

KENT SUPERIOR COURT  
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STATE OF RHODE ISLAND  
KENT COUNTY

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SUPERIOR COURT

NANCY STRIULI, CLERK

Girard Bouchard, in his capacity as  
President of the Board of Directors  
of the Central Coventry Fire District  
*Plaintiff*

**COPY**

vs.

K.B. No. 12-1150

Central Coventry Fire District  
*Defendant*

**SPECIAL MASTER'S MEMORANDUM TO THE COURT**

On April 10, 2013, the above-entitled matter came before the Court on the Town of Coventry's ("Town") Motion for Priority Status and Other Miscellaneous Relief ("Loan Motion").<sup>1</sup> The Loan Motion sought, *inter alia*, this Court's approval of a \$300,000 loan offered to the Central Coventry Fire District ("District"), which loan was intended to provide operating capital to the District and defer its court-ordered closing as of midnight on Thursday, April 11, 2013. In connection with approving the loan, the Court expressed its desire that the extra time the District could stay open was to be used wisely and towards a solution other than liquidation.

At the same hearing, the Court expressed its intention to provide clarity to the voters of the District, on an expedited basis, as to "whether or not the taxpayers of the Central Coventry Fire District are liable by lien on their property or otherwise for amounts owed by the district after all the assets have been sold." Transcript, April 10, 2012, at 8-9. The Court further explained that its objective was to identify "which parties fall into certain categories" for priority of payment in the event liquidation is required and accomplished. Transcript, 9. Near the

<sup>1</sup> Representative Patricia Morgan, Senator Kettle and James Sullivan ("Taxpayer Group") filed written objections to pleadings of both the Municipal Employees' Retirement System and the firefighters' union and presented their objections at prior hearings in this matter. While the Special Master is aware that the Court has granted various parties an opportunity to be heard given the public safety concerns at issue, the Special Master has taken no position as to whether the Taxpayer Group has standing to file pleadings, litigate or seek relief from this Court, and reserves his rights to do so with respect thereto.

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conclusion of the hearing, the Court requested that interested parties provide the Court with briefs regarding the liability of the District taxpayers to the following classes of claimants:

1. "the liability of the taxpayers to federal, state and local and quasi-government taxing authorities,"
2. "the liability to the Municipal Employees Retirement System,"
3. "to the fire firefighters [sic] and other employees covered under the current collective bargaining agreement,"
4. "liability to the State and the Rhode Island Department of Labor and Training for the expenditure of unemployment funds,"
5. "the liability of secured creditors," and
6. "liability to unsecured creditors."

Transcript, 9-11. On April 11, 2013, this Court entered an order identifying the issues for briefing and provided a deadline by which briefs were to be received by the Court.

In response to the Court's inquiry at hearing and the Court's Order dated April 11, 2013, Richard J. Land, the duly-appointed Special Master of the District ("Special Master") submits this memorandum.<sup>2</sup>

#### **I. POWERS AND DUTIES OF THE SPECIAL MASTER**

Generally, the powers and duties of a Special Master are set forth in the court's order appointing him. Peck v. Jonathan Michael Builders, Inc., 2006 WL 3059981 n. 9 (R.I. Super. Oct. 27, 2006) aff'd, 940 A.2d 640 (R.I. 2008) ("The order appointing the receiver or receivers sets forth their powers and duties.") (quoting R.I. Gen. Laws 7-1.2-1316(d)); R.I. Gen. Laws § 7-1.2-1316(a) ("In proceedings to liquidate the assets and business of a corporation the court has general equity jurisdiction and power ... to appoint a receiver or receivers pendent elite, with any powers and duties that the court, from time to time, directs.").

