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

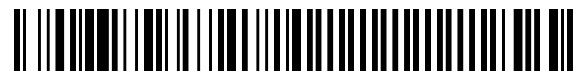
In re:	)	
	)	
JEFFERSON COUNTY, ALABAMA, a political subdivision of the State of Alabama,	)	**Case No. 11-05736-TBB**
	)	**Chapter 9**
Debtor.	)	

BENNETT RATEPAYER/CLAIMANTS REPLY TO OMNIBUS REPLY BRIEF IN SUPPORT OF PLAN CONFIRMATION

In reply to Debtor's Brief in Support of Plan Confirmation Andrew Bennett, Jefferson County Tax Assessor, Bessemer Division, Roderick V. Royal, Former Birmingham City Council President, Mary Moore, Alabama State Legislator, John W. Rogers, Alabama State Legislator, William R. Muhammad, Carlyn R. Culpepper, Lt. Col. Rt., Freddie H. Jones, II, Sharon Owens, Reginald Threadgill, RickeyDavis, Jr., Angelina Blackmon, Sharon Rice, David Russell, each a taxpayer of sewer property taxes and a ratepayer of the Jefferson County sewer system and jointly representatives of a class of approximately 130,000 taxpayers of sewer property taxes and ratepayers of Jefferson county sewer bills (collectively, the "Ratepayer/Claimants" or "Ratepayers") hereby resubmit the following:

A. PLAINTIFFS' BRIEF IN OPPOSITION TO JEFFERSON COUNTY'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT FOR A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF (Doc. 91 from AP-120) attached as Exhibit A.

B. RATEPAYER/CREDITORS' SUPPLEMENT AND AMENDMENT TO OBJECTIONS FILED JULY 30, 2013, TO CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA, attached as Exhibit B, together with Appendices 1-9.



Dated November 19, 2013

Respectfully submitted,

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

IN RE:	)	Case No.: 11-05736-TBB
JEFFERSON COUNTY, ALABAMA,	)	Chapter 9
Debtor.	)	

****

ANDREW BENNETT, ET AL.,	)	
Plaintiffs,	)	
v.	)	**Adversary Proceeding No. 12-00120-TBB**
THE BANK OF NEW YORK MELLON, AS INDENTURE TRUSTEE, ET AL.,	)	
Defendants.	)	

PLAINTIFFS' BRIEF IN OPPOSITION TO JEFFERSON COUNTY'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT FOR A DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

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I. PROCEDURAL HISTORY

On June 14, 2011, John Young, Jr., Court appointed Receiver, issued a report recommending three successive years of 25% compound sewer rate increases. These increases would double sewer rates and charges affecting Jefferson County taxpayers and sewer rate payers after three years. The Receiver's announcement was initiated pursuant to powers granted in State court litigation—Mellon Bank v. Jefferson County (Case No. : CV-2009-02318). (the "Receiver Case"). On June 24, 2011, Plaintiffs, a group of taxpayers and ratepayers sought intervention to file a complaint in the Receiver Case. They alleged that the doubling of rates included overcharges of $1.63 billion from unlawfully incurred "soft costs" in 3 series of auction/adjustable rate sewer refinancing warrants (out of the 11 series issued by the County—Series 2002C, 2003B and 2003C). These three series of warrants were used to purchase related interest rate swap contracts which were combined with the related warrants to create new "designer" debt instruments called a "synthetic fixed rate swap warrants" (referred to hereinafter as "swap purchase warrants" or "swap warrants).

[1] [2]

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[1] Swap warrants fundamentally change the County's debt obligation because sewer rates and charges are designed to pay the County's fixed interest rate on the swap contract rather than interest on sewer warrants as with traditional fixed rate warrants. The variable rate paid by the swap provider or seller is designed to pay the adjustable rate interest on the auction rate warrants issued by the County. However, if the auction rate interest adjusts to a rate in excess of the variable rate paid by swap seller to the County under the swap contract, the County has to pay both the fixed interest rate on the swap contract component and the excess interest rate on the

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The $1.63 billion in soft costs included over $368 million in refinancing losses called "negative arbitrage" recorded by the County's auditors for the three series, $170 million in unfair markups paid to JPMorgan and other swap providers on the swaps sold to the County and over $1 billion in additional interest, remarketing and transactions costs repayable over the life of the 25-30 year swap

auction rate warrant component of the swap warrant. Here the swap sellers were paying a LIBOR variable rate under the swap contracts of less than 1% when the excess due from the county on auction rate on the warrants was as great as 8-10%. The County did not have sufficient sewer rates in place to pay the fixed rate on the swap contract component of the swap warrant of approximately 4% plus the 8-10% excess on the auction rate warrant component of the swap warrant, which effectively caused this bankruptcy filing.

[2] It is now widely accepted that multilateral transactions may under appropriate circumstances be "collapsed" and treated as phases of a single transaction for purposes of applying fraudulent conveyance principles. HBE Leasing Corp. v. Frank, 48 F.3d 623, 635 (2d Cir. 1995) (as amended on denial of pet. for reh'g *en banc*); Orr v. Kinderhill Corp., 991 F.2d 31, 35 (2d Cir. 1993) (citing cases). Under this "integrated transaction" doctrine (or "step transaction" doctrine as it is sometimes known), "[i]nterrelated yet formally distinct steps in an integrated transaction may not be considered independently of the overall transaction." In re Foxmeyer Corp., 286 B.R. 546, 573 (Bankr. D. Del. 2002) (quoting Big V Supermarkets Inc. v. Wakefern Food Corp. (In re Big V Holding Corp.), 267 B.R. 71, 92-93 (Bankr. D. Del. 2001)). "[B]y 'linking together all interdependent steps with legal or business significance, rather than taking them in isolation,' the result may be based 'on a realistic view of the entire transaction.'" Id.
.

In determining whether a series of transactions should be "collapsed" into a single integrated one, courts focus not on the form of the transaction but on its substance -- especially the knowledge and intent of the parties involved in the transaction and whether there was an overall scheme to defraud creditors. See HBE Leasing Corp., *supra;* Orr, 991 F.2d at 35-36; Liquidation Trust of Hechinger Inv. Co. of Del., Inc. v. Fleet Retail Fin. Group (In re Hechinger Inv. Co. of Del., Inc.), 327 B.R. 537, 546 (D. Del. 2005); MFS/Sun Life Trust - High Yield Series v. Van Dusen Airport Serv. Co., 910 F. Supp. 913, 934 (S.D.N.Y. 1995); Wieboldt Stores, Inc., *supra;* In re OODC, LLC, 321 B.R. 128, 138 (Bankr. D. Del. 2005); Best Products Co., *supra;* O'Day Corp., *supra;* Suburban Motor Freight, *supra.* Among other things, courts consider whether all of the defendants were aware of the multiple steps of the transaction. See HBE Leasing Corp.,*supra,* at 635-36; Hechinger Inv. Co., *supra,* at 546-47; MFS/Sun Life Trust, 910 F. Supp. at 934; O'Day Corp., *supra,* at 394. Courts also consider whether each step would have occurred on its own or, alternatively, whether each step depended upon the occurrence of the additional steps in order to fulfill the parties' intent. See Hechinger Inv. Co., *supra,*at 546; MFS/Sun Life Trust, *supra,* at 934.

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purchase warrants. All of these soft costs were in excess of warrant proceeds used to pay sewer improvement capital projects costs required by a consent decree and provided no benefit to the County or the Ratepayer Class.

To be clear, none of these soft costs included any money for real project costs of extensions, improvements or enlargements of the sewer system required under the consent Decree or otherwise. The primarily fixed rate warrants refinanced by the swap purchase warrants issued prior to 2002C warrants were the sole source of payment for such project costs.

The Plaintiffs' intervention motion was denied by the trial court *sua sponte* and their complaint was never filed. The Plaintiffs were preparing their complaint as direct cause of action, when the County sought bankruptcy protection caused primarily by the County's ongoing inability to pay on the swap purchase warrants.

On June 4, 2012, Plaintiffs, as taxpayers and ratepayers representing a putative class of similarly situated County residents (the "Ratepayer Class"), filed a proof of claim in this court to recover the $1.6 billion in actual and prospective overcharges for the next 25-30 years owed back to the Ratepayer Class. The recovery is to be accomplished by a cancellation of the principal amount of the swap warrants in excess of the amounts that would have been due on the refinanced fixed rate warrants used to pay project cost as opposed to soft costs. Another possible remedy is to have the Ratepayer class set off from future sewer

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bills owed the amount of the overcharges amortized over the 25-30 year period. The refund of overcharges was sought to be accomplished by a declaratory judgment that $1.6 billion of the swap warrants which caused the overcharges is void and unenforceable from their inception in 2002 and 2003 and, therefore, no further levy and collection of sewer fees for such overcharges are enforceable against plaintiffs and those similarly situated within the statute of limitations period and for future periods.

The Plaintiffs have stated in all their filings that swap purchase warrants are void, *ab initio* and unenforceable for five separate but interrelated reasons:

1. They were issued to purchase interest swap/exchange agreements (i.e. swaps) to create “synthetic fixed rate debt” benefitting private parties rather than pay for any Consent decree or other project costs.
2. They include the issuance of auction rate warrants that were prohibited by the 1997 Master Indenture unless rates had been increased prior to issuance sufficient to repay them and unless they did not exceed 50% of all outstanding warrants.
3. The amendments to the 1997 Indenture in the Ninth Supplemental Indenture that removed the prohibitions in paragraph 2, above, were procured by bribes to the Commission President Langford who executed it and Commissioner Buckelew, and other corrupt activities making the

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swap warrants issued in reliance on the corruptly procured amendments void on their face.

4. All of the swap payments made by the County in the synthetic fixed rate swap debt structure are simply installment payments made over the term of the swap to purchase the swap. In the event of default these installment purchase payments are accelerated by present valuing, using discount rates from a "forward yield curve," all remaining installment payments due in what is called a "Termination Value." The swap purchase warrant obligation to pay this accelerated swap contract Termination Value, which is part of the debt due on the swap warrant, violates the Alabama constitutional debt restrictions.

5. It is undisputed that Constitutional Amendment 73 provides the only County authorization to levy and collect sewer usage fees in its governmental capacity. The county does not operate a proprietary "for profit" sewer system. Constitutional provisions are mandatory not discretionary. 73 is self executing requiring no legislative action or clarification . It provides "***Before*** issuing any bonds ***or levying or collecting any such sewer service charges or rentals, the proposal shall first be submitted to and approved by a*** majority of the voters. (Emphasis added). Because sewer charges or rentals are described in amendment

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73 to include "an amount sufficient to pay the principal of and interest on such bonds, replacements, extensions and improvements to, and the cost of operation and maintenance of, the sewers and sewerage treatment and disposal plants" plaintiffs have stated a plausible cause of action that a majority vote is required for levy and collection of sewer service charges to pay for "replacements, extensions and improvements to, and the cost of operation and maintenance of, the sewers and sewerage treatment and disposal plants" contemplated by the 1997 Master and Supplemental Indentures.

Following the filing of the proof of claim, plaintiffs noted that the Indenture Trustee had sought to collect its stayed claims to sewer revenues to pay the swap warrants in the Receiver case, by filing an adversary case asking for a declaratory judgment that full payment of the swap warrants was secured by a "statutory lien and trust impressed on the Net Revenues" (See Complaint, Doc 1 in Adversary Case 12-00016, filed 2/3/2012, by the Indenture Trustee and warrant holders and guarantors, Main doc p. 23 of 26). Plaintiffs on July 12, 2012, filed a complaint in intervention in that case "Because the Ratepayer Intervenors' claims in this bankruptcy proceeding is based on the invalidity of plaintiffs (i.e. the Indenture Trustee and warrant holders in Adversary 12-00016) claimed lien on Pledged Revenues on the Invalid Warrants, this Complaint in Intervention is required to

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pre-empt a ruling that would have a preclusive effect on Ratepayer Intervenors claims." (Complaint in Intervention, AP 12-00016, Doc. 126, par 8). This Complaint in Intervention comprised 48 paragraphs totaling 25 pages.

The court ruled on August 15, 2012, to sever the complaint in intervention from Adversary Case 12-00016 and permitted plaintiffs to replead in a direct action in a separate adversary proceeding (Case 12-00016-TBB Doc 139). On September 6, 2012, plaintiffs filed an adversary complaint (AP Case 12-00120, Doc. 2) which recited the invalidity of the swap warrants and sought declaration that the $1.6 billion soft costs including swap markups in excess of the principal on the refunded fixed rate warrants be declared void and unenforceable. This complaint was amended to correct technical errors on September 29, 2012 (Id. Doc. 8) and the amended complaint comprised 84 pages with 191 paragraphs and 9 causes of action. The complaint contained declaratory judgment actions against the defendant Indenture Trustee and the County, as a nominal defendant, and also contained various causes of action for recovery against warrant holders, and transaction participants including swap counterparties, bond insurers and bond counsel.

The Defendants filed motions to dismiss claiming they could not understand the Complaint, that it violated rules of pleading, class allegations were inadequate, Swap warrants complied with Alabama constitutional laws, and that the plaintiffs

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had no standing and the statute of limitations had run, etc. Motions to dismiss, for more definite statement and to deny class certification was heard on February 20, 2013. Prior to the hearing, plaintiffs voluntarily dismiss 6 of 9 causes of action leaving only three declaratory judgment actions. Many of the factual allegations in the Amended complaint pertained to the causes of action that were dismissed. In the February 20, 2013 hearing the court mentioned major inadequacies in the complaint which included: 1) the County was affected and should be made a defendant, 2) the allegations regarding unconstitutionality were unclear, 3) class allegations were inadequate. Plaintiffs were ordered to file a second amended complaint.

This second amended complaint names the County as a defendant, attempts to make the allegations regarding why the soft costs in the swap warrants are not legal or enforceable, and drops the class allegations. It contains four counts or causes of action requesting declaratory judgment. First, a declaration that the swap warrants violate Article X of the 1997 Indenture, second that the swap warrants are void under the Alabama Constitution, third a declaration that the enforcement mechanisms for plaintiffs' required repayment of the swap warrants overcharges are a taking of plaintiffs' property without due process, and fourth, a declaration that amendments in the Ninth Supplemental Indenture to the 1997 Indenture which circumvent the Article X prohibition of more swap warrants and require a

historical debt service coverage test were procured by bribery and corrupt influence which makes the swap warrants void.

The second amended complaint is organized similarly to Case 12-00016-TBB Doc 1 which has 5 requests for declaratory relief and incorporates in each count the preceding paragraphs. This is because the constitutional voidability allegations in Count 2 rely on most of the same facts and the local law voidability in Count 1. The lack of due process claims rely on the allegations in count 1 and 2 and the voidability because of corruption and bribery to procure the way around the conditions precedent in Count 1 contained in Count 4, rely on the allegations in Count 1, 2 and 3 to develop a full picture of the basis for the Count 4 allegations. The second amended complaint is much more concise than the First Adversary complaint, having 34 pages in roughly 70 numbered paragraphs and four causes of action.

This factual allegations outline an illegal scam of the ratepayers, not breach of contract or tort. Illegal actions are alleged to be intentional and fraudulently covered up by perpetrators. For example, although there is no document stating that the swap warrants were procured by bribes paid from markups on swaps sold to the County, there are substantial allegations of circumstantial evidence. These allegations include description monies paid to County officials and the timing of increased swap warrant execution and issuance that appear directly influenced by

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the bribes. The allegations in the complaint show that the theory, that swap warrant issuance and execution that resulted in overcharges to Plaintiffs from the $1.6 billion in soft costs, was not just an 'honest mistake" under the business judgment rule.

Plaintiffs' allegations are sufficient to show both unlawful procurement of the execution and issuance of the swap warrants and the use of the proceeds in violation of constitutional requirements for debt issuance. The Complaint's allegations and our proof under Rule 56 or at trial will show that there is no truth to the rumors that Commission President Langford and the other transaction participants believed they could lower rates if they entered into certain transactions for the benefit of the increasing rates on the sewer rate-payers; and/or that Mr. Langford and others on the county commission decided that if they went in and got lower rates today at variable rates and then they went in and did certain transactions that you call swaps, that effectively they could arbitrage the risk of any increase in rates and effectively establish what is a variable rate to be a lower fixed rate by the arbitrage. The following facts demonstrate that the complaint states a cause of action:

1. The swaps were sold to the County with a $170 million market loss accruing to the County on the day of closing which is about $150 million in excess of the normal markup in the municipal sector and $170 million more than the mark up in the commercial banking sector. At the date of contract initiation of a fixed/floating interest

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rate swap, the swap contract is usually executed *at-the-money*" (or zero markups).

