Docket #1958 Date Filed: 8/5/2013

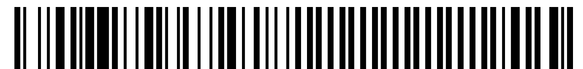
IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

In re:	)	
	)	
JEFFERSON COUNTY, ALABAMA, a political subdivision of the State of Alabama,	)	**Case No. 11-05736-TBB**
	)	**Chapter 9**
Debtor.	)	

ANDREW BENNETT, Jefferson County Tax Assessor, Bessemer Division, an elected official of Debtor; RODERICK V. ROYAL, Birmingham City Council President, an elected official of the City of Birmingham; STEVEN W. HOYT, Birmingham City Council President Pro Tempore, an elected official of the City of Birmingham; MARY MOORE, Alabama State Legislator, an elected official of the State of Alabama; JOHN W. ROGERS, Alabama State Legislator, an elected official of the State of Alabama; WILLIAM R. MUHAMMAD; CARLYN R. CULPEPPER, Lt. Col. Rt.; FREDDIE H. JONES, II; SHARON OWENS; REGINALD THREADGILL; RICKEY DAVIS, Jr.; ANGELINA BLACKMON; SHARON RICE; and DAVID RUSSELL,

Ratepayer/Creditors,

RATEPAYER/CREDITORS OBJECTIONS TO REVISED DISCLOSURE STATEMENT (THE "DISCLOSURE STATEMENT") REGARDING CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA <u>(DATED JULY 29, 2013)</u>



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Case 11-05736-TBB9 Doc 1958 Filed 08/05/13 Entered 08/05/13 00:20:27 Desc Main Document Page 1 of 23

TABLE OF CONTENTS

I. INTRODUCTION ... 3

II. BASIS FOR RATEPAYER/CREDITOR OBJECTIONS TO THE REVISED DISCLOSURE STATEMENT ... 6

A. The Creditors Voting on the Plan Need to Know that the Illegality of Swap/Warrants Dispute Alleged in the Complaint is Not Being Compromised Properly and the County Debtor Has More Settlement Value than what they have Agreed to Receive.

B. Disclosure Statement Fails to Disclose the Financial Capability of the Users Connected to the Sewer System, Compliance with EPA User Household Capability Requirements or Amendment 73 Reasonableness and Voter Approval Requirements ... 7

C. The Disclosure Statement Fails to advise Impaired Creditors that the Series 2002C, 2003B and 2003C Warrants are Subject to a Claim of being *Ultra Vires and Unenforceable* Because Issuance was Procured by Bribes, Net Proceeds from the Issuance were used to Purchase Swaps for Private Benefit—Not Projects, and the Lien on Sewer revenues is Unenforceable because the Levying and Collection of Sewer Fees Requires Voter approval10

D. The Reluctance of the Debtor/County to Support the *Ultra vires* Request for Declaratory Judgment Invalidating the Series 2002C, 2003B and 2003C Swap/Warrants as a potential Source of Recovery does not indicate a Sincere Attempt by the Debtor to readjust its debts by maximizing the Creditors' Recovery. ... 12

E. The Disclosure Statement Fails to Disclose that the Plan Cannot Be confirmed Without (1) Separately Classifying Sewer Warrant Claims for that were not subject to the SEC Decree and (2) Separately Classifying Ratepayer/Creditors Claim ... 15

F. Under 11 USC 943, a special tax payer may object to confirmation of the Plan, and this was not disclosed ... 18

G. Under Rule 904 neither the Creditors nor the court may control expenditures for municipal services or otherwise control the affairs of a municipality indirectly through the mechanism of proposing a plan of adjustment of the municipality's debts that would in effect determine the municipality's future tax and spending decisions. ... 18

H. The Debtor's Attempt to Deny Ratepayer/Creditors the Protection of Part II of the Rules By Mooting AP Case 120 Claims with Plan Confirmation Hearings Violates Bankruptcy Procedural Rule 7001. ... 18

I. Under 11 USC 943(b)(6) to confirm a plan, any regulatory or electoral approval must be obtained, or the plan expressly conditioned on such approval. The New Sewer Warrants under the Plan cannot be acted upon without a majority vote under Amendment 73 of the Alabama Constitution. The Disclosure Statement should be amended to reflect this vote is a condition to confirmation. ... 21

III. Conclusion ... 21

II. INTRODUCTION

On June 4, 2012, a group of Jefferson County elected officials and citizens who pay sewer fees and charges as users of the County Sewer System (the "System"), and who pay County Sewer Taxes which have been imposed Countywide to build the System since 1901 (hereinafter referred to as "Ratepayer/Creditors"), filed a Class Creditor Claim in this bankruptcy proceeding (hereinafter referred to as the "Ratepayer/Creditor Claim" or the "Claim"). This Claim was for overcharges of $1.63 billion in sewer charges resulting from the unlawful issuance and execution of over $8 billion in Swap/Warrants by the County.

