

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) WASSERMAN, JURISTA & STOLZ, P.C. 110 Allen Road, Suite 304 Basking Ridge, New Jersey 07920 Phone: (973) 467-2700 Fax: (973) 467-8126 <i>Counsel to Debtor-in-Possession, Newark Watershed Conservation and Development Corporation</i> DANIEL M. STOLZ, ESQ. DONALD W. CLARKE, ESQ.	
In Re:	Case No.: 15-10019(VFP)
NEWARK WATERSHED CONSERVATION AND DEVELOPMENT CORPORATION,	Chapter: 11
Debtor	Honorable Vincent F. Papalia

**CERTIFICATION OF THE HONORABLE DOROTHEA O’C. WEFING (RET)
AND EDWIN H. STIER, ESQ. IN SUPPORT OF MOTION TO REDUCE OR
EXPUNGE CLAIMS OF THE PENSION BENEFIT GUARANTY CORP., LINDA
WATKINS-BRASHEAR, DONALD BERNARD SR., AND SHARON E. BERNARD**

The Honorable Dorothea O’C. Wefing (RET) and Edwin H. Stier, Esq., the Provisional Trustees of the Newark Watershed Conservation and Development Corporation (“NWCDC” or “Debtor”) being of full age and having been duly sworn hereby certify and state:

1. We are the duly appointed Provisional Trustees of the NWCDC, having been appointed by the Superior Court of New Jersey, Essex County, by Order dated June 5, 2013. We are currently responsible for the supervision of the NWCDC during its Chapter 11 case, aided by the Interim Executive Director of the NWCDC, Joseph Hartnett.

2. As the Court is aware, investigations conducted by the United States Attorney's Office and the New Jersey Office of the State Controller, have resulted in multiple indictments and convictions of former officers and employees of the NWCDC on Federal corruption charges.

3. Linda Watkins-Brashear was a long term employee of the NWCDC. She held the position of Executive Director of the NWCDC from April of 2007 to March 25, 2013.

4. Ms. Brashear has pled guilty to crimes perpetrated during her tenure as Executive Director of the NWCDC and is currently incarcerated. Even after her guilty plea, Ms. Brashear has asserted her Fifth Amendment Rights and refused to answer any questions posed by counsel for the NWCDC.

5. Donald Bernard, Sr. is a former NWCDC employee who owned and operated three (3) entities that conducted business within the State of New Jersey and entered into no bid contracts and/or loans from the NWCDC. Mr. Bernard has also pled guilty to crimes perpetrated during his tenure as an employee of the NWCDC and has asserted his Fifth Amendment Rights, refusing to answer any questions posed by counsel for the NWCDC.

6. In June 2006, prior to the election of Cory Booker as Mayor of the City of Newark, Ms. Brashear resigned her employment with the NWCDC. In connection therewith, she received over \$209,000.00 in severance claims, unused vacation and sick time. Despite Ms. Brashear's "resignation", she continued to receive her salary, as if she had never resigned. Several weeks after her "resignation", Ms. Brashear was rehired by Mayor Elect Booker and promoted to Executive Director of the NWCDC. Despite the fact that she had never ceased receiving payment of her salary during the "resignation period", upon her rehiring and

promotion, Ms. Brashear did not repay to the NWDC the \$209,000.00 of severance she had received.

7. Without proper approval, Ms. Brashear was given an employment contract containing an exorbitant compensation package during her tenure as Executive Director of the NWDC. In addition, although this employment contract provided for compensation to Ms. Brashear totaling \$1.16 million for the period 2006 through 2013, Ms. Brashear actually received payments totaling \$1.98 million. Ms. Brashear also took over \$800,000.00 in unjustified “expense reimbursements” through nearly seventy (70) manual checks she wrote to herself and signed herself (without a co-signer). Ms. Brashear received a second severance payment when, after the improprieties had been revealed in a report by the Office of the Controller, the Board voted to dissolve. At that time, the Board, without a quorum, approved a separation and settlement payment to Ms. Brashear in the amount of \$453,805.00, which included her unearned salary through 2015, as well as the value of her unused vacation and sick time.

8. Importantly, Ms. Brashear’s employment contract with the NWDC limited her entitlement to future salary, to circumstances where the NWDC terminated her without good cause and did not permit her to resign and collect for future work that had never been performed. In addition, Ms. Brashear artificially inflated the value of any unearned future salary, by maneuvering to have her contract reworked in January of 2013, two months before the dissolution of the Board.