2. The independent auditors of County recorded a "refinancing loss" of $368 million on the issuance of the auction rate warrants required to facilitate purchase of the unconscionably expensive swaps.
3. The principal amount owed on the fixed rate warrants increased by $372 million to facilitate saving the poor ratepayers money.
4. The debt repayment structure was changed from a level debt service to a step up debt service so it would look like the swap warrants produced a lower rate when in actuality the principal and interest increased dramatically as the debt payments stepped up. All of the perpetuators would be long gone before anyone discovered the amount of rate increases required to amortize the step up structure.
5. The transaction costs paid to financial services and legal participants in the swap warrants were approximately $300 million.
6. The additional interest paid and payable over and above the fixed rate bonds for which the participants told the public they were saving money is over $600 million on a present value basis.
7. According to the U.S. court of Appeals in *U.S. v Langford*, JPMorgan gave Goldman Sachs $3 million in an "off book" swap that was used to make payments to Blount that was used to bribe Langford before the swap warrants Supplemental Indenture was "amended" to eliminate reports that historical rate increases covering the debt due meant money was "in hand" to repay the warrants and prohibitions that would have disallowed the swap warrants and the markup on the swaps.

Regardless of whether Mr. Langford and other commissioners "knew" what they were doing or not, the complaint properly alleges facts showing that what they did was not legally enforceable. The Plaintiffs have properly alleged that the County commission approved the amendments to the 1997 Indenture, which would have prohibited the swap warrants that resulted in increased sewer fees injurious to

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plaintiff's economic well being and property values. Because government contracts procured by fraud and bribes are illegal, Plaintiffs should be allowed to prove at trial that this was the case. If the Swap warrants were implemented because of bribes and payoffs they are void at their inception.

Under the allegations of Cause of Action 2 that the swap warrants were issued to purchase swaps for the benefit of the swap sellers and other transaction participants rather than being used to pay for project costs, and the swap warrant "bribees" and their associates knew the County did not and would not have sufficient rate increases to pay all of the swap payments and warrant payments it incurred to issue swap warrants and execute accompanying swaps, the violation of the Alabama constitution is obvious. Why do these allegations meet the test of plausibility in a motion to dismiss?

1. According to Alabama Supreme Court warrants are not validly issued unless the funds are on hand or previously approved to pay the debt service. Because the County was relying on the swap provider's payment of the variable index rate in the swap to be sufficient to pay the auction rate interest,[3] the County did not have the funds in hand to pay the warrants, because:

    - The County was relying not on its own funds to pay the auction rate warrants but on the swap counterparty to pay the interest on the swap notional amount equivalent to interest on the auction rate warrants, and
    - The County had no valid projections showing the sewer rates were sufficient to repay the full obligations under the swap warrants prior to issuance and execution.

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[3] Any constitutional issues of first impression may be certified to the Alabama Supreme court.

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2. Only about $2 billion of the outstanding principal of the swap warrants can be attributed to the remaining principal on the fixed rate warrants used to pay project costs and which would have been due as of today.

3. The claim that the swaps were just bad business judgment is untrue, since the swaps produce no money for project financing that is not added back to the termination value. Therefore the only reason you need auction/variable rate warrants is to purchase interest rate swaps.

4. If, as plaintiffs have alleged, the motive to execute more swaps was corruptly procured, this accounts for the incurrence of the over $1.6 billion non consent decree project related uses of swap warrant proceeds. You must first convert the project fixed rates warrants to auction rate warrants to consummate the swaps to get the benefit of all the bribes and payoffs. The fixed rate warrants had to be converted to variable/auction rate warrants to give JP Morgan and other swap providers something to "hedge against" so as to comply with State law, which provides:

   "(2) No governmental entity shall enter into any swap agreement unless all of the following occur:

   a. The governmental entity's governing body first finds and determines, and certifies to the counterparty, that the swap agreement is entered into for the purpose of hedging against an interest rate, investment, payment, or other similar risk that arises in connection with or incidental to the proper activities of the governmental entity.

   Code of Ala. § 41-1-42"

5. The fixed rate payer in a swap is the purchaser of the swap. Therefore, the County as purchaser ***implemented the auction rate warrants to purchase a swap*** and not to pay for consent decree projects. Looking through all the Exhibits filed so far in the case, plaintiffs have not found one piece of admissible evidence that suggests that the swap warrants were motivated by the desire to

help the ratepayers reduce the cost of escalating sewer rates resulting from consent decree projects

6. The Allegations in the Second amended complaint show that the decision to do more swaps to get the corrupt proceeds from payoffs came before the rationale that the swaps would actually save the ratepayers from a rate increase as evidenced by the fact that the sewer warrant payments were made artificially low in the first 7 or 8 years with the $1.6 billion in increased costs "stepping up" in years 10 through 30 which effectively hid these costs from public scrutiny.

The federal due process allegations underlying Count 3 are fairly straightforward.

1. The County has no inherent power to put a lien on your property to repay $3 billion in sewer warrants without affording due process. Why do the plaintiffs have to wait until the County or a Receiver actually forecloses on their homes under the authority they have under the 1997 Indenture, to request a court to determine whether such an action would be legal? Particularly in light of the fact that the warrant holders still claim a legal right to double sewer rates the injury is imminent.
2. The total value of all the property in Jefferson county is only about $500 million and the sewer debt subject to a lien and foreclosure if not paid of $3 billion is 6 times greater than the entire county assessed value and no vote has been held to approve the imposition of that debt secured by a lien on this assessed value.
3. The property tax assessed on real property since 1901 for sewer service is placed in the Revenue fund (and has since 1997 been diverted from the general fund) where it is comingled with swap payments and sewer fees and used to pay operating costs and auction rate interest even though not technically "pledged" to the auction rate warrants.
4. The sewer fees are used to pay the installment payments on purchasing the swap contract rather than the cost of extending or enlarging the sewer system.

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Count 4 says simply that bribes were used to procure the 6th, 9th and 10 Supplemental Indentures between the County and the Indenture Trustee and that government contracts procured by bribes are void on their face.

With only four Counts for declaratory judgment, defendants should be charged with adequate notice of plaintiffs' claims.

II. LEGAL DISCUSSION

The County's arguments in the Motion to dismiss are not tenable because the court's directive to add the County as a defendant, clarify the allegations regarding constitutionality and reduce excess verbiage in the complaint have been addressed. (In the second amended complaint, one of our proof readers omitted §224 language (dealing with counties) from the complaint and replaced it with § 225-6 dealing with Cities—an obvious error.)

A. ***Allegations relating to synthetic fixed rate swap warrants simplify a complex debt instruments to show violation of constitutional provisions written a hundred years before these instruments were invented.***

Plaintiffs allege that the interest rate swaps and related auction rate warrants are two integral components of a ***single debt instrument with composite debt service*** from both interest rate swap and auction rate warrant components called a synthetic fixed rate swap warrant. Nothing makes this fact more evident that the

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definitions section of the Ninth Supplemental Indenture, page 77, §10.5

"Definitions," "Maximum Debt Service," subsection (d) and (g) that provide:

> (d) the ***debt service payable with respect to any Parity Securities for which the County has entered into a Qualified Swap pursuant to which the County has agreed to make payments calculated by reference to a fixed rate of interest shall be calculated as if the Parity Securities bore interest at such fixed rate during the term of such Qualified Swap*** (Emphasis supplied).
> ***
> (g) there shall be excluded any principal of or interest on any Parity Securities to the extent there are available and held in escrow or under a trust agreement (i) moneys sufficient to pay such principal or interest***

These provisions make it clear that the County and the Indenture Trustee assumed the fixed rate paid by the County to the Swap provider would buy a variable rate payment sufficient to exclude any payment of auction rate interest. Plaintiffs have alleged that the "soft costs" of implementing this structure was additional debt of $1.6 billion to be paid by sewer ratepayers in the County that did not acquire any enlargements, extensions or improvements to the sewer system or other public facilities. Because these costs attributable to the auction rate warrants were used to purchase the interest rate swaps not to pay for extensions, enlargements and improvements to the Sewer system, these costs were not allowable under Alabama Constitution, Art. XII, § 222.05 Alabama, or Alabama Code §§ 11-28- 2 and 11-28 4, to wit:

"Sec. 222.05. Certain county revenue securities not to constitute

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bonds or indebtedness.

Revenue bonds or other revenue securities at any ***time issued by a county for the purpose of extending, enlarging or improving any water, sewer, gas or electric system then owned by such county*** shall not be deemed to constitute bonds or indebtedness of such county within the meaning of Sections 222, 224 or Amendment No. 342 [amending § 224] of this Constitution, if by their terms such bonds or other securities ***are not made a charge on the general credit or tax revenues of the issuing county and are made payable solely out of revenues derived from the operation of any one or more of such systems***."(Emphasis supplied)

§ 11-28-2. Generally.

In addition to all other warrants which any county shall have the power to issue pursuant to laws other than this chapter, the county shall have the power from time to time to sell and issue warrants of the county ***for the purpose of paying costs of public facilities.***

§ 11-28-4. Refunding warrants.

Each county may at any time and from time to time issue refunding warrants for the purpose of refunding refundable debt then outstanding, whether such refunding shall occur before, at or after the maturity of the refundable debt to be refunded, and such refunding warrants shall be governed by the provisions of this chapter as and ***to the same extent applicable to warrants authorized in section 11-28-2.***

Constitutional provisions are to be strictly construed, hopefully with a little common sense. It is reasonable that the voters of Alabama who approved §222.05 would want to issue revenue warrants to extend, enlarge or improve an existing system if repaid solely from their sewer fees and charges. It is not reasonable to assume that these voters on the §222.05 constitutional referendum wanted to

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charge themselves $1.6 billion or any other amount to pay for soft costs to implement a new synthetic debt instrument designed primarily to benefit Wall Street and procured by bribes, payoffs and other questionable means.

Moreover, if the court does not want to reach the constitutional issue, under State laws authorizing warrants, refunding warrants also have to meet the requirements that funds be used to pay the costs of public facilities which would preclude the enforceability of the costs to implement the auction rate warrant component of the swap warrants required as a condition precedent to legally utilize the exorbitantly profitable swaps, i.e. $1.6 billion in "swap development costs" that defendants have the legal right to pass along to plaintiffs as higher, lienable, sewer rates and charges.

B. *<u>Declaratory Judgment is the appropriate way to resolve Plaintiffs' legal rights on what they consider unlawful exactions of their disposable household or "operating" income.</u>*

For declaratory judgment purposes, this facts and allegations in the complaint gives us the following undisputed conclusions:

1. The sewer user fees were designed to pay a fixed rate on a swap contract, considered to be the debt service on the "Parity[swap warrant] Securities," ***and not the interest on the auction rate warrants*** which was designed to be paid into the Revenue Account from the variable rate received on the swap component of the debt. This debt service structure violates the requirements of Amendment 73 that "sewer rentals or service charges, [which] shall be levied and collected in an amount sufficient to pay ***the replacements, extensions and improvements to, and the cost of operation and maintenance of, the sewers and sewerage treatment and disposal plants.' Defendants will have a hard time proving that $3 million

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paid to Goldman Sachs from the County's fixed rate swap payment was a "cost of operation."

2. . In addition we allege that the swap contracts were sold with an unfair markup of $170 million over the fair market value, which was used not only to pay money surreptitiously to Goldman Sachs by JPMorgan with the understanding that Goldman was make consultant fee payments to Blount who admitted making payments to Langford and Buckelew, but also to pay legal fees for swap counsel, swap advisors and other locals protagonists who facilitated the what has now become a tragic financing plan not only for the swap warrant holders but also for the general creditors and general creditworthiness of the County. Plaintiffs allege this markup was passed along to the County and then to the Ratepayers by increasing the County's fixed rate payment [or decreasing swap counterparties' variable rate payment] under the swap component of the synthetic fixed rate swap warrants which increased the overall debt service to be collected from the rate payers through higher sewer rates. Alabama Constitution, Article IV, §94(a) provides (in relevant part):

   "(a) The Legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any corporation, association, or company, by issuing bonds or otherwise."
   Alabama Const. Art. IV, Sec. 94;

3. The variable rate received by the County in the related "qualified" swap component of the synthetic fixed rate swap warrant was designed to pay the interest on the auction rate warrants. This is evidenced by the fact that under the 1997 Indenture the swap payments were paid into the Revenue Fund which was used to pay Operating Expenses and Debt Service, in that priority. Section 11.1 of the 1997 Indenture provides:
   "Section 11.1 **Revenue Account.** There is hereby established a special account in the
   name of the County, the full name of which shall be the "Jefferson County Sewer System Revenue Account." ***All System Revenues[4] and all***

[4] "System Revenues" means the revenues derived from the Sewer Tax and all revenues, receipts, income and other moneys hereafter received by or on behalf of the County from

> ***amounts received by the County pursuant to Qualified Swaps shall be deposited in the Revenue Account*** promptly upon receipt by the County***On or before the last Business Day of each calendar month, the County will apply the moneys in the Revenue Account for the payment of all Operating Expenses that are then due and that were incurred during the then-current or in any then-preceding calendar month. On or before the various dates specified in Sections 11.2 through 11.5, ***the County will apply the moneys in the Revenue Account that remain after payment of Operating Expenses for payment into the Debt Service Fund***, the Reserve Fund, the Rate Stabilization Fund and the Depreciation Fund, in the order named, of such amounts as are required hereby to be paid therein on or before the pertinent dates specified in the aforesaid sections, to the respective extents provided in such sections and to the extent that moneys on deposit in the Revenue Account are sufficient therefor.

The fact that "Qualified Swaps" receiver payments and the Sewer Tax were comingled in the Revenue Fund [and, of course, money is fungible] means the swap warrants were not ***"made payable <u>solely</u> out of revenues derived from the operation of any one or more of such systems" as required by constitutional provision §222.05.*** The fact that only sewer revenues were formally ***pledged*** to pay warrants and there was an expressed intent under the 1997 Indenture that Sewer Tax be first applied to Operating Expenses, does not change the fact the swap warrants were ***payable*** out of the Revenue Fund that was one big pot of money that was not exclusively sewer revenues. To the extent plaintiffs make this proof

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whatever source derived from the operation of the System (See, 1997 Indenture, "Definitions" at p. 12)

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under Rule 56 or at trial, the §222.05 exception to §224 will be inapplicable and the swap warrants' constitutionality will have to be determined under §224.

C. The complaint complies with federal rules of pleading.

Rule 10(c) provides:

> "(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. "

The first case cited by defendant County, Wagner v. First Horizon Pharm. Corp., 464 F.3d 1273, 1279-1280 (11th Cir. Ga. 2006), is quite dissimilar to our claims. All of the causes of action in the second amended complaint are for declaratory judgment involving essentially the same set of facts—though each claim has a separate legal theory—and requesting the same remedy-the cancellation of swap warrants in the amount of the soft costs of $1.6 billion resulting from the swap warrants illegality and lack of enforceability.

The 11 circuit stated in overruling the motion to dismiss in Wagner:

> "On appeal the plaintiffs have demonstrated their ability to cite specifically to the factual paragraphs that substantiate their claims. We expect that kind of connectivity would allow the district court to determine whether the plaintiffs have stated a claim.
>
> Nonetheless, we disagree that dismissal was the appropriate course of action for the district court to take at this juncture in the litigation. As the district court concluded, "the problem was not that Plaintiffs did not allege enough facts, or failed to recite magic words; the problem lay in the fact that while Plaintiffs introduced a great deal of factual allegations, the amended complaint did not clearly link any of those facts to its causes of action." R6-77 at 6. *We disagree with the dismissal of this case because these observations sound more clearly in Rule 12(e)'s remedy of ordering repleading for a more definite statement of the claim, rather than in Rule 12(b)(6)'s remedy of dismissal for failure to state a claim*. In fact, the court noted that there was "no repeated failure on Plaintiff's part to draft a conforming complaint." Id. (Emphasis supplied)

Wagner v. First Horizon Pharm. Corp., 464 F.3d 1273, 1279-1280 (11th Cir. Ga. 2006)

In this case there can be no doubt as to what factual allegations link to the four separate causes of action.

