery plan as modified is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency* in the distressed municipality.

53 P.S. § 11701.703(e) (emphasis added).

### **B. SAC's Global Objections**

Before turning to the Receiver's specific proposed initiatives, we first address SAC's global objections to the Plan Modification as beyond the Receiver's Act 47 powers and disconnected from Act 47's fiscal recovery purpose.

SAC first globally objects to the Plan Modification on the basis that the Receiver improperly considers SAC an asset of the City. SAC vigorously maintains that SAC is an entity separate and distinct from the City and offered Ms. Taylor's credible testimony to establish that the City and SAC do not commingle funds or

have any payor/payee relationship. While the Court is cognizant that the City and SAC are siloed from one another financially, we disagree that SAC's financial independence removes it from the Receiver's purview under the plain language of Act 47 or is otherwise fatal to the Receiver's Plan Modification.

As one point of legal authority for the Plan Modification, the Receiver cites Section 706(a)(5), which permits him to require an authority to sell or convey its assets and use those assets in accordance with Section 707. 53 P.S. §§ 11701.706(a)(5), 11701.707. Section 707(a) requires:

The proceeds from any sale, lease, conveyance, assignment or other use or disposition of assets of the distressed municipality or authority shall be applied to the payment of outstanding debt obligations owed by the distressed municipality or authority, subject to any lien, charge, covenant, restriction, contract, law, rule or regulation, that encumbers or is otherwise applicable to the assets.

53 P.S. § 11701.707(a). While Section 706(a)(5) is cited as a legal justification for the Plan Modification, at no point does this Plan Modification actually contemplate the sale or conveyance of SAC's assets. Rather, the Receiver relies on Section 706(a)(5) as a rationale for his duty to *preserve* SAC's assets in order to protect their value. In explaining why SAC Board's legal compliance is important, Mr. Kapoor credibly testified that the stability and integrity of SAC directly relates to its valuation. N.T. at 20. Because Act 47 specifically contemplates the Receiver's disposition of an "authority['s]" assets in its overall structure, we reject SAC's argument that the Plan Modification is fatally flawed because SAC itself is not an asset of the City. We likewise reject SAC's secondary argument that the Plan Modification fails because Receiver did not show how he would use any future

proceeds in accord with Section 707. As explained above, the Receiver is not pursuing monetization at this time. Nevertheless, the Court finds the Receiver is properly concerned about maintaining the integrity of SAC pursuant to his Act 47 responsibilities.<sup>21</sup>

In a similar vein, SAC globally objects to the Plan Modification on the basis that it will not result in any direct fiscal benefit to the City and therefore falls outside the purview of the Receiver's Act 47 powers. The Court rejects this limited reading of Act 47. In *Siger*, the Supreme Court addressed the City's objection to the Receiver's 2022 Plan Modification on the basis that the challenged initiatives were "not necessary" to achieve financial stability, which the City asserted was the only permitted reason to modify a recovery plan under Act 47. 309 A.3d at 723. Specifically, the City argued that the challenged initiatives were unrelated to the City's fisc and rather sought to alter the City's governance and operations, thus exceeding the Receiver's grant of authority. *Id.* The Supreme Court rejected the City's argument, explaining the "order of operations specified by Act 47." *Id.* It explained that Section 706(a)(2) grants "the *Receiver* the power to modify the recovery plan as necessary to achieve financial stability of the distressed municipality . . . in accordance with [S]ection 703." *Id.* (emphasis in original). The Supreme Court expounded that:

Act 47 does not direct the court to conduct an independent analysis of whether, in its view, the modifications are "necessary." The determination of the necessity of the modifications is committed to the Receiver's judgment. The court may take evidence on the modifications at a

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<sup>21</sup> Mr. Kapoor also credibly testified about the Receiver's obligations to creditors in the ongoing bankruptcy court proceedings. N.T. at 19-20. The Receiver's power under Act 47 extends to initiating and pursuing such bankruptcy proceedings. See 53 P.S. § 11701.706(a)(9).



hearing, but its role is limited to confirming the modifications, which it must do unless it finds, by clear and convincing evidence, that the modifications are “arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency” under Section 703(e). Neither this Court nor the Commonwealth Court are experts in municipal finance, and Act 47 does not ask us to be. The question for a reviewing court is not whether the Receiver is, in fact, correct in determining that a particular modification is “necessary to achieve financial stability.” Rather, Act 47 directs the court to apply a specific, and highly deferential, standard of review to the Receiver’s determination.

*Id.*

SAC’s global objection here is similar to the one lodged in *Siger* and again characterizes the Receiver’s proposed initiatives as unrelated to the fiscal health of the City and unnecessary to alleviate the City’s financial condition.<sup>22</sup> Guided by *Siger*, this Court declines to “conduct an independent analysis of whether, in its view, the modifications are ‘necessary.’” 309 A.3d at 722. That determination is committed to the Receiver’s judgment. Instead, we undertake our statutory duty to determine whether SAC presented “clear and convincing evidence that the recovery plan as modified is arbitrary, capricious or wholly inadequate to alleviate the fiscal emergency in the distressed municipality.” 53 P.S. § 11701.703(e).

Following the evidentiary hearing, we conclude that SAC has failed to meet its burden under Section 703(e) of Act 47.