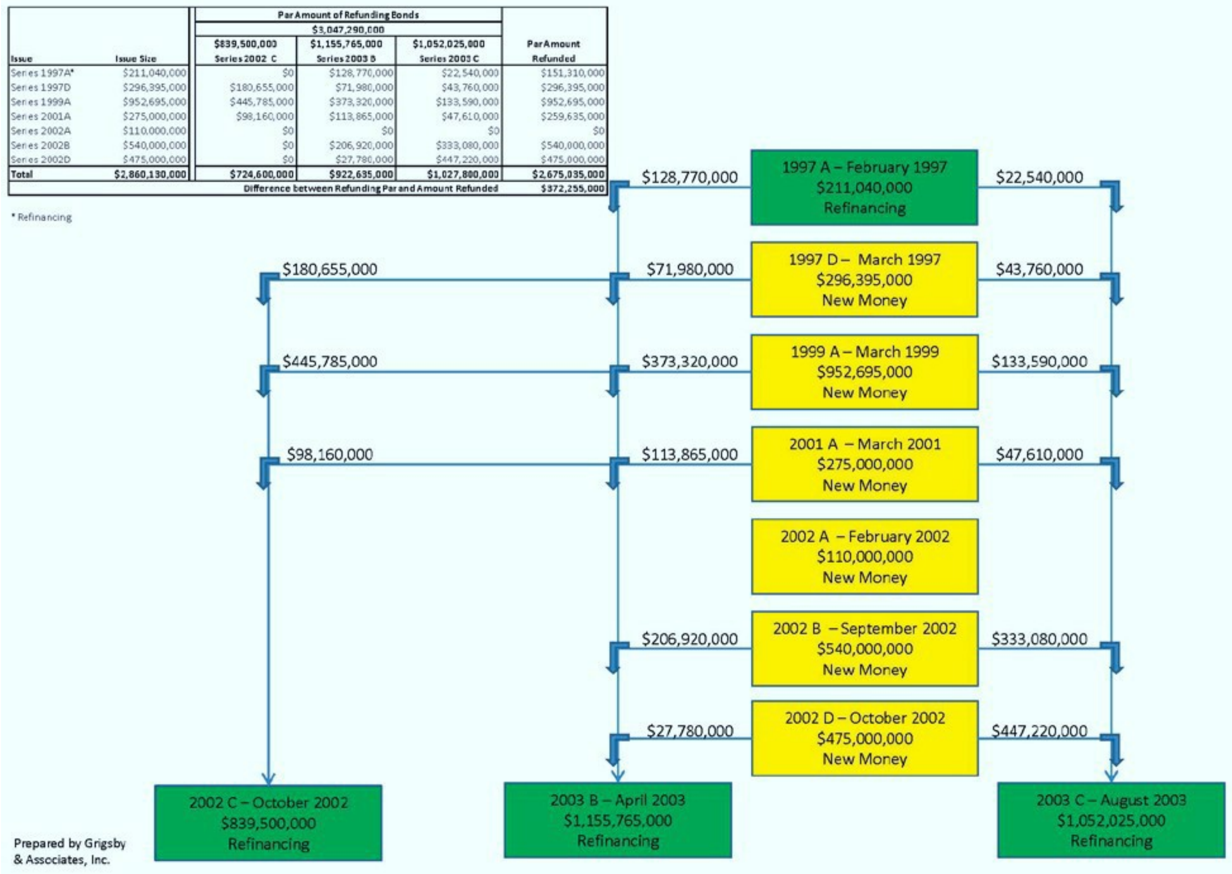
These Swap/Warrants were debt instruments comprised of two components: (1) Series 2002C, 2003B and 2003C warrants requiring the County to pay $3 billion in principal and "adjustable interest" and (2) over $5 billion of contracts, purchased with the County's credit behind the proceeds of the $3 billion in warrants, called interest rate swaps (collectively the warrant and swap contract components are collectively referred to hereinafter as Swap/Warrants). Each Official Statement for the Series 2002C, 2003B and 2003C warrants expressly stated that the purpose of the issue was to purchase interest rate swaps. These interest rate swaps were simulated to keep the interest on the adjustable rate warrants at a rate lower than the original $2.6 billion in warrants used to fund Sewer System projects (called "Project Warrants") but in actuality created another $5 billion in additional "notional" debt payable from Sewer Revenues.

The $5 billion in swap contracts required the County to pay a debt amount equal to the difference between a fixed rate or adjustable rate, and a second adjustable rate, both adjustable rates based on a different LIBOR interest rate index. LIBOR is a pseudonym for the adjustable rate at which banks borrow from each other. These Swap/Warrants did not work because the

adjustable rate on the warrant component of the Swap/Warrants increased at a much higher rate than the adjustable payment in the swap contract component of the Swap/Warrants. The result was that the County did not have sufficient sewer fee collections to pay the debt due on either $3 billion warrant debt component of the Swap/Warrant debt or the debt on the swap component of the Swap/Warrants of $5 billion. The County had substituted $2.6 billion in fixed rate debt for over $8 billion in Swap/Warrant debt which was far more expensive than the community served by the System could afford. In addition the $8 billion in Swap/Warrant debt served no public purpose.

The roughly $200 million of remaining principal of the warrants not affected by the SEC cease and desist order discussed in the next paragraph—Series 1997A , 2001A and 2002A (hereinafter collectively referred to as the "Compliant Warrants) should be described in the Disclosure Statement to have not been corruptly procured and should be classed in a separate unimpaired class from the Swap Warrants. There is no need to accelerate these warrants since the impairment because of issuance in violation of law should only impact the Swap/Warrants. These Compliant Warrants and any unpaid interest could be repaid post-partition in the ordinary course of business thereby decreasing the size of the New Warrant issue and attendant costs.

In 2008, it was disclosed by the U.S. Securities and Exchange Commission that bribes had been paid by JPMorgan, Goldman Sachs and certain local broker dealers of corruptly procure the issuance of three series of Swap/Warrants coupled with the County's purchase of related swap contracts: Series 2002C, 2003B and 2003C, as shown in the green boxes at the bottom of the following chart [the Project Warrants are shown in yellow]:



Jefferson County Issued $3,047,290,000 in Bonds to Refund $2,675,035,000 in Principal. A Difference of $372,255,000.

Issue	Issue Size	Par Amount of Refunding Bonds $3,047,290,000			Par Amount Refunded
		$839,500,000 Series 2002 C	$1,155,765,000 Series 2003 B	$1,052,025,000 Series 2003 C	
Series 1997A*	$211,040,000	$0	$128,770,000	$22,540,000	$151,310,000
Series 1997D	$296,395,000	$180,655,000	$71,980,000	$43,760,000	$296,395,000
Series 1999A	$952,695,000	$445,785,000	$373,320,000	$133,590,000	$952,695,000
Series 2001A	$275,000,000	$98,160,000	$113,865,000	$47,610,000	$259,635,000
Series 2002A	$110,000,000	$0	$0	$0	$0
Series 2002B	$540,000,000	$0	$206,920,000	$333,080,000	$540,000,000
Series 2002D	$475,000,000	$0	$27,780,000	$447,220,000	$475,000,000
Total	$2,860,130,000	$724,600,000	$922,635,000	$1,027,800,000	$2,675,035,000
		Difference between Refunding Par and Amount Refunded			$372,255,000

* Refinancing

The Ratepayer/Creditors have alleged that these 3 series of Swap/Warrants in the green boxes immediately above were void from their inception because their issuance and execution were procured by fraud and bribery, because the $8 billion in Swap/Warrant debt violated the Alabama constitution because the County's good credit was used to benefit private persons, and because levy and collection of the sewer fees to pay the $8 billion in Swap/Warrant debt was not approved by the voters as required by Amendment 73 to the Alabama constitution. On July 30, 2013, Ratepayer/Creditors filed their Opposition to the June 30, 2013, disclosure statement and concurrently therewith their "RATEPAYER/CREDITORS OBJECTIONS TO PLAN OF ADJUSTMENT (THE "PLAN OPPOSITION")" which is hereby incorporated herein by reference and will be referred to herein. This Supplemental Opposition to Disclosure Statement

is filed in opposition to the County's revised Disclosure Statement dated July 29, 2013. Ratepayer/Creditors did not fully appreciate that the revised Disclosure Statement had been filed until after filing the July 30, 2013 Opposition.[1]

Ratepayer/Creditors object to the Revised Disclosure Statement for the following reasons:

III. BASIS FOR RATEPAYER/CREDITOR OBJECTIONS TO THE REVISED DISCLOSURE STATEMENT

A. The Creditors Voting on the Plan Need to Know that the Illegality of Swap/Warrants Dispute Alleged in the Complaint is Not Being Compromised Properly and the County Debtor Has More Settlement Value than what they have Agreed to Receive.

