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APPENDIX A
OPINION OF THE ELEVENTH CIRCUIT
(AUGUST 16, 2018)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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, ET AL.,

Plaintiffs-Appellees,

v.

JEFFERSON COUNTY, ALABAMA,

Defendant-Appellant.

No. 15-11690

D.C. Docket No. 2:14-cv-00213-SLB,
Bkcy No. 11-bkc-05736-TBB9

Appeal from the United States District Court
for the Northern District of Alabama

Before: TJOFLAT, MARTIN, and
JORDAN, Circuit Judges.

JORDAN, Circuit Judge:

Generally speaking, the doctrine of equitable mootness "permits courts sitting in bankruptcy appeals to dismiss challenges (typically to confirmation plans) when effective relief would be impossible." *Ullrich v. Welt* (*In re Nica Holdings, Inc.*), 810 F.3d 781, 786 (11th Cir. 2015). We have applied the doctrine in the Chapter 11 reorganization context, *see, e.g., First Union Real Estate Equity & Mortg. Invs. v. Club Assocs. (In re Club Assocs.)*, 956 F.2d 1065, 1067-71 (11th Cir. 1992), and in Chapter 13 cases, *see, e.g., Hope v. Gen. Fin. Corp. of Ga. (In re Kahihikolo)*, 807 F.2d 1540, 1543 (11th Cir. 1987), and we have assumed without deciding that it applies in Chapter 7 cases, *see Nica Holdings*, 810 F.3d at 786 n.4, but until today we have not been asked to apply the doctrine in a Chapter 9 municipal bankruptcy case.

I

Municipal bankruptcy proceedings are usually complicated affairs, and the Chapter 9 proceeding for Jefferson County, Alabama—involving about $3.2 billion in total sewer-related debt—has proved to be no different. A detailed chronology can be found in *Bennett v. Jefferson County*, 518 B.R. 613, 616-26 (N.D. Ala. 2014), and *In re Jefferson County*, 474 B.R. 228, 236-45 (Bankr. N.D. Ala. 2012), but the relevant facts and procedural history are set forth below.

A

Jefferson County filed for bankruptcy in November of 2011. In June of 2013, following 18 months of negotiations, the County announced that it had come

to an agreement in principle with almost all of its major creditors.

The final settlement, reached in November of 2013, provided that the County would issue and sell in public markets new sewer warrants (through an indenture) in the amount of approximately $1.785 billion, with the proceeds and other funds being used to redeem and retire the prior sewer warrants (which, again, totaled about $3.2 billion) at a reduced and compromised amount of about $1.8 billion.

Pursuant to the settlement, the County would cut over $100 million in general fund expenditures, the creditors would write off a significant amount in outstanding debt, and the County (or the bankruptcy court if the County failed to act) would implement a series of single-digit-percent sewer rate increases over 40 years. The County would not be able to decrease sewer rates in a given fiscal year unless it could somehow offset the decrease (by, for example, increasing its customer base). Over the course of these 40 years—the planned time period for retiring the new sewer warrants—sewer rates would increase about 365%, which is not far off of the national increase in inflation in the previous 40 years. With respect to non-sewer debt, warrants would be repaid in full on terms favorable to the County through the exchange of existing general obligation warrants and school warrants for new warrants. *See Bennett*, 518 B.R. at 623-25.

At the confirmation hearing before the bankruptcy court on November 21, 2013, a group of Jefferson County ratepayers objected to the County's proposed plan. They argued that the plan validated corrupt government activity (*e.g.*, bribery) that procured the

execution of some of the prior sewer warrants and led to the debt crisis; that the plan, by taking the ability to set rates out of the hands of elected Jefferson County commissioners, infringed on their rights to vote and to be free from overly burdensome debt without due process; and that the plan was not feasible because it was imposed over a service area with a declining population and falling income levels, and because it increased costs for a long period of time without any consideration of the users' ability to pay. *See id.* at 626. One of the claims asserted by the ratepayers was that certain of the prior sewer warrants were invalid because they violated provisions of the Alabama Constitution and the United States Constitution. *See id.* at 626-27.