Paragraph 1 of the order appointing the Permanent Special Master provides the Special Master with the following powers and duties:

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<sup>2</sup> This pleading is not intended as a recommendation to the Court for the approval or rejection of any particular claim or class of claims. The Special Master hereby reserves his right to file a separate pleading providing his recommendation on the allowance of claims.

to take possession and charge of all of the said estate, assets, effects, property and business of the Defendant, including cash surrender value of any insurance owned by Defendant, and to preserve the same, and is hereby vested with title to the same; to collect and receive all the debts, property and other assets and effects of said Defendant, including such cash surrender value, with full power to prosecute, defend, adjust and compromise all claims and suits of, by or against said Defendant and to appear, intervene or become a party in all suits, actions or proceedings relating to said estate, assets, effects and property as may in the judgment of the Special Master be necessary or desirable for the protection, maintenance and preservation of the property and assets of said Defendant.

Order Appointing Permanent Special Master, November 12, 2013. In typical business liquidation, a Special Master, is obligated to pay the debts due from the entity if the funds realized from the liquidation of property are sufficient to pay all creditors in full. If there are insufficient funds to do so, the Special Master must make pro-rata distributions to court-approved creditors. See R.I. Gen. Laws § 6A-9-101 et seq; see also Hilti, Inc. v. HTM Development Corp., 2007 WL 809792, \*28 (Mass. Super. Feb. 13, 2007). However, a special mastership of a quasi-municipal entity which provides fundamental emergency services and raises operating funds through taxation of property owners is far from typical.

The Special Master is responsible for reviewing creditor claims and making a recommendation to this Court regarding approval, priority and payment of such claims. Super. R. Civ. P. 66(f). In order for the Special Master to carry out this obligation, the Special Master must first ascertain the full universe of claims, based upon creditor claims filed with the Special Master. To properly determine the funds available to satisfy approved claims, the Special Master must ascertain whether any of the assets of the District are available to satisfy claims and/or if the District taxpayers are obligated to supply the funds necessary to satisfy approved claims. It is apparent from the Court's inquiry and Order that the Court is also aware of this predicate.

However, the Special Master believes the inquiry is not so narrow. Whether the District taxpayers are liable for the obligations of the District and whether the Court may order the District to impose a tax levy on the ratable property in the District are issues which persist apart from liquidation. As explained below, and notwithstanding that the Special Master takes no personal satisfaction in the outcome, the Special Master believes that current law compels the Court to order the District to impose a tax levy on the ratable property of the District to satisfy legitimate obligations incurred as a result of the District's operations regardless of whether the District's assets are liquidated or if operations continue.<sup>3</sup>

## II. THE DISTRICT'S TAXING AUTHORITY

A fire district is "a governmental or political body which is incorporated as a convenient method of exercising a part of the sovereign power of the state. Its charter may be imposed on the inhabitants thereof without the necessity of their acceptance. It holds no property except for public purposes; and it may be abolished or its territorial limits may be changed at the will of the Legislature." East Providence Water Co. v. Public Utilities Commission et al., 128 A. 556, 558 (R.I. 1925). The District is a "public or quasi municipal corporation." Cole v. Fire-Engine Company, 12 R.I. 202, 204 (R.I. 1878); Wood v. Quimby, 40 A. 161 (R.I. 1898); State Ex. Rel. v. Cummings, 21 A. 546 (R.I. 1891).

Fire districts are vested with a portion of the state's taxing power, are true bodies politic, and their "inhabitants exercise a part of the sovereign power of the state." Kennelly v. Kent County Water Authority, 89 A.2d 188, 191 (R.I. 1952). Once the tax is levied, it becomes a lien against the property to which the tax is applicable by operation of law. R.I. Gen. Laws § 44-9-3 ("All taxes, charges, assessments, assessed against any person in any fire district ... shall

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<sup>3</sup> The Special Master believes that the only distinction to be drawn between liquidation and operation in this regard is the potential size of creditor claims and corresponding levy.

constitute a lien upon that person's real estate in the district for the space of three (3) years after the assessment, and, if the real estate is not alienated, then until the taxes or fees are collected.”).