This Plan is aimed at mooting the Ratepayer/Creditors' AP Case 120 Claim of illegality as a compromise and settlement of contested claims. This proposed Plan compromise does not, however, go far enough and should be better. The Disclosure Statement does not notify creditors that for the Plan to be confirmed, a necessary finding by the Court will be that the Plan has been proposed in good faith and not by, any means forbidden by law, or compromises on illegality. 1129(a)(3). The issue of illegality is being compromised and settled in the Plan for $1.1 billion in concessions plus contingent obligations that reduce the value of this settlement even more. Given the amount contributed by JPMorgan, the illegality argument, based primarily on the corrupt activities of JPMorgan, but which is a defense applicable to all existing Swap/Warrant holders since "holder in due course" defenses do not apply to warrants, appears to be the direct cause of the amount agreed to in the compromise so far. However, as shown by the Alternative Financing Plan (Plan Opposition pp. 8-10) the alleged illegality dispute is not being compromised properly, and the creditors voting on the plan need to know that the County-Debtor has more

[1] Mr. Grigsby, counsel for the Ratepayer/Creditors had been ill for the last week and unable to meet the court ordered August 2 deadline to respond to the Revised Disclosure Statement filed July 29.

settlement value then what they have agreed to receive, so far. The Alternative Financing Plan costs the ratepayers $3.6 billion. The Debtor-Swap/Warrant holder compromise Plan costs $14.3 billion. This goes to the heart of whether the Plan is in the best interest of creditors and is feasible under 11 USC 943(b)(7).

B. Disclosure Statement Fails to Disclose the Financial Capability of the Users Connected to the Sewer System, Compliance with EPA User Household Capability Requirements or Amendment 73 Reasonableness and Voter Approval Requirements

1. *No Information is Disclosed to Properly Evaluate Reasonable Ability to Collect Sewer Revenues.*

The Disclosure Statement provides no information on the demographics of the roughly 140,000 households connected to the Sewer System and paying sewer fees which make up all directly pledged sewer warrant revenues (see, e.g. Economic and Demographic disclosure on pages 4-12). The information disclosed relates to the State of Alabama, Jefferson County as a whole, where almost half of the households are using septic tanks instead of the Sewer System, and the Birmingham-Hoover MSA. Birmingham-Hoover, AL Metropolitan Statistical Area which consists of seven counties (Bibb, Blount, Chilton, Jefferson, St. Clair, Shelby, and Walker) centered around Birmingham. The population of this MSA as of the 2010 census was 1,128,047 and its demographics bear little resemblance to the Sewer System user base with respect to house hold income, percentage of household income paid for housing and utilities or percentages in single family or rental units. Under EPA consent decree guidelines a major consideration in establishing fair and reasonable and non discriminatory sewer rates is the user household financial capability (See Exhibit J to Plan Opposition "GSO Guidance for Financial Capability Assessment and Schedule Development", p.3). The Consent Decree contemplated implementation costs of $30 million, which the county had to deposit into a trust fund. (See, Case 2:08-cv-01703-RDP Document 8-5 Filed 09/23/08 Pages 1-13.) The $3 billion now owed is 100 times the amount of

implementation cost contemplated under the Consent Decree and the County has presented no feasibility study showing that the financing plan for issuing new Sewer Warrants is fair and reasonable under the EPA guidelines for user household financial capability or Amendment 73 requirement for "reasonable and non-discriminatory" fixing of rates among users or Amendment 73 requirement for voter approval of levying and collection of sewer charges and fees.

The Disclosure Statement must be amended to provide demographic information on the actual user base, and a feasibility study showing compliance with EPA guidelines, and Amendment 73 "reasonableness" and "voter approval requirements before a creditor vote can be confirmed as fair and reasonable. Without knowing the quality of revenues or earnings there is no way to properly value the Sewer System for purposes of determining fair and equitable distributions.

2. *No Information is Disclosed on the Median Household Income of the Users Paying Sewer Bills.* The Economic and Demographic disclosure on pages 4-12 fails to describe the Median Household Income of actual System users paying sewer bills or that the increase in user fees from $140 million and year to $600 million a year in the Financial Plan will be feasible (see, Exhibit B to Plan Opposition). In fact, one of the consultants to the County, GLC (see Exhibit A to initial Opposition to June 30 disclosure Statement, p. 20), shows the median income of Jefferson County of $45,000 as a basis to recommend rate increases, when the median income of actual user households is 50% less or roughly $30,000 (See Exhibit G to Plan Opposition). The Disclosure Statement must be amended to disclose the Median Household Income of the persons in census tracts actually connected to the Sewer System. See, for example, Exhibit J to Plan Opposition showing those census tracts in the Sewer service area that are more than 20% *below* the poverty level. Only when these actual numbers are provided (and they are readily available from the Birmingham Waterworks billing computer which has zip codes that can be correlated to census tracts MHI as maintained on the U.S. Census database) can the value of the earnings of the System

be considered by Creditors entitled to vote.

Instead of providing relevant information on user MHI essential to valuation of the System earnings, the Disclosure Statement wrongfully suggests this information is not available:

> "The sufficiency of the gross revenues from the operation of the Sewer System to pay debt service on the New Sewer Warrants, to pay operating expenses of the Sewer System, and to make capital expenditures necessary to maintain or expand the Sewer System may be affected by events and conditions relating to, among other things, population and employment trends, weather conditions, and political and economic conditions in the County, the nature and extent of which are not presently determinable." (Disclosure Statement, at p. 94)

Creditors are entitled to relevant information on valuation and accurate projection of revenues prior to voting on the Plan. As authority see, In re Mount Carbon Metro. Dist., 242 B.R. 18, 37-38 (Bankr. D. Colo. 1999). In this case involving a water a sewer district, the bankruptcy court denied Plan confirmation because revenue projections were insufficient to determine feasibility of the Plan. It stated in relevant part:

> "On the most superficial level, the District has failed to establish the feasibility of the Plan because it has projected future revenues, but not future expenses. The omission is particularly glaring in light of (1) the District's proposed assumption of all executory contracts (at least four of which require infrastructure installation), (2) the District's need for additional water rights and water/sewer infrastructure in order to develop, and (3) the District's Service Plan. ***Without reasonable projections of future expenses to compare to future revenues, the District has failed to provide the evidence necessary to establish feasibility. ****** ***The District's reliance upon landowners to cover all future infrastructure costs is unsupported by any evidence that landowners are able and willing to pay.*** According to the Plan Funder Agreement, the District cannot charge fees, increase taxes or secure any new financing without CDN's consent. Although the District may plan to charge for water and sewer service on a usage basis, no projections of such revenues were provided.