9. In addition to the foregoing, Ms. Brashear has admitted to engaging in several “kickback” schemes, whereby improper payments were made to other employees and businesses and then a portion of those funds were “kicked back” to Ms. Brashear. Finally, Ms. Brashear

used the NWCDC Petty Cash account for many personal expenses, over an extended period of time.

10. Ms. Brashear has asserted that the funds that she had improperly diverted by from the NWCDC were squandered through her gambling habits. In 2018, Ms. Brashear filed a personal Chapter 7 Bankruptcy Petition, showing no assets other than her NWCDC pension, which she quickly dismissed once she realized that she would be required to testify under oath.

11. Similarly, Donald Bernard was paid an inflated salary and diverted huge amounts of funds from the NWCDC.

THE PENSION FUND

12. In January 2013, two months before the Board of the NWCDC voted to dissolve, Ms. Brashear orchestrated a change in the eligibility for distributions from the Pension Fund from 65 to 55 (she was 63 at the time). More significantly, Ms. Brashear orchestrated an amendment to the Plan, to allow for lump sum payouts. By January 2013, Ms. Brashear knew about the State Comptroller's investigation and impending demise of the NWCDC.

13. Following our appointment as Provisional Trustees, we were advised by the actuary responsible for the Pension Plan that, on an actuarial basis, the Pension Plan was underfunded by between \$400,000.00 and \$500,000.00. As a result of the fact that all employees of the NWCDC were transferred to employment by the City of Newark, shortly after our appointment, no further contributions were made to the Pension Fund.

14. When it became clear that there would not be sufficient funds in the NWCDC's accounts to pay all obligations, including those due to fully fund the Pension Plan, a Chapter 11 Petition was filed for the NWCDC.

15. Following the NWCDC's Chapter 11 filing, our counsel contacted the Pension Benefit Guaranty Corporation ("PBGC") to advise the PBGC that the NWCDC Pension Plan was actuarially insolvent and to request that the PBGC assume responsibility for the Pension Plan.

16. To our great frustration, our counsel could not obtain a response from the PBGC for an extraordinarily long period of time as to whether the PBGC would assume responsibility for the Pension Plan.

17. On May 9, 2016, prior to the PBGC taking over the Pension Fund, resolutions were entered denying eligibility to participate and receive distributions from the Pension Fund by Ms. Brashear and Mr. Bernard. By letter dated May 27, 2016, Ms. Brashear and Mr. Bernard were advised of the resolution of the Trustees of the Pension Fund. A copy of the Resolutions and letters are attached hereto as Exhibit "A". Both Ms. Brashear and Mr. Bernard were advised of the procedure should they wish to appeal the decision of the Trustees. No Appeal was ever lodged.

The PBGC

18. As a result of her machinations, Linda Brashear was by far the largest beneficiary of the Pension Fund. If Ms. Brashear were to receive her monthly benefit, it would be approximately \$5,500.00, while most every other employee would be receiving under \$1,000.00 per month.

19. At great expense to the NWCDC Bankruptcy Estate, countless communications were conducted with the PBGC to determine whether the PBGC would assume responsibility for

the Pension Fund. Initially, staff counsel for the PBGC indicated that the PBGC would likely decline coverage of the Pension Fund, asserting that the NWDC was a governmental agency.

20. From the outset of our counsel's communications with the PBGC, we requested that, if the PBGC decided to take over the Pension Plan, the PBGC deny the claims of Brashear and Bernard.

21. Finally, in September 2016, our counsel received an indication that the PBGC was leaning towards taking over the Pension Plan. The PBGC assured our counsel that once they took over the Plan, they would deal with the Brashear and Bernard claims. The PBGC requested that the NWDC not pay any payments to beneficiaries of the Pension Plan, pending a final decision.

22. Almost six months passed before the PBGC actually took steps to take over the Pension Plan. The Pension Plan was finally fully taken over by the PBGC in late February 2017.

23. Subsequent to the PBGC taking over the Pension Fund, the PBGC was provided with the resolutions and a request was made for the PBGC to adhere to the position of the Pension Fund Trustees. The PBGC assured the Trustees that they would take the matter under consideration.