The bankruptcy court entered a confirmation order over the ratepayers' objections on November 22, 2013, the day following the hearing. The order in part dismissed pending claims, and barred any and all persons from commencing or continuing any action to assert the claims made by the ratepayers prior to the start of, or in, the Chapter 9 bankruptcy proceeding.

In the confirmation order, the bankruptcy court retained jurisdiction for the 40-year life of the new sewer warrants to, among other things, adjudicate controversies regarding the validity of actions taken pursuant to the plan, including implementation or enforcement of the approved rate structure and issuance of the new sewer warrants, and enter any necessary or appropriate orders or relief (including mandamus). *See* Bankr. D.E. 2248 at 67-68. The disclosure statement for the indenture contained similar language describing the bankruptcy court's retention of jurisdiction.

The plan's effective date was December 3, 2013. Although Bankruptcy Rule 3020(e) normally imposes an automatic 14-day stay on the operation of a confirmation order, at the confirmation hearing the ratepayers did not object to the County's motion (filed two weeks earlier) to waive the automatic stay. In the absence of an objection, the bankruptcy court exercised its discretion under Rule 3020(e) to waive the automatic stay when it entered the confirmation order. *See Bennett*, 518 B.R. at 626.

The ratepayers filed their notice of appeal on December 1, 2013, two days prior to the plan's effective date. But they did not ask the bankruptcy court, or the district court, for a stay of the confirmation order pending appeal. Nor did they request that their appeal be expedited. On December 3, 2013, pursuant to the terms of the order, the County issued the new sewer warrants. The proceeds from the sale of these warrants went in part towards retiring the prior sewer warrants, with more than $1.454 billion going into a clearinghouse system to pay individual and institutional investors. *See id.*

B

In the district court, the County moved to dismiss the ratepayers' appeal, arguing in relevant part that any challenges to the confirmation order were constitutionally, statutorily, and equitably moot because the plan had been consummated and the transactions that were completed could not be unwound. The ratepayers responded that their appeal was not moot because, among other things, the bankruptcy court could not constitutionally retain jurisdiction to conform (if necessary) sewer rates to the plan over a 40-

year period. In the ratepayers' view, such rates had to be set in compliance with Alabama law. As the district court explained, the ratepayers wanted to "avoid . . . paying rates set by a [County] Commission wh[ich] can be taken to the bankruptcy court if it enacts rates in violation of" the approved rate structure. *Bennett*, 518 B.R. at 631 n.21. The district court rejected each of the County's mootness arguments.

First, the district court concluded that the appeal was not moot under Article III. Although the consummation of the plan might limit the scope of relief available to the ratepayers, the court concluded that it could fashion "'some form of meaningful relief.'" *See id.* at 631 (quoting *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)).

Second, there was no "statutory mootness" under 11 U.S.C. § 364(e). Under Eleventh Circuit precedent, said the district court, § 364(e) protects "only transactions authorized by § 364(c) or (d)," and it did not believe that the issuance of the new sewer warrants to pay off the prior sewer warrants was a transaction authorized by § 364(c) or (d). *Id.* at 632. *See also id.* at 633 ("Neither subsection (c) nor subsection (d) authorizes the bankruptcy court to allow the County to obtain credit or incur debt by giving the lender or the bankruptcy court unlawful or unconstitutional ratemaking authority.").

Third, the district court ruled that the appeal was not equitably moot despite the failure of the ratepayers to seek, let alone obtain, a stay of the confirmation order. The court thought that the doctrine of equitable mootness, which is prudential in nature, was in some tension with the Supreme Court's reaffirmation of the principle that federal courts have a

"virtually unflagging" obligation to hear and decides cases within their jurisdiction. *See id.* at 634. But it did not need to confront those potential concerns because it held that equitable mootness does not apply to constitutional challenges to a confirmation order in a Chapter 9 proceeding: "In the case of a Chapter 9 reorganization plan[,] finality and reliance may be required to yield to the Constitution and the interests of the public in the provision of governmental services." *Id.* at 636. And "applying the doctrine of equitable mootness as the County espouse[d] would prevent both state and federal Article III courts from deciding . . . 'knotty state law' and constitutional issues and would prevent any review of a federal bankruptcy court's assumption of jurisdiction to enforce its unreviewed actions." *Id.* at 637. Although the court recognized that "some part or parts" of the confirmation order might be "impossible to reverse," the "County's ceding of its future authority to set sewer rates to the bankruptcy court" as a term of the new sewer warrants was "not one of those parts." *Id.* If it agreed with the ratepayers that the bankruptcy court's retention of jurisdiction was unconstitutional, the court could declare that provision invalid and prevent its enforcement. *See id.*