Here, the General Assembly created the District by public law (“Charter”). See 2006, Chapter 492. The Charter incorporates the District’s inhabitants as a self-governing body, provides the District taxpayers with political rights when governing the District, and vests certain powers in the District’s board and taxpayers. See Kennelly, 89 A.2d at 190 (characteristics that distinguish quasi-municipal corporations). The District’s board of directors (“Board”) is elected by the qualified voters of the District. Charter, § 5(b). The Board is representative of the qualified voters and is responsible for carrying out the duties of the District. Section 6 of the Charter delineates the Board’s duties, specifically, the power to “order payment of the district’s bills and indebtedness” and “all necessary authority to operate and conduct the business of the district as necessary.” Charter §§ 6(a)(2), (b). Accordingly, when the Board incurred obligations on behalf of the District, it was exercising its power to order the payment of the District’s bills and indebtedness.

It is important to recognize that the connection between the qualified voters and the District’s debts is not severed by the Board or the District. The qualified voters of the District elected the Board and the Board incurred the liabilities. In further support of the uninterrupted connection, the qualified voters (other than the current budget) approved the expenditures proposed by the Board by affirmatively voting for the budgets.<sup>4</sup>

**III. THIS COURT HAS THE AUTHORITY TO ORDER THE DISTRICT TO LEVY A TAX SUFFICIENT TO SATISFY APPROVED CLAIMS AGAINST THE DISTRICT**

Over 100 years ago, the Rhode Island Supreme Court upheld the issuance of a writ of

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<sup>4</sup> There is no doubt that the qualified voters within the District received services and goods for which payment has not been made.

mandamus directing a fire district to levy a tax sufficient to satisfy a judgment against the fire district. Cole v. The Fire-Engine Company in East Greenwich, 12 R.I. 202, 1878 WL 4076 (R.I. 1878). Cole provides a blueprint for this Court to require payment of the obligations of the District by ordering the District to levy a tax.

In Cole, the Court characterized the fire-engine company (“Company”) as a public or quasi-municipal corporation. Cole, 12 R.I. at 203. The Company was empowered “to order taxes to be assessed on the buildings within said limits, for the purpose of purchasing, building, and keeping in repair suitable buildings, engines, wells, reservoirs, pumps, hose, and other apparatus.” Id. at 204. The plaintiff obtained a judgment against the Company for “\$1,150 as debt or damages.” Id. at 203. When the sheriff served an execution on the treasurer of the Company, the execution was returned unsatisfied because the Company had no funds or assets from which to make payment. Id. Thereafter, the judgment creditors petitioned the Superior Court for a writ of mandamus “commanding the [Company] to assess and levy upon its ratable property a tax sufficient to pay the judgment,” and to “collect and apply any revenue raised to the satisfaction” of the judgment. Id. In response to the petition, the Company was cited to show cause why the requested relief should not have been granted. Id. After a hearing, “an alternative writ of mandamus was issued to the corporation, commanding it to assess the tax and pay the judgment, or to appear and show why it should not.” Id. The Company denied liability for several reasons. The Company argued that it was a private corporation, rather than a public or quasi-municipal corporation, because the 1797 charter named specific persons “and all others who shall by them be admitted as members of their company.” Id. at 204. The Court rejected this argument and found that the Company was a public or quasi-municipal corporation because the “object, however, was public, namely the purchase and support of a fire-engine for protection

against fire. And the company was invested with an important public franchise, namely the right to assess and levy taxes not only to themselves, but also on the whole of the inhabitants of the compact part of the town of East Greenwich, including Pierce Street.” Id. at 204 (internal quotations omitted). Here, the District is a quasi-municipal corporation with a public purpose substantially similar to the Company in Cole.

Significantly, the Company’s charter in Cole was amended in 1850, almost thirty years before the Supreme Court ruled. Id. The 1850 charter was amended to include as electors all inhabitants of the Company over 21 years of age who owned real property. Id.<sup>5</sup> The 1850 amended charter in Cole is strikingly similar to the District’s Charter.

The 1850 amended charter in Cole

empower[ed] the corporation by a majority vote at any legal meeting attended by at least thirteen members, to order taxes to be assessed on the buildings within said limits, for the purpose of purchasing, building, and keeping in repair suitable buildings, engines, wells, reservoirs, pumps, hose, and other apparatus.”