In the Disclosure statement there are no projections or feasibility study showing the costs of the Plan are within the ability of the County System users' ability to pay. Such disclosures must be made to determine if the Plan is fair and equitable and feasible under rule 943(b) (7). See, Prime Healthcare Mgmt. v. Valley Health Sys. (In re Valley Health Sys.), 429 B.R. 692, 711 (Bankr.

C.D. Cal. 2010) ("The court has an independent obligation to determine that a proposed plan meets the confirmation requirements of § 943(b), notwithstanding creditor approval. Mount Carbon, 242 B.R. at 36.").

C. **The Disclosure Statement Fails to advise Impaired Creditors that the Series 2002C, 2003B and 2003C Warrants are Subject to a Claim of being *Ultra Vires and Unenforceable* Because Issuance was Procured by Bribes, Net Proceeds from the Issuance were used to Purchase Swaps for Private Benefit—Not Projects, and the Lien on Sewer revenues is Unenforceable because the Levying and Collection of Sewer Fees Requires Voter approval**

Ratepayer/Creditors have filed a Second Amended Adversary Complaint ("Complaint") asking for a declaration that the three series of warrants that were the subject of the SEC consent decree be declared null and void because (1) any government contract obtained through bribery and fraud is void and unenforceable, (2) the $8 billion in actual and notional debt used to replace the $2.6 billion in fixed rate debt was incurred to benefit private banking profits and not for the benefit of the public was not debt for sewer projects which are constitutionally permissible, and (3) under Amendment 73, and fundamental due process, the voters have to approve any debt that could result in a lien on their property. (See Plan Opposition, pp. 8-25; Exhibit A, and F to Plan Opposition).

The net result of the relief requested would be an alternative plan that would finance $1.44 billion pay in full all Compliant Warrants (or continue to amortize such warrants in the ordinary course of business), *plus $1.24 billion of the Series 2002C, 2003B, and 2003C Swap/Warrants . This Alternative Financing Plan would refund to the County Ratepayers $10 billion in overcharges contemplated by the Plan (See, Plan Opposition "Alternative Plan resulting from a Determination of Swap/Warrant Invalidity")* which reads in part:

> "The net result from this alternative financing Plan would be debt service of $91.5 million a year for 40 years which given the $140.6 million per year presently collected would leave $49 million for Operations and Maintenance and Capital

> Plant Replacement and Refurbishment costs. This Alternative Financing Plan could be accomplished without a Rate Increase which means that total collections from the Sewer Users represented by the Ratepayer/Creditors would be $3,658,288,888 instead of $14,328,013,000. (See, Exhibit B, page 2, column 1 heading). If the court follows Alabama Law as discussed below, the cost to the Ratepayer/Creditors is 26% or approximately ¼ of the cost required under the Plan.[1] Further, elimination of the need for a Rate Increase results in an investment grade rating on the new warrants and therefore a much lower interest cost."

Although the County as debtor has the exclusive right to submit a Plan or withdraw from Bankruptcy, the Debtor/County has a duty to disclose the benefits of disallowing the Swap/Warrant Claims under Rule 1129 (a) (3)[2] and Rule 943(b) (4)[3] and under the Alternative Financing Plan as well and the litigation costs and risks required to secure the Alternative Financing Plan so the creditors voting on the Plan can properly evaluate the cost and benefit of implementing the Alternative Financing Plan. Because the Series 2002C, 2003B and 2003C series were refundings an added benefit to having these Series declared a nullity would be the assurance that the New Sewer Warrants were the first refunding and therefore tax-exempt under IRC 149(g) (See, discussion, Plan Opposition Section VIII, "THE PLAN UNLAWFULLY PURPORTS TO REFINANCE SEWER WARRANTS USED TO PURCHASE INTEREST RATE SWAPS, PAY BRIBES AND EXCESSIVE SOFT COSTS IN VIOLATION OF INTERNAL REVENUE CODE REQUIREMENTS THAT TAX EXEMPT DEBT BE USED FOR A PUBLIC PURPOSE RATHER THAN PRIVATE PURPOSES; ANY NEW SEWER BONDS MAY HAVE TO BE ISSUED ON A TAXABLE BASIS IF NOT VOID AB INITIO", pp. 31-32 of Plan Opposition.

Moreover, the legitimately issued Compliant Warrants, defined as all those not tainted by the bribery scandal, should be classified separately from the Swap/Warrants. Section 1122 provides that "a plan may place a claim or an interest in a particular class only if such claim or

[2] The court shall confirm the Plan if (3) the plan has been proposed in good faith and not by any means forbidden by law.

[3] The court shall confirm the Plan if (4) the debtor is not prohibited by law from taking any action necessary to carry out the plan.

interest is substantially similar to the other claims or interest of such class." 11 U.S.C.A. § 1122 (1979) . The Plan must disclose to Sewer Warrant Holders and creditors *other than* Series 2002C, 2003B, and 2003C that their interests are different from the Swap/Warrants whose validity is being challenged.

D. The Reluctance of the Debtor/County to Support the *Ultra vires* Request for Declaratory Judgment Invalidating the Series 2002C, 2003B and 2003C Swap/Warrants as a potential Source of Recovery does not indicate a Sincere Attempt by the Debtor to readjust its debts by maximizing the Creditors' Recovery.

The requirement that a Chapter 9 plan be "proposed in good faith and not by any means forbidden by law" is derived from 11 U.S.C. § 1129(a) (3), which is expressly incorporated in Chapter 9 by 11 U.S.C. § 901(a). Compliance with § 901 is a requirement for confirmation pursuant to § 943(b) (1). In the present case the Series 2002C, 2003B and 2003C Swap/Warrants [4]are tainted by the following Violations as found by the U. S. Securities and Exchange Commission:

> "VIOLATIONS
>
> 48. As a result of the conduct described above, J.P. Morgan Securities willfully violated Section 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person from obtaining money "by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading" or engaging "in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser" in the offer or sale of securities or security-based swap agreements.
>
> 49. Also as a result of the conduct described above, J.P. Morgan Securities willfully violated Section 15B(c)(1) of the Exchange Act, which makes it unlawful for any broker, dealer or municipal securities dealer to "make use of the mails or any

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[4] Paragraph 9 of the SEC Cease and Desist Order states:

9. The three bond offerings, with a total par value of about $3 billion, are: (1) an $839 million sewer bond offering that closed on October 24, 2002 ("the 2002-C bonds"); (2) a $1.1 billion sewer bond offering that closed on May 1, 2003 ("the 2003-B bonds"); and (3) a $1.05 billion sewer bond offering that closed on August 7, 2003 ("the 2003-C bonds").