Finally, the district court explained that, even if the doctrine of equitable mootness applied in Chapter 9 bankruptcy proceedings, it would nevertheless deny the County's motion to dismiss. The court could, as it had noted, grant the ratepayers some relief by striking the terms providing for the bankruptcy court's retention of jurisdiction and authority to set sewer rates in the future. Moreover, the ratepayers' failure to obtain a stay, though significant in the equitable mootness

analysis, was not dispositive. There had been a rush to consummation, and seeking a stay "was futile and cost-prohibitive." *Id.* at 639. No stay, reasoned the court, would have been granted. *See id.*

The district court later certified its ruling for interlocutory review, and Jefferson County instituted the present appeal. We conclude that the case is not constitutionally moot, but hold that it is equitably moot, and therefore reverse and remand for dismissal of the ratepayers' appeal from the bankruptcy court's confirmation order. We do not reach statutory mootness as a separate issue, but touch on it briefly in discussing equitable mootness.

II

We first address Article III mootness—*i.e.*, mootness in the jurisdictional and constitutional sense. This doctrine, the Supreme Court has held, emanates from the "case or controversy" requirement of Article III. *See, e.g.*, *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997).[1]

"[T]he party who alleges that a controversy before us has become moot has the 'heavy burden' of establishing that we lack jurisdiction." *Michigan v. Long*, 463 U.S. 1032, 1042 n.8 (1983). *See also Mattern v. Sec'y for the Dep't of Corr.*, 494 F.3d 1282, 1285 (11th Cir. 2007); *Dupree v. Palmer*, 284 F.3d 1234, 1237

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[1] Not all members of the Supreme Court have agreed with the Article III characterization of mootness. *See Honig v. Doe*, 484 U.S. 305, 331 (1988) (Rehnquist, C.J., concurring) (asserting that any connection between a court's "unwillingness to decide moot cases" and "the case or controversy requirement of Art. III" is "attenuated").

(11th Cir. 2002). The district court held that the ratepayers' appeal is not constitutionally moot. Exercising plenary review, *see Nat'l Advert. Co. v. City of Miami*, 402 F.3d 1329, 1331 (11th Cir. 2005), we agree.

The County's argument is essentially that we (and the district court) lack the legal authority to issue the relief that the ratepayers seek. *See* County's Opening Br. at 28 ("[T]he dispositive question is . . . whether a reviewing court can provide meaningful relief if it agrees with the [party challenging the bankruptcy court's order] that the order is erroneous"). "But that argument—which goes to the meaning of the [bankruptcy laws] and the legal availability of a certain kind of relief—confuses mootness with the merits." *Chafin v. Chafin*, 568 U.S. 165, 174 (2013). *Cf. Moody v. Warden*, 887 F.3d 1281, 1285-87, 1292 (11th Cir. 2018) (holding that death row inmate had Article III standing to challenge his planned execution notwithstanding the court's ultimate conclusion that he could not obtain legal relief). We note also that, in the one case that we have found in which the Supreme Court addressed mootness in the context of action taken in reliance on an unstayed order in a bankruptcy proceeding, the Court had no trouble concluding that the case presented a justiciable controversy. *See Wayne United Gas Co. v. Owens-Ill. Glass Co.*, 300 U.S. 131, 134-35 (1937).

Notably, the County does not contend—as the respondent did in *Chafin*—that any of the forms of relief sought here (*e.g.*, striking the offending jurisdictional provision from the confirmed plan) would be "ineffectual" with respect to the ratepayers' harm. *See Chafin*, 568 U.S. at 174-76; *FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 224 n.3 (2013). Nor

does it contend that any "law of physics prevents" us from issuing relief that might provide some relief for the ratepayers in this case. *Chafin*, 568 U.S. at 175. *Cf. Rhodes v. Stewart*, 488 U.S. 1, 4 (1988) (discussing mootness where a plaintiff seeking injunctive relief has died).