Id. at 204. In comparison, the District’s Charter provides the

power to order such taxes and provide for the assessing and collecting of the same on the taxable inhabitants and property in said district as they shall deem necessary for purchasing fire engines, and all other implements and apparatus for the extinguishing of fire; for the purchase of land and buildings for keeping same; for the purchasing, installation, operation and maintenance of a suitable alarm system; for making cisterns and reservoirs; for paying the salaries of district officers and employees, as well as the members of the rescue unit known as Central Coventry Rescue.”

Charter, § 7(a).

The Company unsuccessfully argued that because no demand was made upon the Company to sell its property or make an assessment the writ should be denied rejecting the Company’s arguments. The Court instructed that “[i]t was the duty of the [Company], after

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<sup>5</sup> The Special Master believes that the 1850 amended charter undermines the efforts of the Taxpayer Group to distinguish Cole from the present case.

judgment recovered, to provide means for its payment.” Id. at 205. The Cole court authoritatively stated that in these circumstances, the permission to tax becomes an obligation to tax:

The respondent contends that the power given them to levy taxes is merely permissive; that it is given for certain purposes only, and that it does not appear that the judgment is founded upon any claim for the satisfaction of which a tax can be legally assessed. The respondent does not assert that the judgment is not, and we think the presumption is that it is, founded on some claim which the corporation has the power, express or implied, to satisfy by taxing its members, for we do not see how, except upon such a claim, the corporation could become liable to the judgment, and we think the power to tax, though permissive in form, creates, under the circumstances, a *duty* which can be enforced.

Cole, 12 R.I. at 205 (emphasis added).<sup>6</sup>

The Rhode Island Supreme Court also affirmed a writ of mandamus compelling a different quasi-municipal entity to levy a tax sufficient to satisfy a judgment. West Warwick School Committee v. Souliere, 626 A.2d 1280 (R.I. 1993). In West Warwick School Committee, the taxable inhabitants reduced a school committee budget, which if approved, would have funded a collective bargaining agreement with the teachers union. Id. at 1281. The school committee appealed to the Education Commissioner arguing that the appropriation was insufficient to implement the collective bargaining agreement or provide required educational services. Id. The Education Commissioner ordered the town to provide the school committee

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<sup>6</sup> The Special Master recognizes that any rights not otherwise delegated by the Constitution of the State of Rhode Island are vested in the people of the state, and no longer in the General Assembly, which, at one time, was the holder of all residuary powers formerly possessed by the King of England. R. I. CONST. art. I § 24; In re Advisory Opinion to the Governor, 732 A.2d 55, 62-63 (R.I. 1999). However, the reversion of this power to the people of the state and away from the General Assembly does nothing to undermine either the application of Cole or this Court’s authority to issue a writ of mandamus to direct the Special Master to levy on the taxable property within the District for the purpose of satisfying the District’s obligations. Both before and after the 2004 Constitutional Amendment effecting this change, the authority to tax was vested in the General Assembly. R.I. CONST. art. VI § 12 (“The general assembly shall, from time to time, provide for making new valuations of property, for the assessment of taxes, in such manner as it may deem best.”). As it has in several instances, the General Assembly has delegated a portion of that authority to the District. P.L. 2006, Chapter 492 § 6. Such authority is delegable. Cummings v. Shorey, 781 A.2d 680, 686 (R.I. 2000) (assessing taxes is an act “authorized by our state’s constitution and delegated in turn by the General Assembly to the various municipal assessors”). Cole, then, is not – in any way – abrogated by the Constitutional amendment. Cole simply stands for the proposition that a municipal or quasi-municipal corporation that has the authority to levy taxes must do so to satisfy accrued liabilities of the municipal or quasi-municipal corporation. And that if it doesn’t, the Court, by employing a writ of mandamus, may order that it do so.



with the necessary funds. Id. The school committee initiated proceedings in the Superior Court which held that the amounts ordered by the Education Commissioner were a debt against the town and that mandamus should issue “ordering defendant tax assessor to assess the taxable property of the town of West Warwick and ordering the tax collector and defendants to collect sufficient taxes to raise the sum.” Id. at 1283. The Supreme Court affirmed the issuance of the mandamus ordering the levy of taxes to satisfy the debt. Id.