> means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of" the Municipal Securities Rulemaking Board ("MSRB").
>
> 50. Pursuant to Section 15B(b)(2) of the Exchange Act, the MSRB proposes and adopts rules governing the conduct of brokers and dealers and municipal securities dealers in connection with municipal securities. Pursuant to Section 21(d)(1) of the Exchange Act, the Commission is charged with enforcing the MSRB rules.
>
> 51. As a result of the conduct described above, J.P. Morgan Securities willfully violated MSRB Rule G-17, which states that in the conduct of its municipal securities business, every "broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice." (See, SECURITIES ACT OF 1933 Release No. 9078 / November 4, 2009; SECURITIES EXCHANGE ACT OF 1934 Release No. 60928 / November 4, 2009; ADMINISTRATIVE PROCEEDING File No. 3-13673, p. 9).

The SEC footnote to this section states instructively: "A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949))."

Rather than joining Ratepayer/Creditors in invalidating these Swap Warrants, Debtor not only totally concedes that these Series 2002C, 2003B and 2003C Swap/Warrants are legal, valid and binding even though the SEC says they were procured by "deceptive, dishonest, or unfair practice[s]", the Disclosure states it is a Plan requirement for the Court to validate the warrants replacing these putatively unlawful Swap Warrants:

> Pursuant Bankruptcy Code sections 944(a), 944(b)(3), 105(a), and 1123(b)(6), from and after the Effective Date, confirmation of the Plan shall be a binding judicial determination that the New Sewer Warrants, the New Sewer Warrant Indenture, the Rate Resolution, and the covenants made by the County for the benefit of the holders thereof (including the revenue and rate covenants in the New Sewer Warrant Indenture) will constitute valid, binding, legal, and enforceable obligations of the County under Alabama law and that the provisions made to pay or secure payment of such obligations are valid, binding, legal, and enforceable security interests or liens on or pledges of revenues (Case 11-05736-TBB9 Doc 1817 Filed 06/30/13 Page 195 of 247)

The Swap/Warrants are not legal, valid, and binding obligations as outlined in the Complaint in AP Case 120. Lumping these warrants into the same class as Compliant Warrants and having the Plan

confirm that replacement New Warrants, which carries forward the same defect of illegality, is a clear violation of Rule 1129(a)(3). As stated in the leading case in this area, In re Mount Carbon Metro. Dist., 242 B.R. 18, 39-41 (Bankr. D. Colo. 1999):

> "Decisions considering good faith in a Chapter 9 context have addressed abuse of the bankruptcy procedure and unfair treatment of certain parties. Under the Bankruptcy Act, the United States Supreme Court reversed confirmation of a Chapter IX plan where the circumstances surrounding creditors' acceptances of a plan were ***tainted by unfair dealing, breach of fiduciary obligations, and the need for protection of one class from encroachments of another***. Am. United Mutual Life Ins. Co. v. City of Avon Park, Fla., 311 U.S. 138, 85 L. Ed. 91, 61 S. Ct. 157 (1940). More recently, confirmation of a Chapter 9 plan was reversed for lack of good faith because ***a property owner whose future tax obligations were unfairly impacted was denied due process***. Ault v. Emblem Corp. (In re Wolf Creek Valley Metropolitan Dist. No. IV), 138 B.R. 610 (D. Colo. 1992). These decisions are fact specific. They reflect the general rule that a Chapter 9 plan proposed in good faith must treat all interested parties fairly and that the efforts used to confirm the plan must comport with due process. However, they do not set out a comprehensive framework against which the good faith of a Chapter 9 plan should be tested." (Emphasis Supplied).

This principle was applied in In re Pierce County Hous. Auth., 414 B.R. 702, 719-720 (Bankr. W.D. Wash. 2009) where the court noted that:

> "Most courts agree that the determination of whether a plan has been proposed in good faith "requires a factual inquiry of the totality of the circumstances." Mount Carbon, 242 B.R. at 39. Factors a court should examine include: "(1) whether a plan comports with the provisions and purpose of the Code and the chapter under which it is proposed, (2) whether a plan is feasible, (3) whether a plan is proposed with honesty and sincerity, and (4) whether a plan's terms or the process used to seek its confirmation was fundamentally fair." Mount Carbon, 242 B.R. at 40-41."

The *Pierce* court also noted that in certain circumstances, "Debtor's lack of good faith in filing the Petition is evidenced by its failure to investigate and pursue allegedly viable claims." The totality of the circumstances here are unprecedented. We have both a SEC cease and desist order and a Eleventh Circuit decision in *U. S. v Langford* showing the three Series of Swap/Warrants are legally unenforceable. In the Complaint we make allegations to connect the dots to show how the bribes created a Swap Warrant financing for the benefit of the private

companies issuing, insuring and executing the Swap/Warrants. To ask the court to "sweep these allegations under the rug" where the benefit to creditors would be substantial is unconscionable and clearly not in good faith. As the court stated in ***Pierce*** in connection with the failure to pursue certain insurers and potential guarantors:

> "The Debtor has failed to state a valid reason why the Post-Confirmation Committee should be prevented from evaluating this claim. The Court concludes that a preponderance of the evidence indicates that it is not in the best interest of creditors to allow the Debtor to remove this determination from the Post-Confirmation Committee. After evaluating the claim, the Committee may decide that there is no potential liability or that the cost of pursuing such claim outweighs any potential benefit. This decision, however, is a valuable right that the Debtor should not eliminate under the terms of its Amended Plan. ***To do so is an attempt to cut-off potential sources of funds for payment of claims and also raises the issue of whether the Debtor's Amended Plan has been proposed in good faith***."

The ultimate irony here is that the Ratepayers and Taxpayers of Jefferson County are paying the legal fees of County attorneys who are not pursuing obvious claims that save $10 billion in taxes and fees to be charged to the Ratepayer/Creditors under the Plan. The lack of good faith is self evident.

E. The Disclosure Statement Fails to Disclose that the Plan Cannot Be confirmed Without (1) Separately Classifying Sewer Warrant Claims for that were not subject to the SEC Decree and (2) Separately Classifying Ratepayer/Creditors Claim

Failure to separately classify the Ratepayer/Creditors claim is fatal to confirmation, and therefore the Court should not let the Plan be voted on without amending the Disclosure Statement to cure this defect under 11 USC 1123 made applicable to Chapter 9 under 11 USC 901(a) so the Ratepayer/Creditors can exercise their fundamental voting rights. Right now, Ratepayer/Creditors appear to be grouped in Class 6, general unsecured claims, and the County-Debtor intends to file a post-confirmation objection to allowance of these Claims for lack of

standing. The County-Debtor's argument that Ratepayer/Creditors have no standing, and the Debtor only has standing, needs amendment to the Disclosure Statement that if the Debtor is not successful in this position, this would be fatal to confirmation.