In sum, we have a live case under Article III. We proceed to consider the parties' arguments about another sort of "mootness."

III

We review de novo the district court's conclusion that the doctrine of equitable mootness does not apply in the Chapter 9 context. The same standard of review applies to the district court's alternative ruling that, if the doctrine did generally apply, it would not bar the ratepayers' appeal. *See In re Club Assocs.*, 956 F.2d at 1069.[2]

The County argues that the doctrine of equitable mootness bars the ratepayers' appeal from the bankruptcy court, and that the district court erred in concluding otherwise. We agree. First, we explore what precisely the doctrine is. Second, we explain why the doctrine can apply in a Chapter 9 proceeding like this one. Finally, we conclude that the doctrine bars the

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[2] We recognize that some other circuits review the application of the equitable mootness doctrine under an abuse of discretion standard. *See, e.g.*, *R2 Investments, LDC v. Charter Commc'ns, Inc. (In re Charter Commc'ns, Inc.)*, 691 F.3d 476, 483 (2d Cir. 2012) (acknowledging a circuit split). If we were writing on a clean slate, we might well use that deferential standard given the equitable and prudential foundations of the doctrine. But we applied a de novo standard in *In re Club Assocs.*, and as a panel we are bound by that earlier ruling.

ratepayers' appeal from the bankruptcy court's confirmation order.

A

The doctrine of equitable mootness appears to have emerged at least a few decades ago in the various federal courts of appeals. *See, e.g.*, *Am. Grain Ass'n v. Lee-Vac, Ltd.*, 630 F.2d 245, 247-48 (5th Cir. 1980); *Trone v. Roberts Farms, Inc.* (*In re Roberts Farms, Inc.*), 652 F.2d 793, 796-98 (9th Cir. 1981); *In re Cont'l Airlines*, 91 F.3d 553, 557-67 (3d Cir. 1996) (en banc); Ross Elgart, *Bankruptcy Appeals and Equitable Mootness*, 19 Cardozo L. Rev. 2311, 2323-27 (1998). As far as we can tell, the Supreme Court has never endorsed it. Nor, however, has the Supreme Court, nor any court of appeals, rejected the concept outright. *See Ochadleus v. City of Detroit* (*In re City of Detroit*), 838 F.3d 792, 800 (6th Cir. 2016) (2-1 decision applying equitable mootness in the context of a Chapter 9 municipal bankruptcy and noting that "even if the Supreme Court would abolish equitable mootness, it has not yet done so (nor has any circuit)"). *Cf. Wayne United Gas Co.*, 300 U.S. 131, 133-35 (denying an attempt to dismiss a bankruptcy appeal as moot due to the sale of the debtor's property in a separate state-court proceeding, because the creditors proceeded in state court "with full knowledge" that the debtor was simultaneously seeking reconsideration of the order dismissing its bankruptcy petition).

Essentially, this doctrine provides that reviewing courts will, under certain circumstances, reject bankruptcy appeals if rulings have gone into effect and would be extremely burdensome, especially to nonparties, to undo. The use of the word mootness (and

the invocation of the consequences that arise from a mootness finding) in the term equitable mootness is a legal fiction, akin to the use of the word "eviction" (and the analogous invocation of relevant consequences) in the term "constructive eviction." *See, e.g.*, *Detroit*, 838 F.3d at 798 ("Equitable mootness is not technically 'mootness'—constitutional or otherwise—but is instead 'a prudential doctrine . . . '"); *id.* at 806 (Moore, J., dissenting) ("Despite the name, equitable mootness bears no relation to 'mootness.' Indeed, in an equitably moot appeal, the relief sought is the opposite of moot—the consequences of granting it would be so great that they are deemed inequitable.").