Even though West Warwick School Committee involves a school committee and education, both the principles applied by the Court and the relative circumstances of the parties are analogous to the District. Both the school committee and the District are quasi-municipal agencies. The inhabitants of both quasi-municipal agencies voted against a budget that funded a collective bargaining agreement and other operating expenses. In both scenarios, the quasi-municipal agencies were left unable to pay obligations and provide necessary services and both sought court intervention.

Neither Cole nor West Warwick School Committee has been overturned or criticized by any later decision of the Rhode Island Supreme Court; therefore, both are binding on this Court.<sup>7</sup>

Viewing the situation in a broader lens, the United States Supreme Court has indicated that federal courts have the authority to issue the writ of mandamus to compel local governmental bodies to levy taxes adequate to satisfy their debt obligations:

[A] court order directing a local government body to levy its own taxes is plainly a judicial act within the power of a federal court.

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<sup>7</sup> A search of Cole's history indicates that the Rhode Island Supreme Court has cited Cole five times, one as recently as 1981. State ex rel. Cummings v. Crawford, 21 A. 546 (R.I. 1891); Wood v. Quimby, 40 A. 161 (R.I. 1898); East Providence Water Co. v. Public Utilities Commission et al., 128 A. 556 (R.I. 1925); McCoy v. Nolan, 62 A.2d 330 (R.I. 1948); Flynn v. King, 433 A.2d 172 (R.I. 1981). Two other states have cited the Cole decision for its discussion of a quasi-municipal corporation and alternative writ of mandamus. See Sutter v. Milwaukee Board of Fire-Underwriters, 155 N.W. 127 (Wis. 1915) (quasi-municipal corporation); Pennington v. Gilbert, 129 A. 905 (Md. Ct. App. 1925) (alternative writ of mandamus). None of the Rhode Island Supreme Court decisions citing Cole, nor the cases from other jurisdictions citing Cole, challenged, questioned or limited Cole, its holding or its reasoning.

We held as much in Griffin v. Prince Edward County School Bd., 377 U.S., at 233, 84 S.Ct., at 1234, where we stated that a District Court, faced with a county's attempt to avoid desegregation of the public schools by refusing to operate those schools, could "require the [County] Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system..." Griffin followed a long and venerable line of cases in which this Court held that federal courts could issue the writ of mandamus to compel local governmental bodies to levy taxes adequate to satisfy their debt obligations.

Missouri v. Jenkins, 495 U.S. 33, 55 (1990) (citing Griffin v. Prince Edward County School Bd., 377 U.S. 218 (1964)) (other citations omitted).

The court-ordered imposition of a tax levy is likewise supported in other jurisdictions where a municipal or quasi-municipal entity incurs, but fails to satisfy an obligation. For instance, in Wofford v. Bettis, 275 S.W. 903, 904 (Ark. 1925), the Fisher Road Improvement District, created pursuant to legislative act of the Arkansas general assembly, assessed taxes for improvements and hired contractors to perform work. Id. After the work was commenced, the district abandoned the project without payment of the obligations incurred and the contractors brought claims for unpaid debts. Id. The chancery court rendered a decree specifying the amount due each claimant, and "appointed a receiver to collect the assessments for the purpose of paying off [creditor] claims, and directed that an assessment be made of 11 per centum of the benefits on the respective tracts of land in the district as already assessed and approved pursuant to statute." Id.<sup>8</sup>

Similarly, a Florida appellate court held that the trial court did not abuse its discretion in ordering a city, which was the receiver of a wastewater treatment plant, to increase the water and

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<sup>8</sup> The taxpayers affected by the District's tax in Wofford only appealed the methodology of the tax, not the court's authority to levy it. The underlying circumstances were the same. A quasi-municipal corporation was ordered by the court to impose a tax on its inhabitants to satisfy creditor claims set by a decree. The statute involved in Wofford is a distinction which does not detract from this Court's authority to levy a tax.