> "Subsection (a) of section 1123 of the Bankruptcy Code, 11 U.S.C.S. § 1123(a), addresses those matters which "shall" be included in a plan, as compared to subsection (b) which addresses permissive plan contents. The mandatory contents of section 1123(a)(4) provide that a plan shall provide for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest. " In re Wermelskirchen, 163 B.R. 793 (Bankr. N.D. Ohio 1994)

The swap component termination payment due from the County of the Series 2002C, 2003B and 2003C Swap/Warrants was nullified pursuant to the SEC Consent Decree as to JPMorgan and the Attorney General's settlement of the Swap antitrust cases as to Bank of America. However the warrant components of the Series 2002C, 2003B and 2003C Swap/Warrants are still subject to cancellation based upon the bribes and price-fixing allegations as claims which violates the best interest of creditors as set forth in § 943(b)(7). (See, In re Pierce County Hous. Auth., 414 B.R. 702, 716 (Bankr. W.D. Wash. 2009). The claims of Sewer Warrant Holders of Series Defaults in paying the Swap/Warrants that fraudulently ballooned the County's fixed rate Project Warrants issued from 1997 to 2002 from $2.6 billion to $8 billion is the direct cause of the County's insolvency. Yet the Disclosure Statement is drafted to give these Swap/Warrants priority without any disclosure of their vulnerability to be determined invalid. This lack of disclosure is unfair to all classes of creditors. In particular, in an apparent attempt manipulate the voting, the Debtor has created creditor classes which combine valid adjustable rate Project Warrants and even fixed rate warrants with contested "adjustable rate" Swap/Warrants and has refused to even acknowledge Ratepayer/Creditors registered claim (See Exhibit C to Plan Opposition). This Claim is the largest single claim in this bankruptcy and the most important in terms of the benefit it brings to the creditors who were not the progeny of the

bribery and other wrongdoing which procured the Swap/Warrants. Accordingly, under the Rules, this Claim must be given a separate classification and appropriate voting rights as an impaired claim.

The Plan discloses a settlement of the issue of whether the Swap/Warrants are ultra vires and states that the lien on sewer revenues backing the Sewer/Warrants is legal, valid and binding even though this issue has not been heard on the merits. The Disclosure Statement should thus provide adequate disclosure of the contending issues that Ratepayer/Creditors have raised with respect to whether the claims of the Swap/Warrant holders are ultra vires and other legal issues associated with defects in the initial offering, including why and how the debtor County has joined with the holders of Swap/Warrants, so that creditors have both sides of the issue before they vote on the Plan. These issues are discussed in greater length in the Plan Opposition incorporated by reference herein.

The Disclosure Statement must fairly apprise voting classes of the County Debtor's justification for accepting the $14.3 billion financing plan over the $3.6 billion Alternative Financing Plan. Ratepayer/Creditors contend that the alternative $3.6 billion financing plan should have been the true value of the settlement of Sewer Claims. If the true value of the settlement is higher than $3.6 billion, then that needs to be disclosed and explained for creditors to have adequate information to vote on the plan.

The County should clearly disclose that if they have not allowed Ratepayer/Creditor's Claim and that Claim has not even been classified, under Rule 1129 the risk is the court cannot confirm the Plan. The failure to classify and treat the Ratepayer/Creditors Claim would make the Plan unconformable due to Rules 1122's and 1123's requirement of proper classification and treatment. As the Eleventh Circuit stated in <u>Olympia & York Fla. Equity Corp. v. Bank of New York (In re Holywell Corp.), 913 F.2d 873, 879-880 (11th Cir. Fla. 1990)</u>:

> "Section 1129 of the Bankruptcy Code provides two mechanisms for confirmation of a Chapter 11 plan of reorganization. The first requires satisfaction of all subsection (a) requirements, including (a)(8), which necessitates acceptance of the plan by all impaired classes or interests. The second mechanism, the mechanism by which the plan was confirmed in this case, incorporates all the requirements of subsection (a), except for (a)(8), and requires that the plan not discriminate unfairly and be fair and equitable with respect to each class of impaired claims or interests that has not accepted the plan. At issue in this appeal is whether the Bank's plan complies with the applicable provisions of title 11, namely section 1122. See 11 U.S.C. § 1129(a)(1) (requiring that the plan comply with the provisions of title 11). Also at issue is whether the Bank's plan discriminates unfairly with respect to MCJV, a creditor who is impaired under, and who has not accepted the plan. See 11 U.S.C. § 1129(b)(1) (requiring that the plan not discriminate unfairly with respect to classes of impaired claims)."

F. Under 11 USC 943, a special tax payer may object to confirmation of the Plan, and this was not disclosed.

Because of the lien imposed on ratepayers' property by the County (see, Exhibit F to Plan Opposition) for non-payment of sewer bills or sewer taxes intercepted by the 1997 Indenture, they are special taxpayers under Rule 943(a). This should be disclosed in the Disclosure Statement.

G. Under Rule 904 neither the Creditors nor the court may control expenditures for municipal services or otherwise control the affairs of a municipality indirectly through the mechanism of proposing a plan of adjustment of the municipality's debts that would in effect determine the municipality's future tax and spending decisions.

See, In re Pierce County Hous. Auth., 414 B.R. 702, 715 (Bankr. W.D. Wash. 2009). The Plan must disclose the fact that the attempt to have the Court set sewer rates for the next 40 years, with the right to be exercised by New Warrant Holders to escalate those rates under certain circumstances locks in the County's future rate setting and spending decisions, is a violation of 11 USCA §904.

H. The Debtor's Attempt to Deny Ratepayer/Creditors the Protection of Part II of the Rules By Mooting AP Case 120 Claims with Plan Confirmation Hearings Violates Bankruptcy Procedural Rule 7001.