In defendant County's second case Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1296 (11th Cir. Ga. 2002), "the proposed third amended complaint contains 127 paragraphs (six more than the second amended complaint) and nine counts, with each count incorporating by reference every paragraph that precedes it." The second amended complaint in this case (treating the severed complaint in intervention as the first complaint) has *eliminated* 6 causes of action, 120 paragraphs and 46 pages. Two-thirds of the prior complaint has been eliminated together with over 550 pages of exhibits. In Strategic Income, the proposed third (rejected) complaint was longer and more verbose than the second. Further, each count which incorporated the prior count relied on different facts whereas here each count for declaratory relief relies on the same facts. For example, the same facts showing violation of the 1997 indenture in count 1 show the procurement of the bribery motive in count 3. The placement of liens under Amendment 73 in count 2 is the same facts showing violation of due process in count 4. This second amended complaint cannot be conclusively characterized as a shotgun pleading.

As the U.S. Supreme court stated in the third case cited by Defendant county:

> "***<u>The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.</u>***" Conley v. Gibson, 355 U.S. 41, 48. The Rules themselves provide that they are to be construed "to secure the just, speedy, and inexpensive determination of every action." Rule 1. (Emphasis added).
>
> The Court of Appeals also erred in affirming the District Court's denial of petitioner's motion to vacate the judgment in order to allow amendment of the complaint. As appears from the record, the amendment would have done no more than state an alternative theory for recovery.
>
> Rule 15 (a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded. See generally, 3 Moore, Federal Practice (2d ed. 1948), paras. 15.08, 15.10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."
>
> <u>Foeman v. Davis, 371 U.S. 178, 181-182 (U.S. 1962)</u>

The County makes the amazing statement (County's Motion to Dismiss, Page 6) that "[b]ecause Plaintiffs have not identified ***what property*** the County is alleged to have taken by ***what means***, the County cannot reasonably respond to this claim…." . (Emphasis in original). The inalterable fact of the matter is that Plaintiffs' second

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amended complaint states, in more than one context, that the Supplemental Indentures unlawfully executed by the Defendant County impose an additional liability of $1.6 billion on Plaintiffs. Since Plaintiffs' funds are the only source of revenues for the sewer system, such liability, unless it declared to be void by this Court, will impose huge hardships on Plaintiffs due to increased sewer charges assessed against the Plaintiffs in an amount more than six times the value of their respective properties. Plaintiffs' properties would then be subject to foreclosure and water shut- off. Nothing could be simpler, more dire or more obvious.

D. ***Plaintiffs' claims deal with complex financial instruments superimposed on 100 year old constitutional provisions but are understandable using simple math.***

There is no question that the financial instruments that Plaintiffs claim should be invalidated are modern and difficult to explain in plain English. However, the claims are simple math. The bribes and payoffs estimated by the SEC at around $8 million and the "transaction costs" of approximately $300 million were paid to facilitate a corrupt implementation of interest rate warrants that overcharged Plaintiffs by about $1.6 billion. Plaintiffs ask that the warrants equal to this amount be declared *void ab initio* allowing the overcharged debt owed now by plaintiffs to be cancelled or set off against future payments.

E. Plaintiffs' claims are based on the SEC findings in the consent decree with JPMorgan and the Eleventh Circuit findings in U.S. v. Langford case and the resulting loss to the taxpayers of approximately $1.6 billion from this well publicized criminal conduct.

Following the natural results of this well publicized activity is not accusatory, as suggested by the County's motion. Defendant claims to this effect have no merit.

F. The swap warrants are unconstitutional based on the Variable Rate Indentures , ISDA Swap Agreements and Commission Resolutions used in this particularcase to pay for swap contracts—all of cases cited by defendants deal with fixed rate warrants used to pay for capital projects[5]

1. Violation of Section 94(a).

Section 94 (a) of the Alabama Constitution provides that "[t]he legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association or company, by issuing bonds or otherwise." Ratepayer-Plaintiffs contend that the Swap Warrants which include two components: (i) auction rate warrants and (ii) interest rate swaps, constitute an unlawful lending of credit under Section 94 (a).

Defendant County cites *Guarisco v. City of Daphne*, 825 So. 2d 750, 753 (Ala. 2002) as its leading case to show that there is no "lending of credit by a [county] when it enters into an ordinary commercial contract with an individual or corporation whereby benefits flow to both parties and there is consideration on both sides." However, the facts show that the County's reliance on *Guarisco* is misplaced. In *Guarisco*, a warrant was issued to "pay the for purchase of real property for the construction or maintenance of a parking lot [which] constitutes a public

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purpose." The selective quotation provided by Defendant County conveniently ignores the "public purpose" finding of the *Guarisco* Court.

This interpretation of Section 94 is further emphasized by the dissenting opinion of Justice Houston in the same case, *in which he agreed with the majority* that certain commercial contracts entered into by a city or County are not prohibited by Section 94 but, based on the specific facts involved in *Guarisco*, *did not arrive at a finding of public purpose*. He stated: "In fact, a review of those cases in which we have exempted commercial contracts from the prohibition of § 94 demonstrates that "ordinary commercial contracts," which are exempt from § 94's proscription, must be for *'proper corporate interests,' i.e., for the benefit of the city, and identified with a public purpose.*" (Emphasis added.)

Thus, unless "ordinary commercial contracts" with an individual or corporation serve a public purpose, it cannot fall within the ambit of the holding in *Guarisco.* The essential requirement of a public purpose in any contract where any form of aid or lending of credit flows to an individual or corporation has been reiterated by the Alabama Supreme Court several times over decades. "The limitation that public money and credit can only be used for 'public purposes' is a matter of due process and implicit in the Alabama Constitution. Indeed, the premise that all appropriations or expenditures of public money by municipalities

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and indebtedness created by them must be for a public purpose as opposed to a private purpose is a widely recognized one." *Brown v. Longiotti*, 420 So. 2d 71, 72 (Ala. 1982)(citations omitted). Sections 93 and 94 of the Alabama State Constitution allow the appropriation of public revenues in the aid of an individual, association, or corporation only when the appropriation is for a "public purpose." A public purpose has for its objective the promotion of public health, safety, morals, security, prosperity, contentment, and the general welfare of the community.

The public record as found in the SEC Cease and Desist order against JPMorgan shows that swap payments passed along to Ratepayer-Plaintiffs as higher sewer rates were used to pay bribes or "influence money" to benefit various individuals and corporations. This is not a public purpose.

Furthermore, JP Morgan made a series of payments to local firms whose principals or employees were close friends of certain commissioners of Debtor-County, but were unable to participate as auction rate underwriters or as swap providers under Alabama law. JPMorgan did not disclose the payments in the official transaction documents. These payments ran into the millions of dollars (see *USA v. Langford,* 647 F. 3d 1309 (11th Cir. 2011)) and cost the Debtor-County because JPMorgan incorporated certain of them into the cost of the swap transactions, even though the firms performed virtually no services for the County.

In short, the Swap Warrants were issued not for a public purpose or benefit such as raising money for capital projects, but (1) for the purpose of creating unjust profits and fees for (A) swap counterparties, issuance participants and non-participant tortfeasors who were paid for making no meaningful contribution except agreeing to not compete; (B) sundry bond underwriters and remarketing agents; and (C) bond counsel and other professionals who received exorbitant fees for closing the illegal transactions; *and* (2) to obtain warrant proceeds and swap profits used for payoffs to County officials and employees as bribes. The Swap Warrant proceeds were used only to refund the Consent Decree Warrants which were issued to fund improvements, and the Swap Warrant issuances pursuant to three Supplemental indentures were merely a subterfuge to provide pecuniary benefits to Swap Fraud Perpetuators contrary to the provisions of Section 94 (a) as admitted by one of the Swap fraud Perpetrators in *Langford, supra.*

The Swap Warrants continue to be illegal even today though issued in 2002-3 because the payments which violate Section 94(a) are collected each month in sewer levies and collections from Ratepayer-Plaintiffs by means of capitalization of illegal payments given to private parties in 2002. The financial fraud perpetrated by the mechanism of the Swap Warrants *resulted in $1.6 billion in additional financing soft costs* and these costs were capitalized into the principal of aggregate debt owed by Debtor-Count, and, in turn, are reflected in the interest and/or

swap payments. Eventually, these payments are made from Sewer Revenues levied on or to be levied on and collected from Ratepayer- Plaintiffs over the next 30 years.

There is no damage inflicted on Plaintiff-Ratepayers until the interest rates get increased several years after the private parties who pilfered the money have decamped from the scene. However, in describing the scope of Article IV, Sec. 94(a) of the Alabama constitution, the Alabama Supreme Court has stated that this provision is broad enough to cover such circumstances: "The evil to be remedied is the expenditure of public funds in aid of private individuals or corporations, regardless of the form which such expenditure may take …." *(Opinion of the Justices No. 120*, 254 Ala. 506, 510, 49 So. 2d 175, 178 (1950).

The swap contracts and variable rate refunding bonds will cause continuing financial losses for the Ratepayer-Plaintiffs, unless enjoined as void from inception, over the term of the financing and any refinancing of the financing. The public record (the audit reports of the County) shows that Swap/Refunding warrant proceeds were not used for sewer improvements or enlargements but only to refund the Fixed Rate Warrants issued earlier, and in order to provide pecuniary benefit to private parties who participated in the issuance of the Swap Warrants.

2. <u>Violation of Amendment 73</u>

Jefferson County, in constructing and maintaining the Jefferson County drainage and sewerage system, is acting in a public and governmental capacity,

and not in the performance of a self-imposed corporate duty. The distinction between governmental and proprietary functions has been explained as follows:

> "The governmental functions of a municipal corporation include the promotion of the public peace, health, safety, and morals, as well as the expenditure of money for public improvements, the expense of which ultimately is borne by the property owners." 56 Am. Jur. 2d Municipal Corporations § 183 (2000) (emphasis added). "A function is a governmental function if it is the means by which the governing entity exercises the sovereign power for the benefit of all citizens." Lane, 669 So. 2d at 959-60. It is "done by authority of law …. [a]nd … not … for profit …. It is not of a proprietary nature, but under the police power to promote the health and well-being of the people." *Downey v. Jackson, 259 Ala. 189, 193, 65 So. 2d 825, 827 (1953).*

City of Selma v. Dallas County, 964 So. 2d 12, 19-20 (Ala. 2007) states that Governmental functions must be expressly authorized by statute or self-executing constitutional provisions. Since there is no Alabama statute which confers authority on Jefferson County to levy and collect "sewer rentals or service charges," such authority can be found only in Amendment 73 which by its express terms is self-executing. Amendment 73 also expressly specifies the kind or the revenues ("sewer rentals and service charges), which may be levied and collected pursuant to its terms. However, before "levying or collecting any such sewer rentals and service charges," the County must first submit a proposal to the voters and gain approval from the majority.

Additionally, since the swap is paid from sewer fees that can be raised without limit, a derivative credit instrument is created which is backed by the

County sewer revenues and can be sold in the marketplace based on the County's obligation to pay a certain synthetic rate on a nominal amount equal to the principal of the underlying variable rate security. As such, under the authority of Amendment 73, the County's credit is being loaned, granted or sold *by the swap provider* in violation of Section 94(a), this time without even the corresponding benefit of a normal commercial contract.

Although Defendants claim swap payments are not debt payable from sewer fees, the Ninth Supplemental Indenture says the opposite:

> "(d) Additional Parity Securities Previously Issued. No Parity Securities, other than the Outstanding Parity Securities, have heretofore been issued by the County under the Indenture, and the County now has no outstanding obligations payable from the revenues derived by the County from the operation of the System except the Outstanding Parity Securities and *certain related Qualified Swap*[6] *transactions." (Emphasis supplied.*)

In the instant case, both Defendants know that the County did not have money "on hand" to pay the warrants issued under the three impugned Supplemental Indenture but were relying on the rate covenant in the 1997 Indenture which represent "sources to be derived in the future."

Reliance on this rate covenant is misplaced because of the word "shall" in Amendment 73: ""[B]efore issuing any bonds *or levying or collecting any such sewer service charges or rentals, the proposal shall first be submitted to and*

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approved by a majority of the voters." (emphasis added). In *Brown, above,* the Alabama Supreme court, in declaring that "the taxpayers have met their burden to "clearly show [the] invalidity" of the ordinance. Richards, 805 So. 2d at 706. Therefore, we reverse the judgment of the trial court to the extent that it holds that the levy and collection of the occupational tax the ordinance purports to impose is legal and valid and complies with the laws of the State of Alabama," also ruled:

> "The word 'shall' is clear and unambiguous and is imperative and mandatory.". In other words, there is no discretionary "middle ground"; we are required to apply the meanings in the definitions enumerated in § 40-1-1 unless required to apply a meaning that is otherwise made clear by context

See, also *Ex parte Prudential Ins. Co. of America*, 721 So. 2d 1135, 1138 (Ala. 1998) ("The word 'shall' is clear and unambiguous and is imperative and mandatory.")

3. Sections 224 and 222.05 of the Alabama Constitution are Violated by Issuance of Swap Warrants

The Alabama Supreme Court has held "that all voluntary obligations assumed or incurred after the exhaustion of the full amount of revenues on hand or in valid expectancy are debts which are repugnant to the Constitution, and are therefore invalid as to their payment." *Brown v. Gay-Padgett Hardware Co.*, 188 Ala. 423, 431 (Ala. 1914).

Section 224 of the Alabama Constitution states:

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> "No county shall become indebted in an amount including present indebtedness, greater than five per centum of the assessed value of the property therein. Nothing herein contained shall prevent any county from issuing bonds, or other obligations, to fund or refund any indebtedness now existing or authorized by existing laws to be created.

The Swap Warrants violate the debt limitations imposed by Section 224 of the Alabama Constitution. Irrespective of whether the auction rate warrants are considered separate from the accompanying swap, or a part of a new debt instrument called a 'synthetic fixed rate warrant," Net Sewer Revenues required to pay them jointly or individually are sourced not from existing revenues but from future rate increases under the rate covenant in the 1997 Indenture.. Consequently, both the swap component and the auction rate component of the "synthetic fixed rate" Swap Warrants" are not warrants exempt from constitutional requirements since they have no existing source of payment.

This Court delineated the characteristic features of a bond and warrant under Alabama law which included the requirement that warrants could be issued only based on revenues "on hand." The Court further observed: "The Supreme Court of Alabama has … also made clear that just because an obligation is called a warrant does not mean it is a warrant. It might be a bond or some other type of instrument. [Citations omitted.] Due to

Alabama's debt limitation for Jefferson County, this Court takes note that the County has a vested interest in maintaining that its warrants are warrants and not some other sort of indebtedness that might be required to be included in ascertaining whether it has stayed within the debt limitation." _*In re Jefferson County*, 469 B.R. 92, 99 (Bankr. N.D. Ala. 2012). However, at that time, the issue of whether the Swap Warrants_ "are, as a matter of fact and law, warrants or some other form of debt such as a bond" was not before the Court, and hence was not adjudicated at that time.

The auction rate component of the Swap Warrants were issued to provide the underlying variable rate debt required to execute $3.2 billion floating to fixed rate swaps and $2 billion in floating to floating rate basis swaps. (See, Article 10 of the Ninth Supplemental Indenture). Each of the floating to fixed rate swaps requires the County to pay installments on the purchase price for the swap equal to the negative difference between, in today's market, approximately a fixed 4-5% rate where the variable rate LIBOR on a declining notional amount is less than one percent. If the county wants to refinance the auction rate warrants associated with the swap the all remaining installment payments are present valued at the rates in the forward yield curve on the day of termination. This is called a breakage or termination penalty or fee.

Because the County is in default in the auction rate warrants, there has been an acceleration of the breakage fee or termination fee on the swaps equal to the present value of this difference annually for the remaining terms of the swaps which must be paid from revenues derived from the sewer service fees on a subordinate basis. The required payment of a future debt, called an accelerated swap termination or breakage fee, which is "present-valued" to today based on the forward yield curve, and *for which there are no funds on hand to pay, <u>is a debt obligation and not a warrant</u>.* But the obligation is neither a bond nor other security for purposes of Sec. 222.05 since it is not used for expansion or enlargement of the system. Accordingly, the accelerated amount of the termination or breakage fee (caused by the auction rate warrants which exceed 5% of assessed values in the County), makes the swaps and related auction/variable rate warrants unconstitutional under Section 224 and 222.