sewer rates charged to users of the utility to satisfy amounts due for current and past rent. City of Kissimmee v. Dep't of Env'l Regulation, 753 So. 2d 770 (Fla. Dist. Ct. App. 2000). The City of Kissimmee was appointed receiver of a private utility as a result of Department of Environmental Regulation violations. Id. at 770. The private utility operated on leased land and the landlord brought an action against the city/receiver for eviction and to recover unpaid rental amounts. Id. The landlord reduced its claim for back rent to a judgment and filed a motion seeking an order directing the city/receiver to increase sewer rates to satisfy the judgment and ongoing rental amounts. The Court noted that

[a]s court-appointed Receiver, the City is required to operate, manage and control the Utility for the benefit of the customers serviced. This logically includes paying its lessor any rents due and owing under the lease to prevent possible eviction of the Utility for non-payment of rent, thereby putting customers in jeopardy. The City has not fulfilled its duty as Receiver as it has yet to pay the operational expense of rent. Since the City has failed to protect the interest of the customers serviced, we find the trial court was within its discretion in taking action at the request of Ash Chemical to insure that the operational expense of rent would be subsequently accounted for. It is well established that the court which appoints a receiver may issue orders as are necessary and proper for the property and interests of those concerned. Moreover, where an operating receivership in which the public has an interest is authorized, the expenses of operation take priority.

City of Kissimmee v. Dep't of Env'tl. Regulation, 753 So. 2d 770, 772 (Fla. Dist. Ct. App. 2000)

(citations omitted).

Additionally, an Illinois appellate court also held that judgment creditors may compel satisfaction of judgments against municipal corporations through mandamus directing payment or levy of taxes sufficient to raise funds to satisfy outstanding judgments against the municipality. Estate of DeBow v. City of East St. Louis, 592 N.E.2d 1137, 1142-43 (Ill. App. 1992)

In addition to the support provided by the foregoing judicial decisions, the Special Master's conclusion is likewise supported by statutory authority to levy taxes to satisfy

judgments within the Rhode Island General Laws:

In case the electors, or the city council, upon due warning given them, shall not take due and effectual care to reimburse, pay, or satisfy the treasurer the money, costs, and charges by the treasurer expended, or recovered against the treasurer, upon complaint filed with the superior court at any time after this, by the treasurer or by the person recovering the judgment named in § 45-15-6, setting forth the facts, *the court may order the assessors of the town or city to assess upon the ratable property, and the collector to collect, a tax sufficient for the payment of the judgment, with all incidental costs and charges, and the expense of assessing and collecting the tax.*

R.I. Gen. Laws § 45-15-7 (emphasis added).

Although § 45-15-7 is textually limited to municipal assessors, fire district tax assessors have “all the powers and privileges and [are] subject to all the duties and liabilities which are conferred or imposed upon collectors of taxes in cities or towns.” R.I. Gen. Laws § 44-9-4. Therefore, if the Court can order a tax assessor for a city or town to levy a tax pursuant to § 45-15-7, the Court can issue the same order to the District’s tax assessor.

Section 45-15-7 demonstrates that the Rhode Island General Assembly contemplated that entities which have been delegated taxing authority can exercise such authority to “*pay, or satisfy the treasurer the money, costs and charges by the treasurer expended, or recovered against the treasurer, upon complaint filed with the superior court, by the treasurer...*” without the approval of owners of the taxable property. R.I. Gen. Laws § 45-15-7 (emphasis added).

In light of all the foregoing support, the Special Master believes that it is indisputable that a quasi-municipal corporation with the power to tax delegated to it must tax to satisfy a judgment against it. Moreover, the Special Master believes that this Court has the power, and obligation, to order the imposition of a tax levy upon the taxable property located within the Central Coventry Fire District to satisfy the obligations incurred by the District. The fact that the District is now

under the control of the Court through its Special Master is a distinction without meaning - where the District has the authority to levy taxes, it has the obligation to do so to satisfy its obligations; the Special Master effectively stands in the same “shoes” as the District. Moreover, the fact that the obligations have not been reduced to judgments as in the other cases cited is likewise irrelevant. It is axiomatic in Rhode Island that a court-appointed receiver, or as in this case, a special master with the powers of a receiver, is charged with reviewing and recommending claims to the Court for allowance, or where there are valid objections, for disallowance in whole or in part. This process effectively liquidates creditor claims in the same manner as if they were reduced to judgment.<sup>9</sup> Accordingly, the Court is vested with the authority to impose a tax upon the ratable property within the District and apply the revenue raised therefrom to the District's debts. This power is independent of, and in addition to, the right of the electors of the District to vote upon a levy to pay the on-going operating expenses of the District.<sup>10</sup>