A "claim" is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). A "debt" is "liability on a claim." 11 U.S.C. § 101(12). Ratepayer/Creditors "claim" is a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). V. W. v. City of Vallejo, 2013 U.S. Dist. LEXIS 109145 (D. Cal. 2013). Because sewer charges and fees are secured by an assessment type lien on Ratepayer/Creditors r property connected to the system, and Sewer creditors are claiming a right to enforce that lien through the terms of the 1997 Indenture and through this Plan, the substantive nature of the property rights held by Ratepayer/Creditors, the Debtor/County and the Swap/Warrant holders making a claim to the same property interests claimed by the Ratepayer/Creditors is defined by state law. Chiasson v. J. Louis Matherne and Assocs. (In re Oxford Management, Inc.), 4 F.3d 1329, 1334 (5th Cir. 1993); see also Butner v. United States, 440 U.S. 48, 55, 59 L. Ed. 2d 136, 99 S. Ct. 914 (1979) ("Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding."). Haber Oil Co. v. Swinehart (In re Haber Oil Co.), 12 F.3d 426, 435 (5th Cir. La. 1994). Ratepayer/Creditors have a right to have those property rights determined in a lawsuit which has been filed as an adversary proceeding.

Declaratory judgments with respect to the subject matter of the various adversary proceedings are also adversary proceedings. Actions for turnover, injunctive relief, and declaratory judgments are "adversary proceedings" under the Federal Rules of Bankruptcy Procedure and are properly commenced by filing a complaint, not by motion. Bankr. R.P. 7001, et seq. In re Davis, 40 B.R. 934, 936 (Bankr. D.S.D. 1984) Ratepayer/Creditors' adversary proceeding is initiated

Case 11-05736-TBB9 Doc 1958 Filed 08/05/13 Entered 08/05/13 00:20:27 Desc Main Document Page 19 of 23

under Rules 7001(2), (9) and 7003 of the Federal Rules of Bankruptcy Procedure. (Case 12-00120-TBB Doc 64 Filed 04/04/13 Page 8 of 44). An adversary proceeding to determine the validity, priority, or extent of a lien proceeds is a lawsuit, incorporating nearly verbatim most of the Federal Rules of Civil Procedure. Chase Auto. Fin., Inc. v. Kinion (In re Kinion), 207 F.3d 751 (5th Cir. Tex. 2000)[5]

The preferred method for adjudicating the validity and/or priority of a lien is through commencement of an adversary proceeding. Indeed, it appears that the weight of authority supports adjudicating such matters through adversary proceedings in accordance with Fed.R.Bankr.P. 7001. See, e.g., Chase Auto. Fin., Inc. v. Kinion (In re Kinion), 207 F.3d 751, 757 (5th Cir. 2000); In re Kressler, Civ. A. No. 00-5286, 2001 U.S. Dist. LEXIS 11723, at *9 (E.D.Pa. Aug. 9, 2001); In re Nuclear Imaging Systems, Inc., 260 B.R. 724, 731 (E.D.Pa. 2000); In re Metro Transportation Co., 117 B.R. 143, 146 (Bankr. E.D.Pa. 1990). In re Brown, 311 B.R. 409, 413-414 (E.D. Pa. 2004). As the 5th Circuit in *In re Kinion* stated:

> ***if at some point the Kinions believed they had grounds to challenge the secured status of Chase's loan, the procedure sanctioned by the Bankruptcy Rules calls for an adversary proceeding. See Bankruptcy Rule 7001, et seq. An adversary proceeding to determine the validity, priority, or extent of a lien proceeds is a lawsuit, incorporating nearly verbatim most of the Federal Rules of Civil Procedure. The court's order stripping Chase's lien complied with none of the usual procedures.

[5] Although Debtor has filed an objection to the Claim, to create a contested matter, this objection is duplicitous since the existing AP 120 proceeding is the preferred way to determine a validity of Sewer Swap/Warrant creditors lien question. ("The objection to a claim initiates a contested matter unless the objection is joined with a counterclaim asking for the kind of relief specified in Bankruptcy Rule 7001. In addition to the requirements of Rule 9014, which governs contested matters, Rule 9004 specifies that the objection contain a proper caption designating it an objection to a proof of claim. It has been said that the filing of a proof of claim is tantamount to the filing of a complaint in a civil action, see Nortex Trading Corp. v. Newfield, 311 F.2d 163 (2d Cir.1962), and the trustee's formal objection to the claim, the answer. See 3 Collier on Bankruptcy para. 502.01, at 502-16. Upon the filing of an objection, the trustee must produce evidence tending to defeat the claim that is of a probative force equal to that of the creditor's proof of claim. Id. at 502-17; see also In re Eastern Fire Protection, Inc., 44 Bankr. 140 (Bankr.E.D.Pa.1984)." In re Simmons, 765 F.2d 547, 552 (5th Cir. Miss. 1985)).

Chase was never served with notice that its lien would be challenged; it never received notice of the hearing date for any such challenge; and no evidentiary hearing was held. The court's allowance of thirty days to file a motion for reconsideration cannot substitute for the before-the-fact protections of creditors' interests embodied in the adversary rules."

Chase Auto. Fin., Inc. v. Kinion (In re Kinion), 207 F.3d 751, 757 (5th Cir. Tex. 2000); *Accord,* Parker v. Livingston (In re Parker), 330 B.R. 802, 807 (Bankr. N.D. Fla. 2005). The disclosure Statement should disclose that the AP Case 120 Complaint must be resolved in a lawsuit conducted under the Federal Rules of Procedure prior to Plan confirmation.

I. Under 11 USC 943(b)(6) to confirm a plan, any regulatory or electoral approval must be obtained, or the plan expressly conditioned on such approval. The New Sewer Warrants under the Plan cannot be acted upon without a majority vote under Amendment 73 of the Alabama Constitution. The Disclosure Statement should be amended to reflect this vote is a condition to confirmation.

(See, discussion in Plan Opposition, p. 29)

IV. Conclusion

The County has negotiated long and hard for a settlement but only with one Class of claimants—those who had the receiver appointed. The Receiver appointment was based on the validity of the liens on sewer revenues created by the 6th, 9th and 10th supplemental indentures with the County Debtor could have but did not challenge. The County has been working in concert with the potentially unenforceable Swap/Warrant Claimants who now have the position of insiders. The Rate Increases proposed by these claimants will result in overcharges to the Ratepayer claimants of over $10 billion. The impact on the quality of life and disposable income of county citizens is a part of Plan confirmation because of the requirement that the Plan be feasible. In this regard we have attached the Declarations of Commissioner Bowman, the county Supervisor where the largest

percentage of residents are connected to the Sewer system, Andrew Bennett, the Assistant County Assessor, Bessemer cut, and Sheila Tyson -, the president of a community association and public advocate.

The Debtor's Disclosure Statement is required to give the full story of the value of Plan distributions and the challenges to certain claims.

We respectfully ask the court to deny the Revised Disclosure statement and fashion an order that requires adequate disclosure consistent with this Opposition to the Disclosure Statement and the Plan Opposition incorporated herein by reference.