The Sec. 224 prohibition against indebtedness is generally construed to apply to indebtedness in all forms, however incurred, or for whatever purpose including swap debt; it is not within the power of the legislature or the courts to dispense with the limitation or enlarge the exception. All voluntary obligations assumed or incurred *after the exhaustion* of the full amount of revenues on hand (or in valid expectation) are debts which are

repugnant to Section 224. Since the auction rate Swap Warrants in excess of the 50% restriction on variable rate warrants as well as the swap payments and the swap termination payments payable in connection with such Swap Warrants were payable not from revenues on hand, and were required to be certified under Article 10.2 of the 1997 Indenture to be 105% of all future debt service, the Swap Warrants [comprised of auction rate warrants and floating to fixed rate swaps] are in violation of the Constitution.

Accordingly, the Swap Warrants issued, not for project costs as were the Refunded Consent Decree Warrants, but to allow the Swap fraud Perpetuators to engage in lucrative swaps, and which were not payable from revenues on hand are constitutionally improper and invalid.

The 1997 Indenture defines Sewer Revenues to include the Sewer Tax (authorized by Act 716 in 1901) and Operating Revenues and defines Net Revenue Available for Debt Services (including Swaps) as "Sewer Revenues" less "Operating Costs. " These definitions show that the *property taxes in existence since the early 1900 are intercepted under the 1997 Indenture and charged to increase Net Revenue Available for Debt Services even though not technically "pledged" to payment of the Swap warrants.* The Sewer Tax is added to the revenue from the operation of the System under the definition of "System

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Revenues" thereby increasing net revenues going to the Swap Warrants. Because money is fungible these tax dollars are being used to pay the Swap Warrants even though these are not expressly pledged.

The Opinion of Justices, No. 346 , Supreme Ct of Alabama (1995) 665 So. 2d 1357 involved questions relating to a bill to lend money to Mercedes Benz to incent them to locate a plant in Alabama. It was opined that payment from earnings of an existing trust fund (where earnings were constitutionally required to be accumulated) to the general fund was unconstitutional. The funds could not be intercepted prior to going to the general fund.

The prohibition against indebtedness is generally construed to apply to indebtedness in all forms, however incurred, or for whatever purpose including swap debt; it is not within the power of the legislature or the courts to dispense with the limitation or enlarge the exception. *Gunter v. Hackworth, 182 Ala. 205, 62 So. 101, 1913.* All voluntary obligations assumed or incurred after the exhaustion of the full amount of revenues on hand or in valid expectancy are debts which are repugnant to this section and are therefore invalid as to their payment. *Brown v. Gay-Padgett Hardware Co.,* 188 Ala. 423, 66 So. 161, 1914 Ala. LEXIS 281 (1914). If the Swap debt incurred under the three impugned Supplemental Indentures violates provisions of the Constitution , then the Swap Warrants which were issued, not for project costs, but to allow the promoters to engage in lucrative

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swaps, are also constitutionally improper. *Taxpayers & Citizens of Shelby County v. Shelby County*, 246 Ala. 192, 20 So. 2d 36, 1944 Ala. LEXIS 479 (1944).

In particular the termination values[7] caused by the unfair markup in the swaps and received as profit *on the day the swaps were executed in the amount of $170 million* which increased to over $600 million as described by the SEC, is not consideration that benefits the County, but inures only to the pecuniary benefit of the swap provider in violation of both Sec. 224 as well as Article 94(a) since it is a gift of public funds for which no exchange of consideration took place.

Under Amendment 73, the County is also vested with the authority to turn off the water and put on an assessment lien in the event of nonpayment. That kind of security goes beyond mere "revenues from the operation of the system. A foreclosure lien or the threat of water shut off provides money not from operations of the system but money from the exercise of the police power of the County.

In discussing *Town of Georgiana* in *Taxpayers & Citizens of Shelby County v. Acker*, 641 So. 2d 259, 261-62 (Ala. 1994), this Court explained:

> "In *Town of Georgiana*, the governing body of the municipality levied a broad-based gross receipts tax and pledged the proceeds thereof to the payment of the proposed warrant issue. The proceeds **[*792]** would otherwise have been available for general municipal purposes. The pledge of the tax for the payment of the warrants could have

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[7] A termination value is just the present value or acceleration value based on current yield curves of the remaining payments due from the County on the swaps. If there was no annual debt due on the swaps there would be no debt to calculate an acceleration payment. Plaintiffs however claim that swaps are not debt.

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indirectly imposed a greater burden on the taxpayer because of the fact that revenues otherwise available for general municipal purposes were being displaced.

"… The warrants proposed to be issued in *Town of Georgiana* had as their source of payment revenues that otherwise would have been available for general municipal purposes and those warrants **[**21]** would thus constitute a debt in the constitutional sense."

The court has also recognized the logic of the Alabama Supreme court in *Town of Georgiana*, as follows:

"At the point now reached by the County, the payment of increasing sewer charges takes monies from its residents that might otherwise have been available via taxes, assessments, fees, or other means. It also has caused the County to use non-sewer revenues and County properties to subsidize some costs and expenses attributable to the sewer system which have not been fully reimbursed from sewer system revenues. These indirect effects are some of what states wanted their municipalities to avoid when they imposed debt limits on them: excessive borrowing that impairs municipal governments from getting monies via taxes, fees, or otherwise for other purposes and dedicating properties and monies to debt service that might be better used elsewhere. "

In re Jefferson County, 474 B.R. 228, 239 (Bankr. N.D. Ala. 2012).

The unbridled issuance of warrants through an expansive reading of constitutional debt limitations makes a mockery of what the 1900-1 constitutional revisions were attempting to accomplish. The County's position from an economic perspective is unfathomable. Jefferson County's total assessed value is about $430 million. So if all the property of the county were sold under the assessment lien in Amendment 73, the proceeds would only cover 12% of the outstanding sewer debt. How can the public improvement debt be 8 times more than the property it

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purports to improve and still be constitutional? It should be clear from these numbers that Ratepayer-Plaintiffs will start walking away from their houses rather than pay off a debt that is 8 times the value of the property they own. Accordingly the sewer warrants have reduced the values of Jefferson County properties rather than provided a benefit.

In addition, the execution of swap transactions summarized above obligated Debtor-County to pay termination values as set the ISDA swap agreements. Confirmations as to each swap transaction violate Alabama Const. Art. XII, Sec. 222.05. Such swap transactions could occur *years after* the original bonds from which construction proceeds were derived to satisfy the EPA consent decree. Hence payments made by the County (passed along to Ratepayer-Plaintiffs) based on the difference between a fixed rate and a variable rate index which could not possibly have been foreseen when the Swap debt was originally issued, does nothing for the purpose of "extending, enlarging or improving" any water, sewer, gas or electric system then owned by Jefferson County, as required by Sec. 222.05.

Defendants advance the proposition that that because the repayment of the warrant Debt is sourced from revenues derived from the System and is not a general obligation of the county, Alabama Constitution Article 12, Section 224's debt limitation provision does not apply. However, the inalterable and obvious fact of the matter is that Defendants are attempting and will attempt to levy and

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collect revenues *that presently do not exist*, and that is what this bankruptcy is all about. The existence *vel non* of “in hand” revenues at the time the Swap Warrants were issued have a lot to do with their enforceability now. Further, Defendants have not been able to cite one statute that gives them the right to levy and collect sewer service charges and rentals other than self executing Amendment 73 which requires voter approval. One way or another, the Swap debt, whether characterized as warrants or bonds, violate the Constitution.

Defendants take the position that Ratepayer- Plaintiffs disregard the clear standards laid out in Article 12, § 222.05, which expressly provides that sewer warrants that are made payable solely out of the sewer system revenues are not “debts” within the meaning of § 224:

> Revenue bonds or *other revenue securities* at any time issued by a county for the purpose of extending, enlarging or improving any water, sewer, gas or electric system then owned by such county shall not be deemed to constitute bonds or indebtedness of such county within the meaning of Sections 222, 224 or Amendment No. 342 [amending § 224] of this Constitution, if by their terms such bonds or other securities are not made a charge on the general credit or tax revenues of the issuing county and are made payable solely out of revenues .

However, Sec. 222.05 comes into play based on certain requirements—none of which are satisfied in this case. First, it says revenue warrants for a “then owned” or existing facility can be pledged to pay for new projects which “extend, enlarge, or improve that facility” is not a charge on tax revenues or payable solely

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out of revenues are not indebtedness. It does otherwise change the law that warrants may be issued legally only if funds are "in hand" and only with the express legislative authority to levy and collect the revenues to pay them, and only if they are not, as here, partially payable from an existing real property tax revenues by being included, as described above, in the definition of "Sewer revenues" coupled with a covenant of continued collection of such tax revenues during the term of the warrants.[8].

As discussed earlier, the Swap Warrants were issued to get as many swaps done as possible according to the testimony of Blount (a bribe giver) and officers of JPMorgan as found by the federal prosecutor and the SEC, not to pay for "enlargements, extensions and improvement" of projects which had already been financed with the fixed rate warrants. The Swap Warrants imposed the burden of increased aggregate principal on "Day One" and exposure to interest rate swaps thus forcing the County to increase net sewer revenues which could be paid only from the levy and collection against Ratepayer-Plaintiffs. This however was just the most obvious part of theft of County sewer revenues. Additionally, the Swap Warrants procured by the payoffs were for a "New Project" –the production of fees and profits for the briber givers and bribe takers. The requirement under Sec. 222.05 and other authorizing provision of using proceed for the purpose of

[8] See 1997 Indenture section 12.7

"extending, enlarging or improving any water, sewer, gas or electric system" were long forgotten. As the 11th circuit found in *U.S. v Langford, supra,*

> Blount unambiguously testified that he paid the cash and gave valuable clothing and jewelry to Langford as a series of bribes to a public official. Specifically, he said, he bribed Commissioner Langford "by providing funds to Al LaPierre, who gave them to [Commissioner] Langford, and by buying a number of gifts, jewelry, clothing for [Commissioner] Langford." As for why he did it, Blount bluntly explained that "*I wanted to make absolutely certain that Blount–Parrish was involved in as many bond issues and swap and financial transactions in Jefferson County as I possibly could."(Emphasis added)*

The statements by Blount under oath reflect the truth of the matter -- that the issuance of 2002C, 2003B and 2003C warrants for the purpose of acquiring swaps were a "new project" and not an enlargement or improvement to the existing System. While Plaintiffs' expert witness can demonstrate to the Court that the County used the Swap Warrants as a source of credit to "purchase" over $5 billion in derivative investments called swaps, such demonstration is scarcely necessary to show that the inherent terms and facts on the public record relating to the f issuance of the Swap debt violated the Constitution. Te facts and circumstances surrounding the issuance of the Swap debt is similar to the situation presented in *Opinion of Justices, 294 Ala. 555,* where the Justices advised:

> Prior to the passage of Amend. CVII (107), Const., 1901, our law was clear to the effect that a pledge of income from an existing revenue producing system, owned by a municipality, to the payment of bonds to finance a new system was impermissible under Ala. Const., 1901, §§ 222, 225, unless such pledge of revenue was necessary to complete

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a system. *Williams v. Water Works and Sanitary Sewer Board, 261 Ala. 460, 74 So.2d 814 (1954)*; *Fuller v. City of Cullman, 248 Ala. 236, 27 So.2d 203 (1946)*:

**

The bill we are discussing, would authorize bonds to be issued to finance creation of a new "Project" in part owned by a municipality, its undivided interest in which might be paid for by conveyance of an already existing facility owned by such municipality. No stretch of imaginative legal reasoning could lead one to conclude that this process was an extension, enlargement, or improvement of a "then owned" municipal electric system as contemplated by Amend. CVII. (Emphasis added).

**

Opinion of Justices, 294 Ala. 555, 568-569 (Ala. 1975)

The sole purpose of the swap bonds was not for extending, enlarging or improving the sewer system but for a "new Project" called synthetic fixed rate swaps. The Official statement for each of the Series 2002C, 2003B and 2003C bonds states that the purpose of each issue is to enter into a contemporaneous swap.

Further, the requirement in the 1997 Indenture that the sewer property tax which is otherwise payable into the general fund be paid into the "System Revenue fund" becomes a "a charge on *** tax revenues" of the County rendering Sec. 222.05 inapplicable. Accordingly Sec. 222.05 does not apply to exempt the allegations in count 2 regarding the swap warrants unconstitutionality under Sec. 222 and Sec. 224 and the defendants' motion to dismiss our claim in count 2 should be denied.

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Ratepayer-Plaintiffs submit that the subject warrants and swap agreements are invalid under § 222 of the Alabama Constitution based on the simple proposition that any debt not otherwise exempt—such as a warrant not “in funds” must comply with Section 222 voter approval. *O'Grady v. Hoover, 519 So. 2d 1292, 1297 (Ala. 1987).* The Jefferson County bankruptcy filing it the best example of what can happen when the laws relating to enforcing constitutional debt restrictions are not strictly enforced. .

4. Violation of Section 223

Without looking at the legislative history, one cannot know that Sec. 223 unlike other statutes codified existing case law, applies to all entities, counties or cities, with the power to make assessments. Accordingly, the term “municipality” is inclusive of all public entities that effect assessments. Therefore Defendants’ position that that the word “municipality” means cities and towns but not counties violates the rule of construction to give every term in a statute meaning. Defendants position is that the language “cities towns and other municipalities” simply means cities and towns only which would make the term "municipality" mere surplusage. Consequently, the term “municipality” should be given a plain and direct dictionary meaning -- all public entities exercising governmental powers over the public at large other than cities or towns since the intent of Sec 223 is to codify existing law requiring a specific finding of public benefit from

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every assessment, regardless of which public entity makes the assessment. Defendants' strained construction would mean counties would not have any limits on the amount of assessments or be required to make assessments in line with benefit to the property owner, which just makes no sense.

There could be reasonable differences of opinion on whether the Swap Debt securities issued by the County pursuant to the three impugned Supplemental indentures may be classified as bonds or warrants. However, as discussed above, irrespective of how they are classified, they violate at least one of the constitutional provisions as among Amendment 73, Section 94 (a), Section 222.05, and Section 224 set out above. Accordingly, each of the three Supplemental Indentures is void ab initio. Ratepayer-Plaintiffs have been subjected to increased assessments and will be continue to be so subjected to pay for the greed and crimes of others rather than for capital improvements to the System. Since the Bankruptcy Court is also a court of equity, a declaration that the Swap Warrants are void *ab initio* will pave the way for a swift and equitable resolution of all claims before this Court.

G. *Plaintiffs Standing in an adversary case to establish their legal rights to avoid a doubling of their sewer fees and to require that levy and collection of sewer fees Comply with the State and Federal Constitutional protections cannot be mooted by a settlement in the Bankruptcy case under §904 of the Bankruptcy law.*

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Plaintiffs’ establishment of their rights in this action will limit the amount of sewer fees and charges that they have to pay. It does not preclude the County from working out any arrangement they chose in a plan of reorganization. As long as the exactions and charges levied on Plaintiffs are legally enforceable, plaintiffs do not have an interest in how the county manages its system or its plan of reorganization. The County will not lose any rights under §904 regardless of the outcome of the adversary litigation. Plaintiffs suffer direct injury to their property rights and disposable incomes, net of sewer utility costs, as a result of the sewer fees charged. Therefore plaintiffs have a right to ask this court to determine if the levy and collection rights given to the County and the Indenture Trustee under the 1997 Indenture and Supplemental Indentures are legal. Plaintiffs have standing to have these legal rights determined.

There is no event in the history of Jefferson County that has had a greater impact on the economic well being of Jefferson County Ratepayers than the rates and charges that have been imposed under the 1997 Indenture and Supplements since the Consent Decree. As stated above these ratepayers are now responsible for repaying debt that is six times greater than the value of their property. Any claim that they have no right or standing to question the legality of the sewer fees being imposed in this magnitude is absurd.

Section 904 provides:

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"§904. Limitation on jurisdiction and powers of court

> Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—
>
> (1) any of the political or governmental powers of the debtor;
>
> (2) any of the property or revenues of the debtor; or
>
> (3) the debtor's use or enjoyment of any income-producing property."