24. Since the PBGC has assumed responsibility for the Pension Plan, it has been extraordinarily difficult to obtain timely responses from the PBGC to inquiries or to engage in meaningful discussions with the PBGC with regard to the Plan and entitlements thereto.

25. On May 8, 2015, the PBGC filed three (3) Proofs of Claim in this Chapter 11 case (Claims numbers 38, 39 and 40) totaling in excess of \$2,000,000.00. There is absolutely no

explanation of the basis for a Claim of this magnitude and our professionals believe the claims are grossly overstated.

26. On or about March 9, 2018, special counsel to the NWCDC wrote to the PBGC by letter, a copy of which is annexed hereto as Exhibit "B", urging the PBGC to deny the Pension Claims of Brashear and Bernard. On March 12, 2018, special counsel to the NWCDC spoke to three representatives of the PBGC. Those representatives assured counsel that they were following through on concerns about the claims of Brashear and Bernard, but indicated they could not discuss the matter with the NWCDC, because of privacy issues. Thereafter, special counsel placed several calls to the PBGC to follow up. The PBGC's counsel, Wayne Owen, advised the NWCDC's counsel that the PBGC could not give us any information about Brashear and Bernard and could not tell us when they would complete the processing of benefit entitlements, again citing "privacy concerns".

27. On May 3, 2018, Bankruptcy counsel to the NWCDC wrote to the PBGC, a copy of which is annexed hereto as Exhibit "C", again urging the PBGC to disallow the Pension Claims of Bernard and Brashear and further, formally requesting an explanation as to the manner in which the PBGC had calculated the claims which they filed, under oath, with the Bankruptcy Court. To date, we have received no response or explanation from the PBGC.

The Brashear and Bernard Claims

28. On March 20, 2015, Linda Watkins Brashear filed a Proof of Claim, which she signed under penalty of perjury in the amount of \$478,615.57, representing the amount Ms. Brashear claims she is entitled to under the NWCDC Defined Benefit Plan.

29. On May 31, 2018, Donald Bernard Sr. and Sharon E. Bernard filed identical claims asserting an entitlement from the NWCDC Defined Benefit Plan in the amount of \$176,123.24.

30. It is the NWCDC's belief that if the Watkins Brashear and Bernard claims against the NWCDC Defined Benefit Plan were forfeited, the Defined Benefit Plan would be rendered solvent and capable of making a full distribution to all of the other innocent employees of the NWCDC. In such an event, obviously, the PBGC filed claims would be expunged.

31. Both the Watkins Brashear and Bernard criminal sentencing provisions require them to pay restitution to the NWCDC, as the victim of their crimes, far in excess of the claims that Watkins Brashear and Bernard have made against the NWCDC Defined Benefit Plan.

32. The NWCDC, through its counsel, sought to amend the sentence of Watkins Brashear to require that, as restitution to the NWCDC, her claims against the Defined Benefit Plan be deemed forfeited. Inexplicably, the PBGC opposed the NWCDC's Motion.

33. Unfortunately, largely as a result of the PBGC's opposition to the NWCDC's Motion, the District Court denied the NWCDC's Motion, finding that there had not been changed circumstances since the time of Ms. Brashear's initial sentencing.

34. As the Court is aware, by far the largest creditor in this ongoing Chapter 11 case is the City of Newark, whose funds were wrongfully diverted by those who have pled guilty in connection with the criminal cases, including Ms. Watkins Brashear and Mr. Bernard. We believe it would be inequitable for the PBGC's claim, which includes over \$600,000.00 of entitlements asserted by Ms. Watkins Brashear and Mr. Bernard, to diminish the recovery from this Bankruptcy Estate to the City of Newark and other genuine creditors.

35. Based upon the foregoing, we respectfully request that this Court expunge the claims filed by the Pension Benefit Guaranty Corporation, Linda Watkins-Brashear, Donald Bernard, Sr. and Sharon E. Bernard in this Bankruptcy proceeding, together with such other and further relief as is just and equitable.

36. We hereby certify that the foregoing statements made by us are true, to the best of our knowledge, information and belief. We are aware that if any of the foregoing statements are willfully false, we are subject to punishment.

/s/ Hon. Dorothea O'C. Wefing
HON. DOROTHEA O'C. WEFING (RET)

Dated: March 18, 2019

/s/ Edwin H. Stier
EDWIN H. STIER, ESQ.

Dated: March 18, 2019