The doctrine, then, does not reference actual mootness at all. As the leading bankruptcy treatises explain, its application turns on equitable and prudential concerns which focus on whether it is reasonable to entertain the contentions of the parties challenging an order of the bankruptcy court. *See* William L. Norton, Jr. & William L. Norton III, 8 Norton Bankr. Law & Practice § 170:87 (3d ed. 2018); 7 Collier on Bankruptcy ¶ 1129.09[1] & n.2 (16th ed. 2018). It would perhaps be more appropriate for us to file the doctrine under the rubrics of forfeiture, waiver, or laches. *See In re One2One Commc'ns, LLC*, 805 F.3d 428, 449-50 (3d Cir. 2015) (Krause, J., concurring) (noting that "there are effective alternatives that do not suffer from the prudential, statutory, and constitutional defects of equitable mootness," including "the equitable defense of laches"). *Cf. N. Pac. Ry. Co. v. Boyd*, 228 U.S. 482, 508-10 (1913) (explaining that in some scenarios—such as when harm results to others—laches may prevent a delayed challenge by a creditor

to a foreclosure sale of the debtor's assets). But it seems too late to change the nomenclature now.

B

Given that we are being asked to apply equitable mootness in a new setting, it makes sense to take a step back and consider the doctrine's origins. By the mid-1990s, most federal circuits had applied a version of the doctrine, and some had even referred to it as "equitable mootness." *See generally Cont'l Airlines*, 91 F.3d at 558 (citing cases from the First, Second, Fourth, Fifth, Seventh, Ninth, Eleventh, and D.C. Circuits).

For our part, we have used variations of the term equitable mootness (including "equitably moot") in three published opinions involving bankruptcy appeals: *Florida Agency for Health Care Administration v. Bayou Shores SNF, LLC (In re Bayou Shores SNF, LLC)*, 828 F.3d 1297, 1328 (11th Cir. 2016); *Nica Holdings*, 810 F.3d at 786; and *Alabama Department of Economic & Community Affairs v. Ball Healthcare-Dallas, LLC (In re Lett)*, 632 F.3d 1216, 1225 (11th Cir. 2011). In each of these cases, we held that the doctrine did not apply in the particular circumstances presented. But it would be incorrect to say that we have never endorsed or applied the doctrine, because in these three cases we relied on earlier decisions in which we had dismissed bankruptcy appeals as "moot" (simpliciter) while overtly relying on equitable considerations. *See, e.g.*, *Club Assocs.*, 956 F.2d at 1069 ("The test for mootness reflects a court's concern for striking the proper balance between the equitable considerations of finality and good faith reliance on a judgment and the competing interests that underlie

the right of a party to seek review of a bankruptcy court order adversely affecting him.").[3]

Over the years, we have identified a number of important considerations for deciding whether the doctrine bars an appeal. The facts will weigh in favor of finding equitable mootness when allowing an appeal to go forward will impinge upon actions taken to one's detriment in "good faith reliance on a [final and unstayed] judgment." *Id.* at 1069-70. *Cf. Doll v. Grand Union Co.*, 925 F.2d 1363, 1371 (11th Cir. 1991) (discussing the equitable defense of promissory estoppel). Or—all the more—when permitting an appeal will interfere with actions taken without knowledge that any claims are still pending final resolution. *See, e.g.*, *Markstein v. Massey Assocs., Ltd.*, 763 F.2d 1325, 1327 (11th Cir. 1985) (holding that foreclosure sale of disputed property to a non-party would not be voided, but remanding for consideration of claim regarding repayment of funds wrongly held by the original creditor). The more substantially the party aggrieved by a judgment has allowed the egg of that judgment to be scrambled—the more that people have acted in ways that render inequitable the relief sought by the aggrieved party—the less likely we will be willing to consider ordering anyone to countenance "the pains that attend any effort to unscramble an egg." *In re UNR Indus., Inc.*, 20 F.3d 766, 769 (7th Cir. 1994). *See also Bayou Shores*, 828 F.3d at 1328 ("The equit-

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[3] For other Eleventh Circuit cases holding that bankruptcy appeals were barred by equitable and prudential considerations, *see Miami Ctr. Ltd. P'ship v. Bank of N.Y.*, 838 F.2d 1547, 1553 (11th Cir. 1988); *Gwinnett Bank & Trust Co. v. Matos (In re Matos)*, 790 F.2d 864, 865-66 (11th Cir. 1986); and *Kahihikolo*, 807 F.2d at 1543.

able mootness doctrine seeks to avoid an appellate decision that 'would knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the [b]ankruptcy [c]ourt.'"). The more complex a transaction (or a series of transactions) is, and the longer the time that has passed since the confirmation of the plan, the harder it will be to undo the past.