Since there is no trustee in this chapter 9 proceeding, there are only two persons who can file an adversary proceeding–a creditor and the County. Section 904 is not relevant to plaintiffs' right as a creditor to have this court make a decision about the issues presented. In this case two groups of creditors are claiming they are owed the same corpus of money payable to the Bankrupt estate over the next 25-30 years. Plaintiffs, as taxpayers and ratepayers, claim that they are owed a refund from overcharges of $1.6 billion payable under the 1997 Indenture on certain synthetic fixed rate swap warrants from their sewer fees, from the date of the statute of limitations on claims imposed by the court and prospectively for the next 25-30 years, until the swap warrants are repaid. The Indenture Trustee, as representative of the warrant holders , the bond insurers and certain swap providers (the "swap warrant holder group") are also claiming, as creditors, in a separate adversary proceeding, AP 12-00016, they are owed the same $1.6 billion and have a valid lien enforceable against plaintiffs to repay the

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swap warrants for the next 25-30 years. Both creditor groups have filed adversary proceedings asking for a declaration of their rights under the law as it relates to this claim for the same corpus of money. For plaintiffs to collect on their proof of claim for refund of claimed overcharges they must defeat the warrant holders claim to have a lien to levy and collect these charges.

Creditors' claims in bankruptcy for overcharges from tariffs or rates are commonplace. (See, e.g. Berthold-Jennings Lumber Co. v. St. Louis, 80 F.2d 32 (8th Cir. Mo. 1935) (creditors' claims arose from overcharges by the debtor in violation of a state maximum tariff for certain shipments); Kaleidoscope Communications v. Kaminky (In re Stern Walters Partners), 1996 U.S. Dist. LEXIS 3607 (N.D. Ill. Mar. 25, 1996) (Court found that the Trustee had standing to recover overcharges even though debtor's clients to whom the overcharges were passed also had standing to bring personal claims for such overcharges as the debtors' creditors.); United States v. Yale Transport Corp., 184 F. Supp. 42 (S.D.N.Y. 1960) (the Government has the right to recover, without limitation, overcharges from carriers by deducting such amounts from any amount subsequently found to be due such carrier.); In re Offshore Dev. Corp., 37 B.R. 96, 103 (Bankr. M.D. Fla. 1984) (criminally usurious overcharge resulted in declaratory judgment that mortgage loan was not enforceable); Jahn. v. U.S. Xpress, Inc. (In re Transcommunications Inc.), 355 B.R. 668 (Bankr. E.D. Tenn.

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2006)(Creditor claiming overcharges allowed to set off amounts owed to debtor under 11 U.S.C.S. § 553(a))

H.County's claims under Sections 362(a), 922(a) and 941 of the Bankruptcy Code have no merit.

In this case the County has admitted that the Defendant Indenture Trustee has a valid lien against sewer fees payable by plaintiffs and agrees the Indenture Trustee can cause the County to enforce its lien on sewer fees by collection procedures initiated against plaintiffs as demonstrated by the appointment of the Receiver in the state case and this court's rulings allowing continued collection of sewer fee revenues from Plaintiffs to be paid to Indenture Trustee. Plaintiffs claim the purported lien on sewer revenues as to soft costs on the sewer swap warrants is invalid and unenforceable. A similar situation was addressed in a Chapter 11 case, where unlike this chapter 9 proceeding, there is a trustee representing the bankrupt estate. In Official Comm. of Unsecured Creditors v. Clark (In re Nat'l Forge Co.), 304 B.R. 214, 217 (Bankr. W.D. Pa. 2004) the debtor had agreed that a loan from a bank in the position of the Defendant Indenture Trustee was "secured by "valid, duly perfected, first priority. . .non-avoidable, enforceable liens." The creditors filed an adversary case against JPMorgan as lender and agent for participating banks "to challenge the validity, enforceability or priority of the Bank's security interest and liens." (Id.) both the Banks and the Debtor claimed the

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Creditor did not have the right to file the adversary proceeding because it interfered

with the orderly liquidation of the estate. The creditors argued the Court, pursuant

to 11 U.S.C. § 105, § 1103 and § 1109, should grant authority to the Creditors'

Committee to prosecute the colorable fraudulent conveyance claims that it has set

forth for the benefit of the bankruptcy estate. The court noted that (similar to the

case at bar) the Debtor was not pursuing the claim (even though it would benefit

the estate) and had even failed to mention the claim in its Disclosure statement:

> "The parties in interest who oppose granting the Creditors' Committee the authority to pursue the claims set forth in the Complaint are parties who will be defendants in the lawsuit. Some of those defendants are the same Key Employees who will also control Liquidating NFC. They clearly have interests potentially at odds with the Debtor's creditors. If any of those parties would agree to the Committee's request, they would not appear here in strident opposition. Such a request by the Committee would have been futile.
>
> Even the Debtor, which is not named as a defendant, has appeared and filed opposition to the Motion. Debtor seemingly takes inconsistent positions. In response to the Creditors' Committee's objection to the Disclosure Statement that it failed to disclose that the cause of action raised in the Complaint may exist, Debtor posited that such action was property of Holdings and would not be affected by the Plan. In the face of Debtor's opposition, it cannot be said that a formal request, in order to obtain a formal refusal, a request which would surely be refused, should be required.
>
> ***The Creditors' Committee asserts that the Debtor was insolvent when the stock redemption was accomplished, or was rendered insolvent thereby, thus creating fraudulent transfer claims against the Banks and certain transferees and breach of fiduciary duty claims against the Debtor's officers. The above bare-bones facts state, at least, a colorable claim. While there may be adequate defenses which come to light when answers to the Complaint are filed, the claim in its present form is colorable.

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> Debtors' management has a conflict of interest in pursuing the fraudulent conveyance action. Key Employees received a benefit from the Redemption Transaction and are named as the Individual Defendants to the Complaint. The Creditors' Committee is the only appropriate party to pursue the cause of action.
>
> Official Comm. Of Unsecured Creditors v. Clark (In re Nat'l Forge Co.), 304 B.R. 214, 217 (Bankr. W.D. Pa. 2004)

The court ruled that the Adversary proceeding should go forward ***even though n order of confirmation had already been issued.*** The court ruled:

> "***here is no risk that the Creditors' Committee is usurping the Debtor's role in bringing the Complaint. The Court has had ample opportunity to serve the role as "gatekeeper" in this case to weigh the potential benefit*** of the litigation against the costs that might be incurred. Any funds that the Creditors' Committee expends in pursuit of the Complaint are funds that would otherwise be available for distribution to its constituents. The incurrence of costs and fees of prosecution has no affect on any other party in the case."

In this case, the Defendant Debtor County has moved to dismiss the Plaintiffs' Creditor claim and has requested to be a defendant in the adversary proceeding to resist the claim. Because the County has conceded that the Indenture Trustees' lien is valid, it cannot now take the inconsistent position to this concession, that Plaintiffs' claims impinge on its exclusive §941 right to constrain or control how the County can adjust its debts since it is foreclosed to assert, and has waived, the right to make a claim under §941 that the lien is invalid. This abdication of the County in failing to pursue and obvious claim of wrongful transfer of $1.6

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billion in public money to benefit private firms and individuals presents the case where in the words of Official Comm. Of Unsecured Creditors, *infra,* the Plaintiffs are "the only appropriate party to pursue the cause of action." (See, also G-I Holdings, Inc. v. Those Parties Listed On Exhibit A (In re G-I Holdings, Inc.), 313 B.R. 612, 643 (Bankr. D.N.J. 2004) (where the Court found that Debtor G-I Holdings has unjustifiably refused to bring suit challenging a Pushdown transaction as a fraudulent conveyance based on actual and constructive fraud. Notwithstanding Debtors' claims, among others, of failure to state a cause of action and running of the statute of limitations, the Court granted the creditors leave to file a fraudulent transfer action challenging the 1994 Pushdown transaction on behalf of G-I Holdings pursuant to § 544(b) of the Code as an adversary action.).

CONCLUSION

A Motion to Dismiss must be denied if there is a minimum showing that a plaintiff can prevail on the merits. The Plaintiffs in this case have more than adequately met that burden, and deserve their day in court.

There could be reasonable differences of opinion on whether the Swap Debt securities issued by the County pursuant to the three impugned Supplemental Indentures may be classified as bonds or warrants. However, as discussed above,

irrespective of how they are classified, they violate ***at least one*** of the constitutional provisions as among Amendment 73, Section 94 (a), Section 222.05, and Section 224 set out above. Accordingly, based on the facts alleged by Plaintiffs which will be proved at trial, each of the three Supplemental Indentures is void ab initio. Since the Bankruptcy Court is also a court of equity, a declaration that the Swap Warrants are void *ab initio* will pave the way for a swift and equitable resolution of all claims before this Court.

Defendant Jefferson County has attempted to argue the merits of their objections to the Adversary Complaint in their Motion to Dismiss. Plaintiffs are not obligated to advance legal theories for all their claims at this point, although the legal basis of their claims is sound and tenable. Plaintiffs have suffered an immediate injury to their property values and future available disposable income to satisfy payments exacted by the County to pay the Indenture Trustee for the unlawfully implemented swap warrant financings. The County has asserted that these financial instruments are lawful and with this filing takes a position diametrically opposed to their customers-the taxpayers and ratepayers-- in resolving a lawfully filed claim. The plaintiffs are the only persons who will aggressively pursue this claim and should be allowed to proceed.

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Respectfully submitted on this 31st day of May, 2013.

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/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.	)	

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' SUPPLEMENT AND AMENDMENT TO OBJECTIONS FILED JULY 30, 2013, TO CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA

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

IN RE:	)	
	)	**Case No.: 11-05736-TBB-9**
JEFFERSON COUNTY, ALABAMA,	)	
	)	**Chapter 9 Proceeding**
DEBTOR.		
	)	

RATEPAYER/CREDITORS' SUPPLEMENT AND AMENDMENT TO OBJECTIONS FILED JULY 30, 2013, TO
CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA

COME NOW 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 CULPEPPER, Lt. Col. Rt.; FREDDIE H. JONES, II; SHARON OWENS; REGINALD THREADGILL; RICKEY DAVIS, Jr.; ANGELINA BLACKMON; SHARON RICE; and DAVID RUSSELL (the "Ratepayer/Creditors") and submit this, their Supplement and Amendment to Objections Filed July 30, 2013, to the Chapter 9 Plan of Adjustment for Jefferson County, Alabama, as supplemented ("Plan"). Ratepayers are real parties in interest, have filed a Claim, and each is a special taxpayer pursuant to 11 U.S.C. Section 1109(b). Pursuant to 11 U.S.C. Section 943(a), each has a right to be heard with respect to this Objection. Further, pursuant to 11 U.S.C. Sections 1128 and 943(a), each has a right to object. Ratepayers respectfully request that the Court determine that the Plan is not feasible and is not in the best interest of creditors as required pursuant to 11 U.S.C. Section

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943 (a) (7) and, hence, the Plan should not be confirmed.

In support of this filing, Ratepayer/Creditors submit and rely upon the following:

(1) the case law, legal arguments and/or exhibits included herein and in Ratepayer/Creditors' Objections to Plan of Adjustment filed July 30, 2013;

(2) the Declaration of Commissioner Bowman, who is the County Commissioner for District 1, the County district with the largest number of Sewer system ratepayers;

(3) the Declaration of Andrew Bennett, who is the Assistant County Assessor, Bessemer Cut; and

(4) the Declaration of Sheila Tyson, who is the newly elected City of Birmingham Councilwoman, a community association leader and public advocate.[1]

In support of this filing, Ratepayer/Creditors state as follows:

I. 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 "Ratepayers/Creditor Claim" or the "Claim"). This Claim was for overcharges of $1.63 billion in sewer charges resulting from the County's unlawful issuance and execution of over $8 billion in Swap/Warrants.

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

[1] The above three declarants will be called to give live testimony at the hearing on October 17th.

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"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 (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 the $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

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2002A (hereinafter collectively referred to as the "Compliant Warrants)— 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 their enforcement is not forbidden by law as with 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 to 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]:

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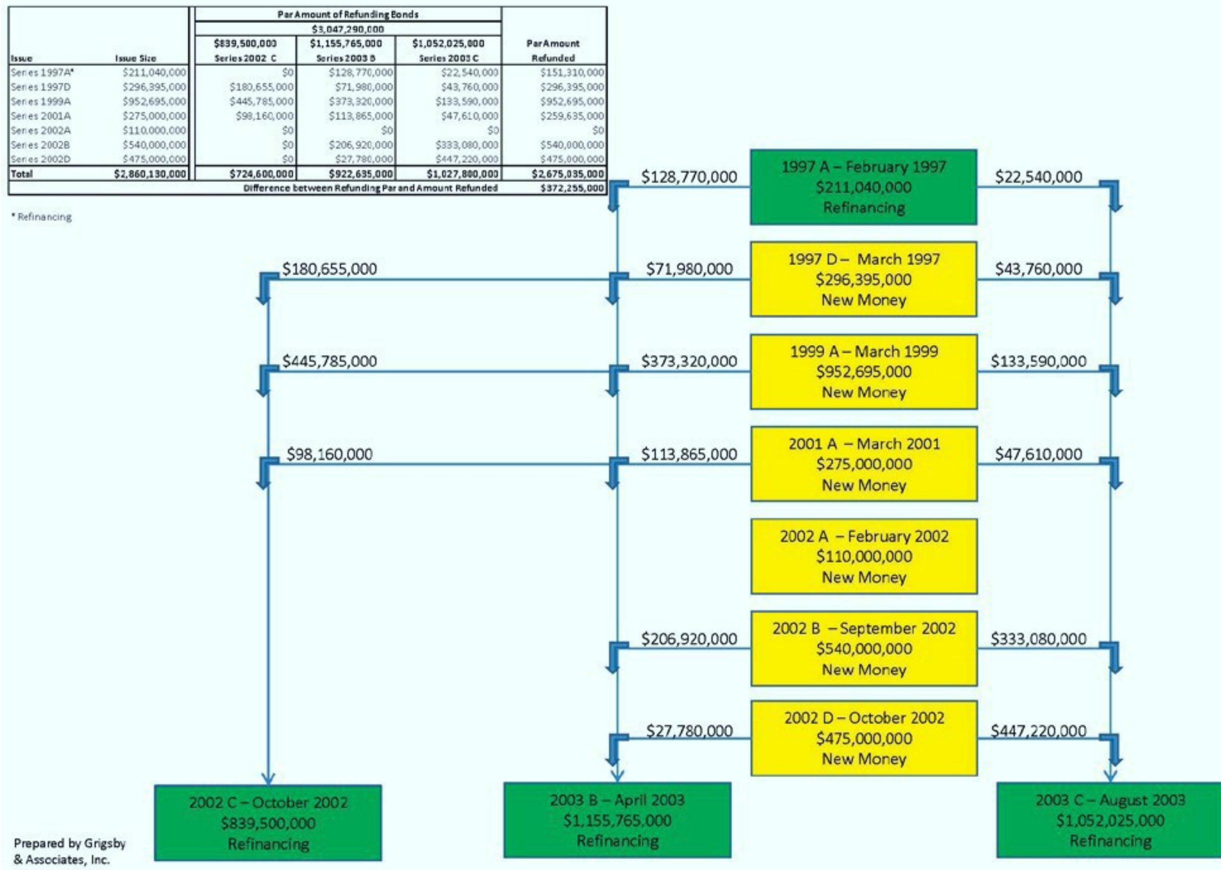

Jefferson County Issued $3,047,290,000 in Bonds to Refund $2,675,035,000 in Principal. A Difference of $372,255,000.

Issue	Issue Size	Par Amount of Refunding Bonds $3,047,290,000 — $839,500,000 Series 2002 C	$1,155,765,000 Series 2003 B	$1,052,025,000 Series 2003 C	Par Amount Refunded
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.

Debtor's Chapter 9 Plan of Adjustment was originally filed on June 30, 2013 and was amended by submissions on July 29, 2013. It was additionally supplemented on September 30, 2013 with updated exhibits, including updated GO and sewer warrant indentures. (the Plan as amended on July 29, 2013 and supplemented about a week ago is

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referred herein to as the "Revised Plan"). 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 which is hereby incorporated herein by reference and will be referred to herein.