Dated August 4, 2013

Respectfully submitted,
Law Office of Calvin B. Grigsby
/s/Calvin B. Grigsby

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IN THE UNITED STATES
BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:	)	
	)	
JEFFERSON COUNTY, ALABAMA, a political subdivision of the State of Alabama,	)	**Case No. 11-05736-TBB**
	)	
	)	**Chapter 9**
	)	
Debtor.	)	

DECLARATION OF SHEILA TYSON

CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA (DATED June 30, 2013)

Sheila Tyson, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am currently the President of the West End Community and the Executive Director of the Friends of West End. I am also the immediate Past President of the Citizens Advisory Board, which is the formal governing association for all of the 99 neighborhoods of the city of Birmingham. Each of these groups is active in advocating for betterment of the poor, young and elderly citizens of the city of Birmingham.
2. I have been working with citizens in this community for more than 30 years.
3. The residents of our community have been subjected to more than a 300% increase in their sewer and water bills over the last decade – way above the national average.
4. More than 1/3 of all families with children under 18 are already struggling below the federal poverty level and would be devastated by even the most modest increase.
5. Almost 1/3 of our elderly citizens rely exclusively on Social Security, and have no flexibility in their budgets to adjust for yet another increase in sewer without impacting their ability to buy food and medicine.
6. This entire sewer debacle has already greatly reduced the property values of many homes, and the proposed, indefinite increases will continue to degrade the value of homes that our

residents have worked so hard to build, buy and maintain.

7. Because sewer and water bills are linked by law, any increase in sewer bills threatens thousands of families ability to provide clean water for drinking, cooking and bathing for their children.
8. It should be noted that the construction and design of the sewer lines were purposely drawn so that the financial impact of the sewer system (which is a necessity for economic activity and growth in Jefferson County) would be on the backs of the poorest residents.
9. Although the sewer fiasco was perhaps the tipping point, Jefferson County's bankruptcy includes much more than just the sewer debt. As a result, all of our County's residents should share equally in paying back this debt.
10. The citizens of the city of Birmingham should not be responsible for debts created by corruption that the banks themselves participated in facilitating. It is a slap in the face to every citizen, every taxpayer and every sewer rate payer to be told that they have to commit themselves, their children and their children's children to paying banks who crafted a criminal conspiracy that led to the largest municipal bankruptcy in the history of the United States of America.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on July 31, 2013, at Birmingham, Alabama

Sheila Tyson

IN THE UNITED STATES
BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:	)	
	)	
JEFFERSON COUNTY, ALABAMA,	)	**Case No. 11-05736-TBB**
a political subdivision of the State of	)	
Alabama,	)	**Chapter 9**
	)	
Debtor.	)	

DECLARATION OF GEORGE BOWMAN
COMMISSIONER DISTRICT 1, JEFFERSON COUNTY, ALABAMA

CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA (DATED June 30, 2013)

George Bowman, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the duly elected Commissioner of district One, of Jefferson County Alabama
2. I have been the Commissioner of this District for 4 years.
3. In August 2008, I travelled to New York and met with representatives of the Indenture Trustee, Standby Credit Banks and other Holders of the Jefferson County sewer warrants issued under the 1997 Indenture.
4. This meeting ended with a Plan of Refinancing of the Sewer Warrants that died after the required State legislation did not pass.

5. In November 2011, I brought to the Commission a presentation attached as Exhibit 1which recommended a write down of the principal amount of the Warrants and a restructuring that did not involve any rate increases.
6. July 19, 2011, I presented the following to the commission the attached copies of all Bowman presentations. See Exhibits1 and 2.
7. The commission on November 9, 2011 embarked upon a bankruptcy filing that I voted against. This filing has resulted in a plan of adjustment that requires total sewer rates to increase from $140 million to $615 million in 40 years with a total cost of $14.3 billion dollars.
8. Approval of this plan has cost the county over $25 Million in legal fees conservatively (see exhibit 3 plus the legal fees of the Indenture trustee which are in excess of $2 million and professional fees of the receiver and others which I am informed is a roughly equal amount. All of these fees are paid by the ratepayers of Jefferson County.This Plan will have a disastrous impact on District 1
9. This Plan will have a disparate impact on the two poorest districts in the County.
10. Within these two districts are the majority sewer rate payers and they are primarily poor and black.
11. Only forty percent of the County pays sewer rate and eighty percent of that is poor and black.
12. Under the newly constructed sewer rate plan, rates increase to the financial detriment of the community taking anywhere from 12 percent to 25 percent of the income of individuals with fixed income.
13. This devastating impact will reverberate throughout the County potentially causing the economic collapse of Jefferson County.
14. This new plan decreases the potential of accumulated family wealth.
15. Decreases the potential to sell homes.
16. Decreases property values.
17. Two billion dollars of the Jefferson County Sewer Debt is tied to criminal activity.
18. The residents of our community have seen their monthly sewer bills quadrupled in the past 15 years.
19. See exhibit 4, articles from The Birmingham News agreeing with my position.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on July 29, 2013, at Birmingham, Alabama
/s/ George Bowman
George Bowman

IN THE UNITED STATES
BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:	)	
	)	
JEFFERSON COUNTY, ALABAMA,	)	**Case No. 11-05736-TBB**
a political subdivision of the State of	)	
Alabama,	)	**Chapter 9**
	)	
Debtor.	)	

DECLARATION OF ANDREW BENNETT
TAX ASSESSOR BESSEMER DIVISION, JEFFERSON COUNTY, ALABAMA

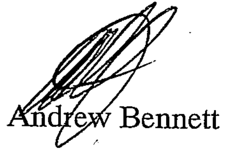
CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA (DATED June 30, 2013)

Andrew Bennett, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the duly elected Assistant Tax Assessor, Bessemer Division, of Jefferson County Alabama.
2. As a Tax Assessor, I am familiar with the ownership, additions or improvements to the property or removal of improvements within the Bessemer District and, in a general sense, within the county as a whole.
3. I am also familiar with the valuation and assessment of business personal property.
4. As Assistant Tax Assessor, I have seen the impact of increasingly higher sewer charges on a personal level within my household budget.
5. I also see the reduction in the growth of business and personal property as customers of county businesses must take a larger and larger portion of their disposable income and use it to pay water and sewer bills.
6. I also see a higher instance of tax sale properties where taxpayers are juggling their options with limited resources as to which debt has priority.
7. I see where taxpayers are foregoing necessities, like medication and food, to stretch their budgets caused by increasing rates.

8. I have heard testimonies in my office from taxpayers fearing that the increases will cause them to no longer be able to maintain homeownership.
9. I also see that unpaid bills will create sewer liens on property and give adversary possession to the sewer authority when homeowners cannot meet the obligations as required.

I declare under penalty of perjury that the foregoing is true and correct .
Executed on July 29, 2013, at Birmingham, Alabama
/s/ Andrew Bennett



Andrew Bennett