Conversely, if the relief sought does not undermine actions that may have been taken in reliance on the judgment, or if no such actions have been taken, then there will be no reason to conclude that an appeal is equitably moot. *See, e.g., Russo v. Seidler* (*In re Seidler*), 44 F.3d 945, 949 (11th Cir. 1995) (matter was not equitably moot because the debtor had not yet recorded satisfaction of putative creditor's lien that bankruptcy court concluded had been satisfied and had not sold the home); *Markstein*, 763 F.2d at 1327 & n.1, n.2 (dismissing appeal insofar as it challenged the validity of the foreclosure sale of the debtor's asset, but remanding because, "if the [debtor's] property sold at foreclosure for an amount in excess of the mortgage debt[,] the excess [might] go into the debtor's estate").

We are sensitive to the "interests that underlie the right of a party to seek review of a bankruptcy court order adversely affecting him." *Club Assocs.*, 956 F.2d at 1069. Consequently, courts will be less likely to find an appeal equitably moot if the aggrieved party sought a stay (especially if it did so promptly), if a stay was unjustifiably denied or was justifiably not requested, or if appellate review was sought reasonably promptly. *Compare Nica Holdings*, 810 F.3d

at 787 (addressing appeal on the merits where the bankruptcy court rejected one motion to stay as too early and, immediately afterward, another one as too late, so that "there was never a time when [the appellant] could file a motion to stay"), *with Club Assocs.*, 956 F.2d at 1070-71 (dismissing appeal and endorsing the bankruptcy court's conclusion that the aggrieved party's failure to immediately seek a stay was "deliberate"). Other equitable considerations may also weigh against concluding that an appeal is "equitably moot," as we observe below in weighing the circumstances here. *See, e.g., Dill Oil Co., LLC v. Stephens* (*In re Stephens*), 704 F.3d 1279, 1283 (10th Cir. 2013).

We have said that equitable mootness is rooted in the "general [principles] of appellate procedure." *Lee-Vac*, 630 F.2d at 248. To be sure, Congress has codified one part or another of the doctrine at certain points in time. *See, e.g.*, *id.* at 247-48 (former Bankruptcy Rule 805); *UNR*, 20 F.3d at 769 (enumerating "[s]everal [statutory] provisions . . . provid[ing] that courts should keep their hands off consummated transactions"). But we have since rejected attempts to strictly read any such codifications. *See Lee-Vac*, 630 F.2d at 247-48. And we have not inferred too much from the removal of any such codifications from the Bankruptcy Code. *See UNR*, 20 F.3d at 769 ("Section 1127(b), unlike § 363(m), does not place any limit on the power of the court of appeals, but the reasons underlying §§ 363(m) and 1127(b)—preserving interests bought and paid for in reliance on judicial decisions, and avoiding the pains that attend any effort to unscramble an egg—are so plain and so compelling that courts fill the interstices of the Code with

the same approach."); *Miami Ctr.*, 838 F.2d at 1553 ("The Eleventh Circuit, like other circuits, has recognized the continuing viability and applicability of the mootness standard in situations other than transfers by a trustee under § 363(b) or (c)."") (citing cases); *Sewanee Land, Coal & Cattle, Inc. v. Lamb* (*In re Sewanee Land, Coal & Cattle, Inc.*), 735 F.2d 1294, 1296 (11th Cir. 1984) (explaining that the absence of an equivalent to Rule 805 in new bankruptcy rules did not call for a different outcome under the new rules, and holding that an appeal of the sale of real property was equitably moot because the court was "powerless to grant relief").[4]