Ratepayer/Creditors object to the Revised Plan for the following reasons:

A. The Illegality of Swap/Warrants as Alleged in the Adversary 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. For the Plan to be confirmed, a necessary finding by the Court will be that the Plan has been proposed in good faith and is not replete with refinancings and other means forbidden by law, or compromises on illegality. 11 U.S.C. 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, concern that Swap Warrants are void *ab initio*, is the direct cause of the amount agreed to in the compromise so far. Their non-enforceability, based on the corrupt activities of JPMorgan, the Former managers of Debtor, and the Swap Warrant Trustee, is a defense to continued validity of all existing Swap/Warrant holders since "holder in due course" defenses do not apply to warrants issued under Alabama law. However, as shown by the Ratepayer/Creditors' Alternative Financing Plan (Plan Opposition pp. 8-10) the *prima facie* showing of illegality is not being compromised properly, and the County-Debtor will substantially increase settlement value in the interest of creditors by joining Ratepayer Creditors

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in establishing the invalidity of the Swap Warrants. 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 Revised Plan is in the best interest of creditors and is feasible under 11 USC 943(b)(7).

B. The Revised Plan is Infeasible and Should Not be Confirmed Under 11 USC 943(b)(7) because (1) Sewer Revenue Requirements Exceed the Financial Capability of the Users Connected to the Sewer System Under EPA User Household Capability Requirements, (2) the Revised Plan fails to comply wh Alabama Constitutional Amendment 73's Reasonableness Standard and (3) the Revised Plan does not Comply with Voter Approval Requirements of Alabama Constitutional Amendment 73

1. *The Plan Fails to Properly Evaluate The County's Reasonable Ability to Collect Sewer Revenues Given the Demographics and Median Income of Sewer Service Area*

The Revised Plan fails to ascertain the specific 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 of June 30 Disclosure Statement). The Revised Plan deceives the Court because it is based on demographics and Median Income levels of the State of Alabama, Jefferson County as a whole, where almost half of the households are using septic tanks, 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

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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 the $30 million implementation cost contemplated under the Consent Decree, coupled with decline in median income among the sewer user base compared to the nation as a whole. The Court has not allowed any evidentiary hearings on this issue in connection with Ratepayer/Creditors AP 120 Complaint or as part of this Revised Plan Objection. The Debtor/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.

Because there is no evidence of economic feasibility based demographic information on the actual user base, and there is no feasibility study showing compliance with EPA guidelines, and no showing of Amendment 73 "reasonableness" and "compliance with Amendment 73 voter approval requirements, the Revised Plan cannot 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. To be sure, all claimants who would object to the Plan because they are ratepayers who have been and will be wrongfully and unconstitutionally overcharged by the Revised Plan have even been allowed to vote on the Revised Plan even though they have timely filed claims in this proceedings and Adversary Proceedings claiming the lien which will enforce the sewer

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overcharges is illegal under Alabama Law. The court must allow a full evidentiary hearing on the legality of the New Sewer Indenture recently proposed on September 30.

2. *The Median Household Income of the Users Paying Sewer Bills shows the Revised Plan is Not Confirmable*

It would be irrational given the actual historic decline in the Sewer Service Area of Median Household Income of actual System users paying sewer bills, that these same Sewer Users would be able to pay increases in user fees from $140 million/year which is the present level to $600 million/ year as outlined in the Financial Plan (see, Exhibit B to Plan Opposition). The Debtor /County has consistently presented misleading evidence on this issue. As an example, 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 Court must allow a full hearing on getting into the record the Median Household Income of the persons in census tracts actually connected to the Sewer System before confirming this Revised Plan as feasible. 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 basing the Plan confirmation on relevant information on user MHI essential to valuation of the System earnings, the Court has, we think wrongfully, approved a Disclosure Statement that wrongfully suggests this information is not available:

"The sufficiency of the gross revenues from the operation of the Sewer

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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)

The Court's confirmation must be based on correct valuation and accurate projection of revenues prior to a 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 and 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.

Ratepayer/Creditors have produced rudimentary information on MHI and the poverty existing in the Sewer User Area, however, more projections or feasibility studies showing the costs of the Plan are within the ability of the County System users' ability to pay must be mandated by the Court prior to any Plan confirmation or vote. Such studies 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."**).** this obligation is especially relevant here where Ratepayers with claims for overcharges and illegality of liens imposed on them by the Sewer Warrant Indentures have not been given their lawfully required right to vote on the Plan or right to vote on rate increases under Amendment 73.

C. The Refinancing of the Series 2002C, 2003B and 2003C with New Sewer Warrants is Not Legally Enforceable Because these Warrants are *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 to 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, rescind and nullify for the County Ratepayers $10 billion in overcharges contemplated by the Revised 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 no right to a Revised Plan components of which are not in accordance with Alabama Law under Rule 1129 (a) (3)[2] and Rule 943(b) (4).[3] The Debtor/County certainly has the right to adopt the Alternative Financing Plan and support 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

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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

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

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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 Revised Plan may Not be confirmed Unless There is 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 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").

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[3] 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").

> 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

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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, <u>In re Mount Carbon Metro. Dist., 242 B.R. 18, 39-41 (Bankr. D. Colo. 1999)</u>:

> "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 ***<u>tainted by unfair dealing, breach of fiduciary obligations, and the need for protection of one class from encroachments of another</u>***. 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 ***<u>a property owner whose future tax obligations were unfairly impacted was denied due process</u>***. 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 <u>In re Pierce County Hous. Auth., 414 B.R. 702, 719-720 (Bankr. W.D. Wash. 2009)</u> 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 <u>*Pierce*</u> 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>*U. S. v Langford*</u> 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 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

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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 that 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 County Debtor's is not justified in 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 that could only occur if the Ratepayer/Creditors do not prevail in their Adversary Proceeding.

The county should join the Ratepayer/Creditor's Claim. Instead, the Debtor/County has failed to properly classify the claim as a class claim with the result that under Section 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 Sections 1122's and 1123's requirement of proper classification and treatment. As the Eleventh Circuit stated in Olympia & York Fla. Equity Corp. v. Bank of New York (In re Holywell Corp.), 913 F.2d 873, 879-880 (11th Cir. Fla. 1990):

> "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

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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, Ratepayer Creditors are special tax payer that may object to confirmation of the Plan.

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 gives the Ratepayer/Claimants a right to a full class hearing on their objection to the Revised Plan.

G. The Plan Cannot be Confirmed because it violates Under Rule 904 since its provisions require the Court to legally Validate New Debt with Rate covenants fixing Sewer Rates and Controlling Expenditures on Capital Improvements and municipal services operations costs or otherwise control the rights of the Ratepayer/Creditors 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 Revised Plan may not legally 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,

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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 that 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 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

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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.

> "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,*

[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)).

Parker v. Livingston (In re Parker), 330 B.R. 802, 807 (Bankr. N.D. Fla. 2005). The Ratepayer/Claimants 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 vote is a condition to confirmation.

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

III. 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 on the district where the largest number of residents are connected to the Sewer system, Andrew Bennett, the Assistant County Assessor, Bessemer cut, and Sheila Tyson -, newly elected City of Birmingham councilwoman and a community association leader and public advocate.

The Revised Plan must reflect both the financial ability to pay and not be forbidden by law.

We respectfully ask the court to deny the Revised Plan and fashion an order that requires a Plan more closely aligned to the Ratepayer/Creditors Alternative Plan.

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Dated October 10, 2013

Respectfully submitted,

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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

EXHIBIT

1

Commissioner Bowman Suggested Terms of Settlement and Refinancing

July 19, 2011

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1. Complete refinancing of all Jefferson County variable rate debt at fixed rates, coupled with approved legislation restoring investment grade rating to County of BBB S&P and Baa-1 Moody's.
   a. Refinancing of $3 billion of Sewer Debt on the following basis[1]:

Sources Of Funds	
Par Amount of Bonds	$2,183,885,000.00
Reoffering Premium	19,795,040.45
Repayment of Accounting Loss	368,000,000.00
Repayment of Excess Interest[1]	600,000,000.00
Repayment of Principal Markup	372,000,000.00
Repayment of SWAP Markup	178,000,000.00
Total Sources	**$3,721,680,040.45**
Uses Of Funds	
Total Underwriter's Discount (0.200%)	4,367,770.00
Costs of Issuance	2,183,885.00
Deposit to Debt Service Reserve Fund (DSRF)	197,125,095.24
Deposit to Current Refunding Escrow Fund	3,047,000,000.00
Deposit to Indigent Relief Fund	235,501,645.11
Deposit to Customer Rebate Fund	235,501,645.11
Total Uses	**$3,721,680,040.45**

[1]Resulting from issuance of auction and variable rate bonds in violation of additional bonds test in Article X of Trust agreement and in "aid of" private unfair profits

   b. The Grigsby refinancing plan presented in April reduces issuance cost from $10.73 million to $4.367 million (See Exhibit A)

[1] All numbers are subject to economic and accounting review

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Case 11-05736-TBB9 Doc 2232-3 Filed 10/10/13 Entered 10/10/13 08:24:38 Desc Appendix Affidavit 1 to Exh 5B of 9 Page 5 of 9

2. Obtain State Legislation to Extend the 1% school bond sales tax for 40 years with the right to use the excess after payment of school bonds for general fund purposes.
   a. Refund School bonds after entire County refinancing plan presented to and approved by rating agencies wit investment grade rating
   b. This will produce roughly $35 million into general fund
3. Obtain State legislation for ¼ of 1% Occupational Tax producing roughly $35-40 million to general fund.

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Case 11-05736-TBB9 Doc 2232-3 Filed 10/19/13 Entered 10/19/13 08:24:37 Desc Appendix Affidavit 1 to Exh 6B of 9 Page 6 of 9

4. Following drafting of legislation and approval by governor and local delegation, meet with rating agencies and secure changes that will produce investment grade rating on sewer and school bond refinancings.
5. Once investment grade ratings are secured on plan have plan approved by legislature.
6. This plan eliminates the need to transfer of sewer system which serves the public out of public hands controlled by County commissioners who have to stand for voter approval, into hands of private GUSC board that have no accountability to ratepaying voting public.

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EXHIBIT

2

JEFFERSON COUNTY COMMISSION

BETTYE FINE COLLINS - PRESIDENT
GEORGE F. BOWMAN
JIM CARNS
BOBBY HUMPHRYES
SHELIA SMOOT

GEORGE F. BOWMAN
Major General (Ret)
COMMISSIONER OF DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Suite 240
716 Richard Arrington, Jr. Blvd. N.
Birmingham, Alabama 35203
Telephone (205) 325-5504
FAX (205) 325-5950

United States Department of Justice
The Honorable Attorney General Eric Holder
U.S. Department of Justice
900 Pennsylvania Ave, NW
Washington, D.C. 20530-001

October 20, 2010

Re: Jefferson County, AL
Bond Indebtedness

Dear Mr. Holder:

Jefferson County, Alabama is currently in a disastrous financial crisis; this is a direct result of bad financial advice and public official corruption.

I am writing to you today, seeking help for Jefferson County citizens in Jefferson County Districts 1and 2. I ask that you participate in finding a remedy for this financial situation, as it is directly having a disparate impact within the poor and the black communities, who are the majority in this sewer debacle.

We were informed by consultants, hired by the Commission President that only forty percent of the county's residents actually pay sewer bills and that eighty percent of that number are poor and black. We were further informed that sewer rates will continue to increase, estimating that each tax payer living below the federally established poverty level will be required to pay approximately twelve to fifteen percent of their yearly net income over the next forty plus years to cure this sewer debt crisis. The negative impact of these rates will reverberate throughout the local economy potentially causing the economic collapse of Jefferson County and untold suffering for those who can least afford it; this includes loss of possible accumulated family wealth and decrease in property values.

To make matters worse; approximately two billion dollars of the County's debt is tied to criminal activity by elected officials, bankers, contractors and lawyers.

The Jefferson County Commission is composed of five districts, each represented by an elected Commissioner, these Justice Department approved districts consist of three predominantly white and two predominantly poor and black districts. These poor and black districts are populated by eighty percent of the sewer customers and rate payers.

Attached you will find a timeline supporting these statements.

With this letter we ask for your immediate attention and whatever actions within your power to correct this wrong and protect the affected communities in Jefferson County.

Sincerely,

George F. Bowman

Major General (Ret.) George Bowman
Jefferson County Commissioner, District 1

Enclosure
yc

JEFFERSON COUNTY COMMISSION

BETTYE FINE COLLINS - PRESIDENT
GEORGE F. BOWMAN
JIM CARNS
BOBBY HUMPHRYES
SHELIA SMOOT

GEORGE F. BOWMAN
Major General (Ret)
COMMISSIONER OF DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Suite 240
716 Richard Arrington, Jr. Blvd. N.
Birmingham, Alabama 35203
Telephone (205) 325-5504
FAX (205) 325-5950

United States Department of Justice
The Honorable Assistant Attorney General Thomas Perez
Civil Rights Division
900 Pennsylvania Ave, NW
Washington, D.C. 20530-0001

October 20, 2010

Re: Jefferson County, AL
Bond Indebtedness

Dear Mr. Perez:

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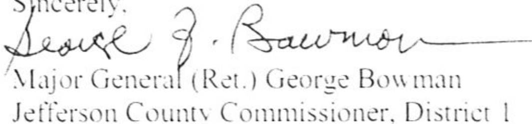
Sincerely,



Major General (Ret.) George Bowman
Jefferson County Commissioner, District 1

Enclosure
yc

Information prepared by Grigsby and Associates

Attached as Exhibit 1 is the SEC initial complaint against Langford, Pierre and Blount accusing them of petty thievery. This complaint focused on low level players in the fraudulent and criminal activity in Jefferson County, Alabama. The big fish in this scenario are the persons who stole over $400 million dollars from the sewer rate payers of Jefferson County.

Attached as Exhibit 2 is a diagram prepared by our firm showing that in order to comply with the consent decree the County issued conventional fixed rate bonds in the amount of $2,860,130,000. This point was totally missed in the complaint attached as Exhibit 1 which states:

21. Jefferson County's sewer revenue bond offerings began in the 1990s pursuant to a consent decree with the U.S. Environmental Protection Agency and
the U.S. Department of Justice to renovate the County's sewer system. *To fund the*
improvements, the County commission approved issuing more than $3 billion in
variable interest rate bonds between 2001 and 2004.(Emphasis supplied)
22. In connection with the bond offerings, the County simultaneously entered into 18 swap agreements, with a current notional amount of $5.6 billion. A
swap agreement is an agreement between two parties to exchange interest payments on a specified principal amount (referred to as the notional amount) for a
specified period of time. (see complaint sect IV Facts p 8).

The complaint starts with the incorrect facts regarding issuance of variable rate bonds : "To fund improvements, the County commission approved issuing more than $3 billion in variable interest rate bonds between 2001 and 2004." Why is this incorrect? Because the improvements were funded with fixed rate bonds as detailed in the box in the left hand corner of exhibit 2. The criminal activity which took ratepayer money started with the issuance of variable rate bonds after the money for the payment of construction costs for improvements in compliance with the consent decree had been raised.

Note that **Jefferson County as a result of bribery, travel act violations, theft of public funds, wire fraud, etc, issued $3,047,290,000 in variable rate Bonds to Refund $2,675,035,000 in remaining Principal on the fixed rate bonds. A Difference of $372,255,000.**

The issuance of these variable rate bonds was not related to funding the improvements. All the money for improvements to the system is contained in construction trust accounts established when the fixed rate bonds were issued.

The object of the conspiracy was to generate fees from swap transactions on variable rate bonds. In order to do this the perpetrators issued $372,255,000 in more in variable rate bonds than the fixed rate bonds **which $372 million was not used to pay for improvements to renovate the system. No new money for improvements was included in the variable rate refunding bonds but the principal amount went up $372,255,000 over the remaining unpaid principal on the fixed rate bonds. This $372 million difference is a theft from the rate payers of Jefferson county.**

You cannot do lucrative swaps on fixed rate bonds. You first have to convert them to variable rate bonds. In order to do the variable rate bonds which allowed the generation of fees which were charged in the complaint only against low level coconspirators, the co-conspirators stole $372,255,000 from the rate payers. This amount was transposed into huge markups in the swaps stolen by the swap providers and huge legal underwriting and financial advisory fees to other coconspirators.

The fixed rate bonds averaged about 4.5% interest. The maximum rate on the variable rate bond was 10% or more as shown by the chart prepared by our firm and attached as Exhibit 4. The coconspirators were not just the three low level employees charged by the SEC but the persons mentioned in the Birmingham News article attached as Exhibit 3, and others who converted the additional $372 million in additional principal to be repaid by the ratepayers in the variable rate bonds over and above the money raised for improvements, into payouts to themselves.