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<sup>22</sup> While SAC attempts to divorce its legal compliance from both the fiscal health of the City and of SAC itself, we conclude that the evidence proves otherwise. At the hearing, SAC’s own witness explained that SAC’s integrity has been doubted by City residents in recent years. Specifically, Executive Director Conner testified that in 2023, the public did not perceive SAC to be a legitimate authority, and consumers stopped paying their rates. N.T. at 145. As a result of this stoppage in payment, SAC took out a personal loan from its former executive manager and his church in order to meet payroll obligations. *Id.* at 144-45. This evidence establishes a clear nexus between SAC’s reputation as a lawfully abiding authority and its own financial health.

### **C. Initiative SAC 01 – Cessation of Board member compensation**

SAC has failed to produce evidence that Initiative SAC 01 is arbitrary, capricious, or wholly inadequate to alleviate the City's fiscal emergency. At the hearing, SAC highlighted that any savings SAC would realize from ceasing Board members' salaries would remain with SAC and therefore is unrelated to the City's fisc. However, as credibly explained by Mr. Kapoor, SAC's financial health and integrity is of appropriate concern to the Receiver and to the future financial health of the City. Importantly, SAC did not attempt to explain how SAC's payment of Board members' salaries complies with the MAA or its own governing documents and did not offer any documentary or testimonial evidence in support thereof. Accordingly, SAC failed to meet its burden under Section 703(e) and Initiative SAC 01 is confirmed.

### **D. Ethics Initiative 02**

We reach the same conclusion on Ethics Initiative 02. While SAC argues that the General Assembly's silence in the MAA regarding whether elected officials may serve on municipal boards speaks volumes, it neglects to make any persuasive argument in response to the City Solicitor's interpretation of Section 11.2-203 of the City's Home Rule Charter. Moreover, at the hearing, SAC did not even attempt to explain why City elected officials serving as SAC Board members purported to resign from their SAC positions following the City Solicitor's opinion but continue, to this day, to accept salaries. This is the type of behavior by elected officials that concerned this Court previously and continues to concern this Court now. Concluding that the interpretation of the Home Rule Charter is reasonable, and

because SAC has not presented evidence to meet its burden under Section 703(e), Ethics Initiative 02 is confirmed.

**E. Initiative SAC 02 – Board member composition**

The Court also confirms Initiative SAC 02, which reduces the number of SAC Board members to five, consistent with the dictates of the MAA and SAC's governing documents. As explained above, the MAA and SAC's Articles of Incorporation and By-Laws all set forth a process for the addition of SAC Board members. SAC presented no documentary or testimonial evidence to establish that its increase in Board membership from five to nine members was properly effectuated pursuant to law. While hanging its hat on the City Council resolutions that approved four additional members and the general presumption that municipal officers take the steps necessary to give validity to their official acts, SAC did not offer a scintilla of evidence to show that *any* official procedures for amending its Articles of Incorporation were followed here. Nor did SAC attempt to explain how City Council's resolutions override noncompliance with the MAA or otherwise cure the conflict in its governing documents. Accordingly, the Court concludes SAC has failed to meet its burden to show this initiative is arbitrary or capricious. Initiative SAC 02 is confirmed.

This leaves the question of the composition of the Board. As a result of the relief afforded the Receiver, the issue is left as which Board members remain and for what term. SAC has not offered any alternate Board structure or presented any evidence to show the Receiver's proposed Board structure is arbitrary or capricious. In light of this, the Court accepts the five-member Board structure outlined by the Receiver in the Plan Modification, *see supra* p. 15-16 & n.13, as illustrated in the attached Order.

## **VII. Conclusion**

Act 47 grants the Receiver the authority to modify the recovery plan as necessary to achieve financial stability of the distressed municipality and its authorities. In this Plan Modification, the credible evidence of record demonstrates that SAC's Board is operating outside of the law and its own governing documents. Based on a thorough review of the parties' filings and the evidence adduced, the Court concludes that SAC has offered no clear and convincing evidence that the initiatives proposed in the Plan Modification are arbitrary, capricious, or wholly inadequate to alleviate the City's fiscal emergency. Rather, the credible evidence establishes that the initiatives will promote the integrity and fiscal health of SAC, an authority of the City. Accordingly, the Plan Modification is confirmed in accordance with the attached Order.

## **ORDER**

AND NOW, this 11th day of July, 2025, upon consideration of the Receiver's Modification of Amended Recovery Plan (Plan Modification), the Stormwater Authority of the City of Chester's (SAC) objections thereto, and the evidence presented at the June 5, 2025 hearing, the Court hereby ORDERS as follows:

1. The Receiver's Plan Modification is CONFIRMED.
2. SAC's objections to the Plan Modification are SET ASIDE.
3. Unless otherwise agreed to by the City of Chester, SAC, and the Receiver, within 60 days of the date of this Order, SAC's Board shall be composed as follows:
  - a. Joan Neal – with a term to expire October 28, 2025;
  - b. Livia Smith – with a term to expire October 28, 2026;
  - c. William Riley – with a term to expire October 28, 2027;
  - d. John Shelton – with a term to expire October 28, 2028;
  - e. Vacancy – with a term to expire the first Monday in January 2029.
4. SAC's Motion to Strike, filed June 4, 2025, shall be marked as WITHDRAWN.
5. Receiver's Objections to SAC's Proposed Exhibits, filed June 3, 2025, are DISMISSED as MOOT.

/s/ Matthew S. Wolf  
MATTHEW S. WOLF, Judge