**IV. THIS COURT SHOULD FOLLOW ESTABLISHED RHODE ISLAND INSOLVENCY PRACTICE IN DETERMINING A PRIORITY SCHEME FOR THE PAYMENT CLAIMS**

In Rhode Island, there is no statute which establishes a priority scheme for payment of creditors' claims in receivership or special mastership proceedings. In practice, the Rhode Island courts can “look[] to the Bankruptcy Act and to decisions by the federal courts for guidance in determining priority of claims including those of secured claimants.” Leonard Levin Co. v. Star Jewelry Co., 175 A. 651, 653 (R.I. 1934); Patel v. Shivai Nehal Realty, LLC, 2012 WL 5380060

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<sup>9</sup> At the April 10 hearing, the Court was clear that it was not asking any party to reduce its claim to a defined amount at this time. Certainly, the Special Master is not suggesting that any tax should be levied until such time as the nature and amount of any and all such claims are defined, whether by agreement with creditors or as determined by the Court.

<sup>10</sup> Regardless of the Court's specific authority to require the Special Master to levy a tax to pay the District's liabilities, the Court enjoys – and has always enjoyed – the authority to “fashion remedies to insure equity and justice to litigants and parties.” City of Providence v. Employee Retirement Bd. of City of Providence, 749 A.2d 1088, 1100-01 (R.I. 2000).

(R.I. Super. Ct. Oct. 26, 2012) (“Where state receivership law provides minimal guidance, [the Superior Court] looks to the Bankruptcy Act and to decisions by the federal Courts for guidance.”); Reynolds v. E & C Assoc., 693 A.2d 278, 281 (R.I. 1997). However, to be clear, the Bankruptcy Code and its provisions are not binding upon a receivership court. Hill v. M.S. Alpers & Sons, 256 A.2d 10, 19 (R.I. 1969).<sup>11</sup> In addition to seeking guidance from the Bankruptcy Code, the Special Master believes that the Court must look to common law and equitable principals. See Clark on Receivers §§ 638, 640, 662, 669-70, 676 (setting forth principles of priority). If nothing else, following established Rhode Island insolvency practice here allows for the application of an ordinary procedure in what is clearly an extraordinary situation. While reference to the Bankruptcy Code priority scheme is appropriate for guidance in this case, the Special Master believes that the priority amounts of actual claims in this case should be considered after review by the Special Master of all claims and upon recommendation to the Court.

**V. TREATMENT OF POTENTIAL CLAIMANTS IDENTIFIED BY THE COURT**

The Special Master provides the following in response to the Court’s inquiry and Order.<sup>12</sup> The potential claimants are discussed in the sequence identified by the Court.

**a. FEDERAL, STATE AND LOCAL AND QUASI-GOVERNMENT TAXING AUTHORITIES**

Without waiving any of his rights, the Special Master refers the Court to the Rhode Island Division of Taxation’s Informational Report and Memo on Tax Liabilities relative to the treatment of claims for Rhode Island state taxes. At this time, the Special Master is unaware of any potential tax claims from states other than Rhode Island.

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<sup>11</sup> The Special Master believes that this Court should look to the Bankruptcy Code for guidance on priority of creditors’ claims; it is not the Special Master’s position that all provisions of the Bankruptcy Code relative to priority claims are automatically adopted in receivership and special mastership proceedings.

<sup>12</sup> Again, the Special Master reserves his right to file with the Court his recommendation on the allowance of claims.