C

We have never addressed whether equitable mootness applies in the Chapter 9 context. Because the doctrine is driven by its principles rather than any particular codification or arbitrary limitation, *see Lee-Vac*, 630 F.2d at 247-48, and because we see no respect in which these principles are bound to come into play any less in the Chapter 9 context than in the contexts of Chapters 11 or 13, we see no reason to reject the doctrine here. Indeed, in ways these principles will sometimes weigh more heavily in the Chapter 9 context precisely because of how many people will be affected by municipal bankruptcies. "'If the

[4] We have, in this respect, perhaps differed somewhat from some other circuits, which have varied in how much they have focused on statutory provisions or rules in interpreting the doctrine. *See, e.g.*, *Detroit*, 838 F.3d at 807-08 (Moore, J., dissenting) (discussing development of the doctrine in several circuits); *Castaic Partners II, LLC v. Daca-Castaic, LLC (In re Castaic Partners II, LLC)*, 823 F.3d 966, 968 (9th Cir. 2016) ("statutory mootness codifies part, but not all, of the doctrine of equitable mootness").

interests of finality and reliance are paramount to [analysis of equitable mootness for] a Chapter 11 private business entity with investors, shareholders, and employees, . . . then these interests surely apply with greater force to the [County's] Chapter 9 Plan, which affects thousands of creditors and residents.'" *Detroit*, 838 F.3d at 803. Nor do we see any reason why the doctrine's principles would not be self-cabining in this context as they are in other bankruptcy contexts. We therefore join the two other courts that have addressed this question in concluding that equitable mootness can apply in Chapter 9 cases. *See id.* at 804-05 (2-1 decision); *Franklin High Yield Tax-Free Income Fund v. City of Stockton (In re City of Stockton)*, 542 B.R. 261, 274 (B.A.P. 9th Cir. 2015) (citing an earlier Ninth Circuit case, *Lionel v. City of Vallejo (In re City of Vallejo)*, 551 F. App'x 339 (9th Cir. 2013), which reached the same result but did not indicate that the question was disputed).

The district court concluded that Chapter 9 is different in ways that required it to hold that equitable mootness does not apply in this context. The ratepayers, defending the district court's decision, contend that the doctrine has no role in municipal bankruptcies because Chapter 9 "implicates public concerns" and potentially involves constitutional issues (like the ones they are asserting). *See* Appellees' Br. at 4. These are important points, and we have duly considered them. Nevertheless, we are still persuaded that equitable mootness can apply in Chapter 9 cases.

The main theme running through the district court's reasoning, and the ratepayers' arguments, is that municipalities and their bankruptcies implicate issues of sovereignty, whereas corporations or indi-

viduals and their bankruptcies do not—and that, accordingly, it is important for us to tread carefully where self governance is concerned. *See Bennett*, 518 B.R. at 636-38. In a certain sense this observation rings true: the Bankruptcy Code arguably gives more (but certainly different) protection to government entities under Chapter 9 than to private persons and entities who seek bankruptcy protection. *See Detroit*, 838 F.3d at 803.

But this argument doesn't speak to the threshold question of whether equitable mootness can apply in any case—it only speaks to whether it applies in particular cases. We see no reason why, for example, if a run-of-the-mill creditor of a municipality (which would have no greater basis in a Chapter 9 case than in any other bankruptcy case for laying claim to any equities of constitutional proportion) objects to a Chapter 9 bankruptcy plan, that creditor should be able to avoid equitable mootness merely because the bankruptcy proceedings happen to be under Chapter 9. Just as in other kinds of bankruptcy proceedings, concerns about finality, reliance, and equity will be at play.

In addition, it is not at all clear in which direction the ratepayers' federalism arguments will cut from one Chapter 9 bankruptcy to the next. Given the interests of the municipality and those of its residents (among others), there is a countervailing argument that a court ought to be more solicitous to the municipality that has obtained confirmation of its plan and thus be especially inclined to pull the trigger of equitable mootness. In the present case, the ratepayers (to whom a state's or municipality's rights ultimately accrue) are challenging the confirmed

bankruptcy plan's alleged trampling of their state-based rights, but what about the actual state entity (for whose sovereignty Chapter 9 procedures reflect such concern)?