Given the misstatement of the facts from the SEC complaint it is not hard to believe the $372 million in variable rate bonds which did not fund any improvements, but funded the swaps and profits from the swaps, was missed by the SEC investigators. Unless you trace the money as we did in Exhibit 2 you cannot see the $400 million of cash flowing into the pockets of coconspirators because the different refunding variable rate bonds refunded different pieces of the fixed rate bonds. Even a very smart SEC lawyer who is not in the bond business everyday would not necessarily know how to trace the refunding cash flows to show how the extra $372 million was generated. Unless you understand that no improvements were purchased by this increase in principal of $372 million, and the additional $372 million in variable rate bonds therefore had to be issued for something other than improvements, and this 'something" was benefits only to the coconspirators receiving fees and profits from the swaps, you cannot understand this theft.

For example once the variable rate bonds were issued the coconspirators entered into swaps that contained markups of $150 million over market value. We have the detail on this, the amount of negative arbitrage required to issue the variable rate bonds and all of the numbers showing how the theft was perpetuated, but unless you can get the basic principle that the fixed rate bonds of $2.75035 billion is all that was raised for improvements to the system and the additional principal of the variable rate bonds of $372 million over the remaining $2.675035 billion of fixed rate principal is theft and other criminal activity—not just the loans and Rolexes in the complaint-this is another Madoff situation the regulators will have missed. A massive fraud involving hundreds of millions of dollars is never going to show up like a Rolex watch of $50,000 loan. It has to be unraveled to become apparent to the regulators.

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 — $839,500,000 Series 2002 C	$1,155,765,000 Series 2003 B	$1,052,025,000 Series 2003 C	Par Amount Refunded
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

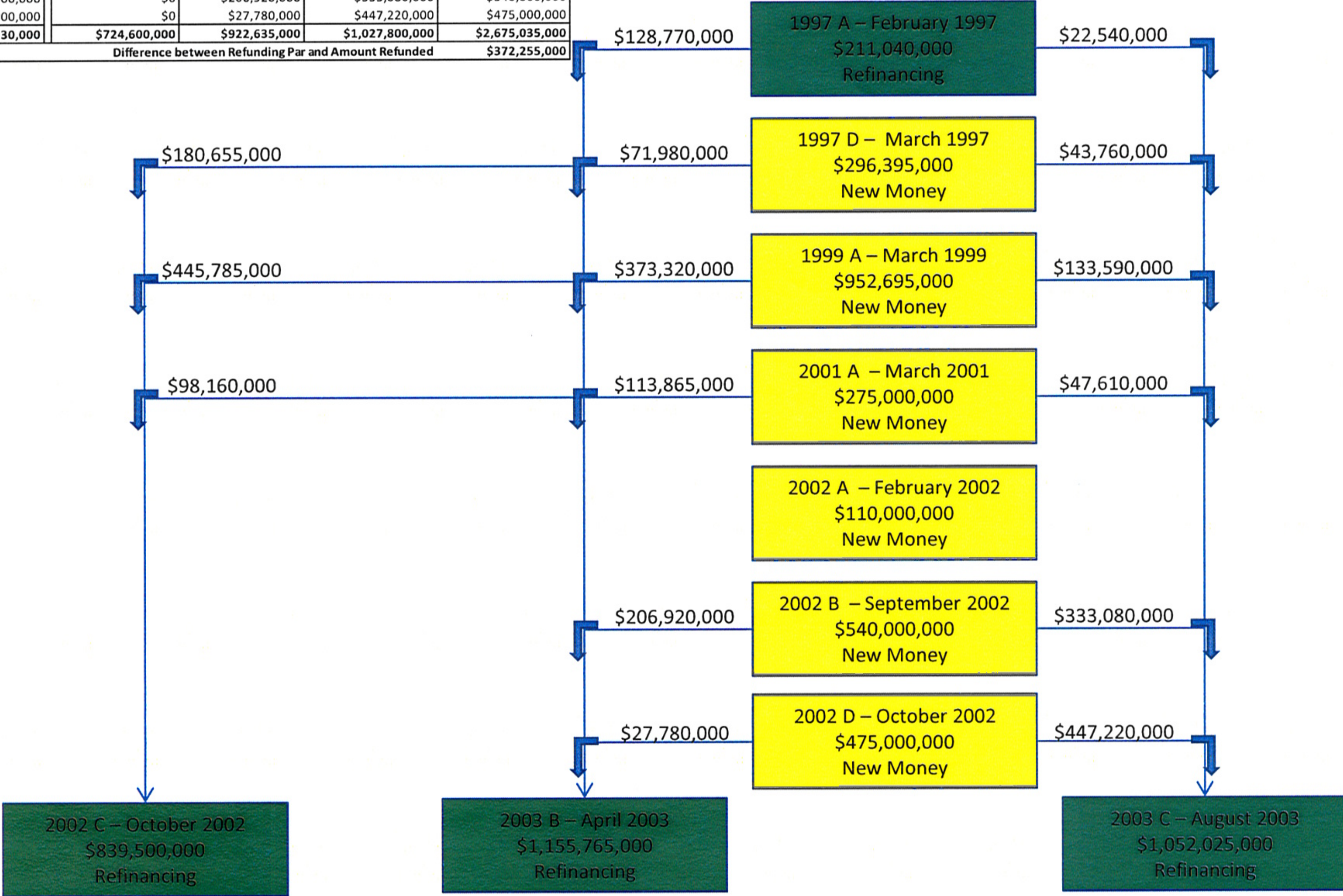


Exhibit 2

Prepared by Grigsby & Associates, Inc.

HOW JEFFERSON COUNTY'S DEBT BALLOONED

Jefferson County has accumulated more than $4.6 billion in debt, much of which carries interest rates that are now soaring because of market conditions.

In this chart, instances in which the county borrowed money are represented by circles, the size of which corresponds to the amount of the bond issue. The bond issues are arranged in chronological order, top to bottom, and begin with the 1996 federal court order that forced the county to repair its sewer system.

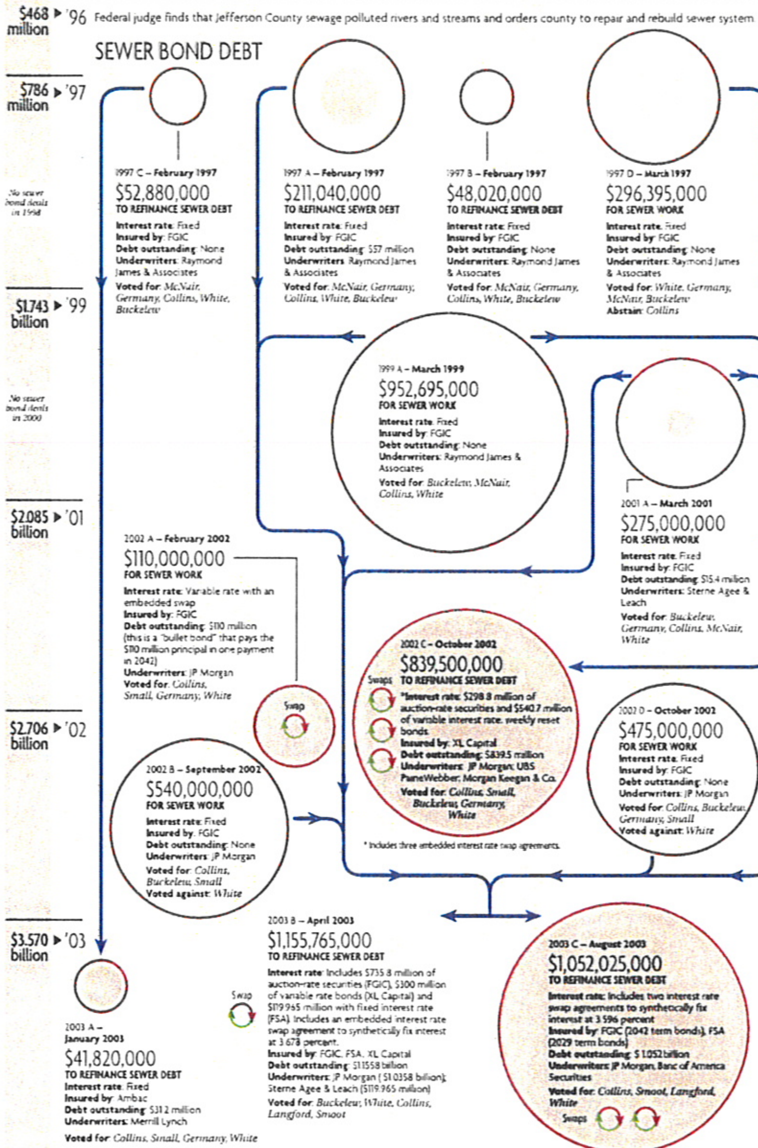
The only county bond issues not represented among the circles are general-obligation bonds, which at $293.7 million represent a small portion of the county's overall debt.

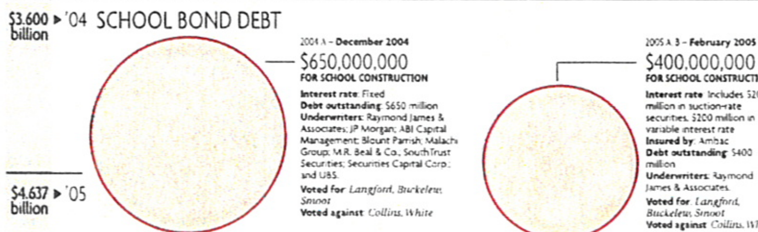
By following the lines that link many of the circles, you can see how older debts, most with fixed interest rates, were refinanced into debt carrying variable rates.

KEY TO GRAPHIC BOND ISSUES: **Initial debt** — **Outstanding debt** — **Debt refinancing** — **Swaps**

Size of circles proportional to amount of debt

Jefferson County's long-term debt as of Sept. 30 each year — Year — JEFFERSON COUNTY COMMISSION





$4.68 BILLION

Jefferson County's audited debt total as of Sept. 30, 2006, the most recent audit available.

EXISTING SWAPS

Jefferson County entered into a series of complex financial maneuvers, called interest-rate swaps, in an effort to lower the amount of money it had to pay out in debt service. Problems in the nationwide credit market first hit Jefferson County's swap agreements, sending the county into its current financial crisis.

TRANSACTION DATE	BOND ISSUE	COUNTERPARTY	MATURITY DATE	TYPE
Jan. 10, 2001	Other Transactions	JP Morgan Chase	2016	Swaption
	Other Transactions	JP Morgan Chase	2016	Swaption
April 17, 2001	**2001 B** General Obligation Warrants	JP Morgan Chase	2011	Cancellable swap
Sept. 18, 2001	**2002 A** Capital Improvement Warrants	JP Morgan Chase	2042	Swap
Oct. 23, 2002	**2002 C** Sewer Revenue Refunding Warrants	JP Morgan Chase	2040	Swap
	2002 C Sewer Revenue Refunding Warrants	Bank of America	2040	Swap
	2002 C Sewer Revenue Refunding Warrants	Lehman Brothers	2040	Swap
March 28, 2003	**2003 B** Sewer Revenue Refunding Warrants	JP Morgan Chase	2042	Swap
July 14, 2003	**2003 C** Sewer Revenue Refunding Warrants	JP Morgan Chase	2042	Swap
	2003 C Sewer Revenue Refunding Warrants	Bank of America	2042	Swap
Nov. 7, 2003	Other Transactions	JP Morgan Chase	2024	Cancellable swap
June 10, 2004	Other Transactions	Bear Stearns	2042	*Swap
	Other Transactions	Bear Stearns	2040	*Swap
	Other Transactions	Bear Stearns	2042	*Swap
	Other Transactions	Bank of America	2042	*Swap

TOTAL NOTIONAL VALUE: **$5,592,000,000**

* Jefferson received $25.5 million in cash payments in connection with these swaps. These involved expensive third-party disclosure payments.

WHO GOT PAID FOR SWAPS

A total of $11,655,134 was paid to financial, tax and swap advisers, bond counsel, legal counsel and two investment banks in 22 Jefferson County interest rate swap deals.

RECIPIENT	AMOUNT
Haskell Slaughter (involved in every deal)	$1,354,716
Morgan Keegan (Commissioner Gary White's financial adviser on 13 swaps)	$1,947,189
Swap Financial Group (White's swap adviser)	$418,229
CDR Financial Products (Commissioner Larry Langford's swap adviser on 8 swaps)	$2,275,000
National Bank of Commerce (Langford's financial adviser)	$415,000
Katten Muchin **	$350,000
Maynard Cooper (NBC's counsel) **	$75,000
FGIC (insurer's legal fees) **	$15,000
FSA (insurer's legal fees) **	$5,000
XL Capital (insurer's legal fees) **	$5,000
Blount Parrish ***	$2,412,500
Gardnyr Michael Capital Inc. ***	$2,382,500
Total	$11,655,134

** People who were solely involved in several complex swaps in 2004 that generated $25.5 million cash for Jefferson County

*** Investment bankers that received third-party payments from the underwriting banks in connection with the swap deals

Sources: Audit of Jefferson County, 2005–06 fiscal year; Alabama Dept. of Examiners of Public Accounts; Porter, White & Company, Swap Portfolio Report, Dec. 31, 2007; Birmingham News analysis of swap confirmation sheets; Jefferson Co.

EXHIBIT

3

Legal Expenditures by Vendor

Vendor #	Vendor	2007	2008	2009	2010	2011	2012	6/30/2013 2013	Total
1000193	JeffCo Treasurer	0	7	0	5	5	0	0	17
1000270	A. Allen Ramsey PC	0	52,637	195,596	53,163	63,407	7,884	14,118	386,805
1000920	Haskell, Slaughter, Young	18,708	297,378	522,881	1,521,753	0	1,500	2,250	2,364,470
1001216	Anne-Marie Adams/Clerk	406	0	0	17	1,054	691	251	2,419
1001369	Wallace, Jordan Ratliff	0	0	59,250	53,024	21,026	0	0	133,300
1001461	Birmingham Reporting Svc	0	458	0	0	0	0	601	1,059
1001597	Balch & Bingham	266,631	1,091,740	953,129	721,076	526,640	1,207,735	1,195,795	5,962,746
1001598	Birmingham News	0	0	0	0	140	0	0	140
1001615	Sirote & Permutt	0	3,500	0	1,500	2,750	33,000	28,200	68,950
1001622	Maynard, Cooper & Gale	0	0	352,755	430,083	414,379	424,248	657,812	2,279,277
1001669	Hand, Arendall LLC	0	22,405	90	0	750	0	0	23,245
1001727	Richard Izzi	1,500	2,250	750	3,500	1,500	750	750	11,000
1001751	Fitzpatrick, Cooper & Clark	19,520	117,905	0	0	0	0	0	137,425
1001983	Howard Furman, Att. At Law	0	750	0	750	0	0	0	1,500
1002065	Walston, Wells & Birchall	14,875	0	0	0	0	0	0	14,875
1002082	John Veres III	0	55,850	36,445	7,350	0	0	41,588	141,233
1002297	American Court Reporting	0	0	0	272	0	0	0	272
1002876	Anne-Marie Adams	0	0	0	0	9,400	44,400	0	53,800
1002928	Lloyd Gray Whitehead & Mo	157,040	156,617	137,921	83,321	38,535	119,302	64,708	757,444
1002986	Christina K. Decker	0	0	2,310	0	0	271	552	3,133
1003263	Baker Donelson Bearman	1,500	1,500	0	0	1,061,572	864,160	0	1,928,732
1003282	Christian & Small	174,994	0	0	0	0	0	0	174,994
1003329	Deborah Byrd Walker	0	0	0	4,133	18,496	17,853	6,754	47,236
1003428	Baise & Miller	0	71,636	0	0	0	0	0	71,636
1004170	J Keith Cader	750	750	0	0	0	0	0	1,500
1004733	Freedom Reporting Inc	5,655	20,558	13,015	0	11,628	25,570	5,983	82,409
1005427	Waldrep Stewart & Kendric	43,925	1,054,992	456,787	0	0	736	0	1,556,440
1005948	Constangy Brooks & Smith	0	0	2,000	2,750	4,250	3,000	750	12,750
1006195	William B. Lloyd	0	1,250	0	0	1,500	750	0	3,500
1006273	Benton & Centeno	0	0	719	17	0	0	0	736
1006299	Michael A Anderson	750	3,750	750	6,250	750	2,500	750	15,500
1006300	Antonio D Spurling	1,500	750	0	0	0	0	0	2,250
1006421	ERS	0	342,287	497,125	3,622	1,511	158,674	61,630	1,064,849
1006475	Bains & Terry	0	0	3,166	5,204	0	0	0	8,370