Without waiving any of his rights, the Special Master believes that debts to certain quasi-municipal agencies may create a lien on real estate, the priority of which cannot be determined until such time as all competing claimants are identified. See e.g. R.I. Gen. Laws § 39-15-12. The Special Master will investigate the claims filed by the Kent County Water Authority and other similar agencies.

**b. MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM**

Without waiving any of his rights, the Special Master refers the Court to the Municipal Employees' Retirement System's ("MERS") Motion for Order Allowing Priority Status of Claims and Motion to Compel Tax Levy and Petition for Issuance of Writ of Mandamus relative to the treatment of the MERS claim. To the extent that any claim, or portion of a claim, asserted by MERS may have the status of a priority unsecured claim, such priority amount may share pro-rata with other claims of the same level.

**c. EMPLOYEES UNDER THE COLLECTIVE BARGAINING AGREEMENT**

Without waiving any of his rights, the Special Master refers the Court to the Central Coventry Firefighters Verified Motion for Temporary Restraining Order. Pre-Judgment Writ of Attachment and Order Directing Issuance of Fourth Quarter Tax Bills relative to the treatment of the claims under the collective bargaining agreement ("CBA").

Unless there is a plan enacted to save, rehabilitate or reorganize the District, it will close (whether upon Court Order or complete depletion of operating capital). An inevitable consequence of its closure will be the resulting breach of the CBA with the firefighters' union and the efforts of the union to recover damages on behalf of its members. See Collective Bargaining Agreement, Article VI (A) (executive board can present grievance to the Board of Directors of the District); Article VI (B) (president of the local or executive board can file a

grievance).

The Special Master believes that any claims for damages arising from breach of the CBA would be governed by traditional breach-of-contract principles. Any forward-looking damages award would have to take into account the March 31, 2015 expiration date and other principles of calculating contract damages, including the union's (and its members') obligations to mitigate their damages. If an award of damages in favor of the firefighters union becomes final and unappealable, the Special Master believes that a portion thereof may constitute a priority unsecured claim and the balance a general unsecured claim, with the priority amount sharing pro-rata with other claims of the same level.

**d. STATE AND THE RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING FOR THE EXPENDITURE OF UNEMPLOYMENT FUNDS**

Without waiving any of his rights, the Special Master believes that debts to certain quasi-municipal agencies may create a lien on real estate, the priority of which cannot be determined until such time as all competing claimants are identified. See e.g. R.I. Gen. Laws § 28-43-20. The Special Master will investigate the claims filed by the Department of Labor and Training and other similar agencies.

**e. SECURED CREDITORS**

Without waiving any of his rights, the Special Master believes that secured creditors should be treated in accordance with the Uniform Commercial Code, R.I. Gen. Laws § 6A-9-101 et. seq., and the title laws of Rhode Island. Generally, a properly perfected secured creditor or mortgage holder is entitled to the value of its collateral.<sup>13</sup> If the value of the collateral is insufficient to satisfy the secured claim, the deficiency amount will be treated as a general unsecured claim.

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<sup>13</sup> The Town of Coventry was afforded a lien on certain assets of the District by Order dated April 11, 2013.




**f. UNSECURED CREDITORS**

Without waiving any of his rights, the Special Master believes that once claims are approved by the Court, the Special Master will be able to ascertain the amounts available for distribution to different classes of creditors. General unsecured creditors will be treated pursuant to R.I. Gen. Laws § 6A-9-101 et. seq., and any payment to them shall be pro rata, based on the amount of funds remaining to satisfy claims.

**VI. CONCLUSION**

The Special Master believes that this Court has the power to order a levy to satisfy all of the liabilities incurred by the District.<sup>14</sup> Although the extent of this liability has yet to be determined, if the court were to agree with the Special Master's opinion, all court-approved claims, regardless of priority, secured or unsecured status, would be paid in full through the collection of one or more court-imposed levies upon the ratable property in the District.

  
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<sup>14</sup> The Special Master believes that the liabilities of the District, other than liabilities for on-going operating expenses, will be between \$2.5 million and \$3.0 million if the District continues to operate. In contrast, the Special Master has been advised that creditor claims resulting from the closure of the District could be as high as \$23 million.