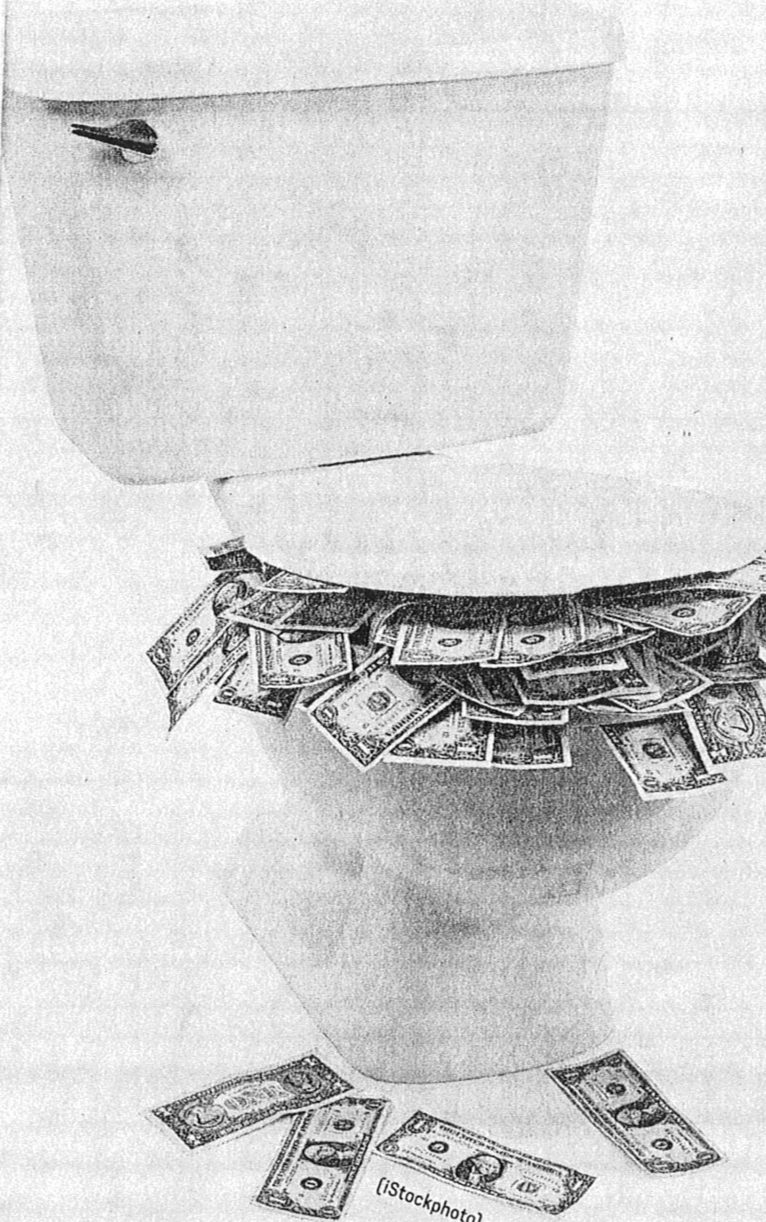
Vendor #	Vendor	2007	2008	2009	2010	2011	2012	2013	Total
1006637	The Law Office of Winston	0	5,250	2,250	3,000	2,250	3,250	0	16,000
1007309	Tech Depot	0	385	0	0	0	0	0	385
1007948	Warren Averett LLC	0	0	0	0	0	0	0	0
1007968	Delores R Boyd Esq	24,576	12,461	0	0	0	0	0	37,037
1007969	Vanzetta Penn McPherson	0	12,110	0	0	0	0	0	12,110
1007970	Sam C Pointer	7,876	13,655	0	0	0	0	0	21,531
1019097	Fitzpatrick and Brown	0	0	45,216	0	0	0	0	45,216
1019334	Vicki Bradley-Seals LLC	0	2,000	1,250	0	0	0	0	3,250
1019470	Threatt & Blockton	0	750	0	0	0	0	0	750
1020364	Bradley Arant Boult	0	1,109,099	3,098,741	1,950,637	2,147,658	4,679,898	4,498,954	17,484,987
1020504	Mark T Waggoner	0	750	2,000	750	0	0	0	3,500
1020535	Davis Law Firm	0	3,000	2,500	2,750	750	1,500	0	10,500
1020603	Cheryl Powell CCR RPR	0	0	0	0	0	0	19,056	19,056
1020850	The Myers Firm LLC	0	4,000	1,500	2,250	2,000	1,250	2,000	13,000
1021553	Glennon Threatt Esq	0	750	0	0	1,500	3,500	0	5,750
1021903	Glennon F Threatt Jr	0	0	750	0	0	0	0	750
1022051	Tamara Harris Johnson	0	0	750	2,750	0	0	0	3,500
1022134	Baddley & Mouro LLC	0	0	21,047	2,875	0	0	0	23,922
1022135	Fawal & Spina	0	0	20,250	21,000	10,137	0	0	51,387
1022519	Riley & Jackson	0	0	615,609	805,663	840,000	426,253	0	2,687,525
1022782	American Water Services	0	0	0	0	172,312	0	0	172,312
1022783	Greenebaum Doll & McDon	0	0	0	0	53,042	0	0	53,042
1022872	Cloyd & Tidwell	0	0	45,784	73,399	0	0	0	119,183
1023504	Cravath Swaine & Moore	0	0	450,000	450,000	900,000	450,000	0	2,250,000
1024840	Roger A Brown	0	0	0	1,500	750	3,250	0	5,500
1025223	Calvin Weis Blackburn III	0	0	0	750	0	0	0	750
1026830	Boles, Schiller & Flexner	0	0	0	0	1,860,422	703,459	132,195	2,696,076
1027541	The Parker Law Firm	0	0	0	0	0	10,937	0	10,937
1027789	Henderson & Assoc	0	0	0	0	304	0	0	304
1028468	Holland & Knight	0	0	0	0	52,797	65,327	0	118,124
1028535	Cynthis Parris Smith	0	0	0	0	1,500	3,750	1,500	6,750
1029080	Kurtzman Carson	0	0	0	0	0	176,580	23,128	199,708
1028541	Klee, Tuchin, Bogdanoff	0	0	0	0	224,540	4,078,868	4,193,192	8,496,600
	Total	740,206	4,463,180	7,542,336	6,215,114	8,449,255	13,520,846	10,952,517	51,883,454

Case 11-05736-TBB9 Doc 2232-5 Filed 10/10/13 Entered 10/10/13 08:24:38 Desc Appendix Affidavit 5 to Exh 1B of 3 Page 1 of 3

EXHIBIT

4

Why the latest sewer hike should worry you


(iStockphoto)

Kyle Whitmire ▸ kwhitmire@al.com

The Jefferson County Commission's vote Tuesday to increase the base sewer user fee by $5 should make you afraid for the future of the county.

For the average Jefferson County ratepayer, that bump will amount to a 13 percent increase in sewer bills Nov. 1. Perhaps, in the greater scheme of things, five bucks a month doesn't sound like much — a bit more than a cup of froufrou coffee at Starbucks.

No, that's not the frightening thing.

Reliability

What's really scary is what this says about the reliability of the County Commission's promises, the credibility of its analysts, and the capability of its bankruptcy team.

Last month, commissioners reached an agreement with the county's creditors that would include 7.41 percent increases for the next four years and 3.49 percent

See SEWER, Page 7A

WHY THE INCREASE?

County officials say there were reasons for the changed rate increase:

- Assumptions about sewer revenue and customer consumption proved to be wrong. Both were down and a supplement was needed to bring the county to what it had promised to creditors as part of their deal.
- County officials blamed a decrease in sewer customer consumption on higher-than-usual rainfall.
- Interest rates on municipal securities have spiked since the county reached its consensus with creditors.

SEWER

From Page 1A

increases every year after that. The four commissioners who voted for the plan then said that it wouldn't be painless, but that it was the best the county would be able to get, and the only plan that would get the county out of Chapter 9 municipal bankruptcy.

This week, the commission came back with a different plan, a different story and even higher sewer rates.

"This is evidence that the people of New York are better at negotiations than the people in Jefferson County," University of Alabama finance professor Robert Brooks said.

Higher rates rationale

Last month, when the county reached its deal with creditors, Matt Fabian, an analyst with Concord, Mass.-based Municipal Market Advisors, who has followed Jefferson County through its debt crisis and bankruptcy, predicted that the volatility of the market could jeopardize the county's proposal.

"The risk to this deal is that market appetite for the new bonds changes and that investors become more cautious or interest rates rise," Fabian said then. "There is a bit of finger crossing that the market holds together."

Cloudy crystal ball

So here's the scary thing: For there to be any certainty to the county's plan, the county must be able to accurately predict many different factors — including consumption, capital expenditures, operating expenses and revenue — 40 years into the future.

But this week the county showed that it couldn't accurately forecast eight weeks into the future.

Whether the commission gets this deal right or wrong will affect Jefferson County for the next generation and part of one after that.

Growing revenue

The county's plan for exiting bankruptcy predicts decreases in consumption, whether that's from lost customers or customers' conservation, of about 0.4 percent per year, according to documents it has filed in court.

However, according to testimony in bankruptcy court and county documents, the sewer system has seen consistent 3 percent drops in consumption every year for the last 10 years.

To grow revenue, the county has proposed annual rate increases.

The commission has portrayed that schedule of rate increases as though those increases are set in stone — as though this is a strict schedule of modest hikes that the sewer system will stick to and that creditors will have to live with.

But that's misleading.

In the county's plan of adjustment — the blueprint for emerging from Chapter 9 that it filed last month with the bankruptcy court — it describes the increases as required "unless adjusted upward or downward by an Adjusting Resolution on the terms and conditions set out in the New Sewer Indenture, including rate and revenue covenants therein."

The indenture is the contract the county as a debtor makes with its creditors who will hold these bonds when the deal is done. If that document yet exists, even in draft form, the county has not released it to the public. And until the county releases it, the public will not be able to know what kind of deal the commission is really striking with Wall Street.

What happens in secret?

The questions the indenture should answer are basic and important to everyone who lives in Jefferson County. What happens if the county doesn't receive the revenue it has projected in its plan of adjustment? Must the county then raise rates or must creditors make due with that revenue alone? Will the county have to pull from other revenue streams or raid its general fund? Will the county have to raise taxes or impose a non-user fee on septic tank owners?

As of yet, none of these questions has answers, at least as far as the county's residents are concerned. Only the commissioners, their lawyers and the county's creditors have a sense of what's to come from that document.

Throughout its negotiations with Wall Street, the commission has conducted its business mostly behind closed doors. Under Alabama's open meetings law, the county can go into executive session to receive advice from its lawyers, but deliberations — the general talking it out among the commissioners — is still supposed to happen in the open.

Short-term memory

But as AL.com reported, there hasn't been much discussion at all after executive sessions, to the point that commissioners couldn't remember whether or not they discussed who to hire as the county's new bond counsel and underwriters.

Major decisions that will affect this county for a generation are happening in secret and documents that might give clues to where the county is going are not available for the public to see.

Case 11-05736-TBB9 Doc 2232-6 Filed 10/10/13 Entered 10/10/13 08:04:37 Desc Appendix 6 to Exh 1 Page 1 of 2

Opinion

AL.com ▸ The Birmingham News
Friday, July 26, 2013 ▸ 3A

OUR VIEW

Once again, the county sewer ratepayers are stuck with the bill

One has to wonder just who is representing the interests of the sewer ratepayers in Jefferson County. It certainly doesn't seem like the majority of the Jefferson County Commission is doing a very good job.

Once again, the majority on the County Commission is leaving their constituents to suffer for their inability to get better terms from those who hold the county's debt, even as Jefferson County seeks to emerge from bankruptcy.

AL.com's and The Birmingham News' Barnett Wright reported that by charging all Jefferson County sewer customers a $5 base charge on Nov. 1, that means a 13-percent increase for the average residential sewer bill.

What happened to the agreement last month for a 7.41-percent increase for four years and a 3.49-percent increase afterward?

Especially troublesome is the perspective of Commissioner Sandra Little Brown: "We got experts and attorneys, we are paying them big money, and we need to take their recommendation that will get us out of bankruptcy."

A Jefferson County sewer manhole cover in Railroad Park in Birmingham. (File)

Actually, the taxpayers of Jefferson County are paying those "experts." But who is on their side? Who is negotiating for the sewer ratepayers and taxpayers? Whoever it is, please stand up.

The county's rate expert, Eric Rothstein, said wet and cold weather caused sewer consumption to fail about 5 percent below what it was last year, and, if consumption projections aren't met, rates have to be adjusted.

Odd that wet and cold weather would lead people to flush their toilets less, but that's why we pay the experts and attorneys the "big money," right?

The ratepayers of Jefferson County need to know they have somebody in their corner. But the majority on this County Commission — and all those expensive experts — seem outmatched by their opponents in negotiations.

It is important for Jefferson County to exit this bankruptcy — but not at any cost.

The ratepayers have been promised much but see little that would encourage confidence that the County Commission is truly keeping county residents' interests in front.

That's a real shame.

This editorial is from The Birmingham News editorial board.

Does Bill Slaughter deserve an apology?

JOHN ARCHIBALD

I'd like to take this opportunity to — *cough, cough, sputter, sputter, wheeze* — apologize to Bill Slaughter.

Um, sorry.

Sort of.

The lawyer who pulled so many strings at Jefferson County for so many years may have been a pompous, long-winded, overpaid pain in our debt-burdened derrieres. But he was *our* pompous, long-winded, overpaid pain.

Slaughter was Jefferson County's legal go-to-guy. He was the one who put all the shadowy plans together, whose firm hauled in millions of dollars from previous commissions. Whenever his $425-an-hour bills were questioned, loyal commissioners defended him, saying:

He knew best.

He knew the county best.

And he had been paid so much that it would be bad business to simply abandon that investment.

And they continued to say it, even as the county tipped into a legal and financial abyss.

Slaughter became Public Enemy No. 1 in this town, for a moment in 2008, when he unveiled "The Bill Slaughter Plan." That idea, which people rightly hated almost as much as they should have hated it, would have automatically increased property and sales tax rates any time Jefferson County couldn't pull in enough money to pay its bills.

A blank check for Jefferson County. It gives me shivers just thinking about it.

So that — clearly — is not what this apology is about. The apology comes because now, with the rear view of time, it is clear that we have not learned a darned thing from the Slaughters of the world or from our past. We are downright eager to repeat it, eager to trust and pay and pray for a better outcome.

And from that view, Slaughter is both cheaper and more forthcoming than the puppet masters of today.

Cough, cough. Sputter.

What has changed, after all, but the amounts?

The Jefferson County Commission acknowledged this week that sewer rates must rise. And of course they do. Any idiot could see that coming. The problem is that this commission has pretended rates would not rise substantially, it has assured that whatever came would be ... gentle.

Ouch.

In the, um, end, we got what we were gonna get all along. Double-digit rate increases for typical residents. And the same buck-passing we heard so often before.

"We got experts and attorneys, we are paying them big money and we need to take their recommendation that will get us out of bankruptcy," Commissioner Sandra Little Brown said on behalf of the rate increase. "We need to take their recommendation to move Jefferson County forward."

What has changed but the money?

The county — the people of this county — has been paying a whole militia of lawyers more than $15 million — $2 million a month in some months — to carve this county a great deal. It took Slaughter a decade to earn what these bankruptcy lawyers make in a year.

And in the end, sewer rates will rise by double digits, Lord knows how often. In the end our current commissioners believe, as their predecessors did, that their lawyers would negotiate the best possible deal. Because they ...

Know best.

And know the county best.

And had been paid too much to ignore now.

We have paid a lot to circle back to the place we used to be. For it looks more and more like the deal Jefferson County is now walking into is a lot like the deal it walked away from before filing bankruptcy. That deal would have cut at least a billion dollars in debt, allowed the county to avoid the stigma of bankruptcy, and put it on a trajectory to recovery.

Just like this.

Only these days we just pay more. And do it with more secrecy.

John Archibald's column appears Sundays, Wednesdays and Fridays in the Birmingham News and on AL.com. Email him at jarchibald@al.com.

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

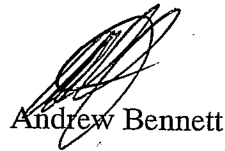
CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA (DATED June 30, 2013)

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

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