Finally, we recognize that, given the centrality of constitutional rights to the fabric of our republic, there is a fair argument to be made that we should allow some leniency when a party who has allowed a bankruptcy plan to go into effect asserts constitutional claims on appeal. But the mere fact that a potential or actual violation of a constitutional right exists does not generally excuse a party's failure to comply with procedural rules for assertion of the right. A "constitutional right, or a right of any other sort, may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." *Henderson v. United States*, 568 U.S. 266, 271 (2013) (internal quotation marks omitted). And we generally allow those with constitutional rights to waive them. *See, e.g.*, *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1944-45 (2015) (permitting litigants to consent to disposition by the bankruptcy court of claims that would have otherwise required an Article III tribunal for adjudication).

Ultimately, we think the correct result is to join the Sixth Circuit and the Ninth Circuit B.A.P. in allowing equitable mootness to apply in the Chapter 9 context. As for federalism concerns, it will be appropriate to note them when deciding whether the doctrine should bar an appeal in a particular bankruptcy case. We do precisely this below.

D

Having explained the law that underpins our equitable mootness inquiry, and having concluded that the doctrine can apply in a Chapter 9 case such as this, we now explain why equitable mootness bars the ratepayers' appeal.

First, and critically, the ratepayers here have never asked any court to stay the implementation of the plan that the bankruptcy court confirmed—not the bankruptcy court itself, not the district court, and not this court—and consequently no court has ever stayed the implementation of the plan. Indeed, the ratepayers had the opportunity to defend the automatic 14-day stay when Jefferson County asked the bankruptcy court to waive it, but they raised no objection then either. Nor did the ratepayers ever ask that their appeal be expedited. Consequently, when Jefferson County commenced this appeal, the bankruptcy court's confirmation order (and the plan) had been in effect, never having been stayed, for more than a year.

We acknowledge that the "failure to obtain a stay does not necessarily preclude review of [an] appeal." *Club Assocs.*, 956 F.2d at 1070. For example, if the relief sought on appeal does not seriously undermine the actions that parties have taken in good faith reliance on the judgment, or with no knowledge at all of the pending litigation, then there may be no reason to conclude that the appeal is equitably moot. *See, e.g.*, *Seidler*, 44 F.3d at 949 (party which prevailed before the bankruptcy court in dispute over title to home retained the property in question, so the dispute was not equitably moot). We may also be less concerned that a stay was not granted if, for example, a court

appears to have refused a stay on inappropriate grounds. *See Nica Holdings*, 810 F.3d at 787.

Claiming this "not necessarily preclude[d]" rubric for themselves, the ratepayers contend (and the district court held) that seeking a stay would have been futile because the ratepayers could never have raised sufficient money to post a supersedeas bond for a plan confirmation with billions of dollars at stake. *See Bennett*, 518 B.R. at 639-40. We see things differently. For starters, even if the bankruptcy court (which had confirmed the plan over the ratepayers' objections) had been inclined to deny a stay, the same certainly could not be said of the district court (which has agreed with the ratepayers on at least some of their arguments). On this record, we do not think it can fairly be said that seeking a stay and/or requesting that the appeal be expedited were fool's errands. We come to this conclusion in part by rejecting a premise of the ratepayers' argument: that a bond would necessarily have been required for a stay of limited duration. Given the unique nature of a Chapter 9 proceeding, the ratepayers could have asked for limited stay relief on another basis, such as meeting the traditional requirements for obtaining a preliminary injunction—likelihood of success on the merits, irreparable harm, etc. *Cf. Ind. State Police Pension Trust v. Chrysler LLC*, 556 U.S. 960, 960 (2009) (endorsing the application of these factors in deciding whether to stay a bankruptcy court order authorizing the sale of assets); *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979) (discussing alternatives to posting an appeal bond for the full amount of the judgment).

Second, and closely related to the stay question, the County and others have taken significant and largely irreversible steps in reliance on the unstayed plan confirmed by the bankruptcy court. Specifically, the County has issued over one billion dollars' worth of new sewer warrants and has used the proceeds to retire the old sewer warrants. These new warrants were sold based on a commitment—backed up by an unstayed court order—to set sewer rates at particular amounts over the course of the next 40 years. The relief sought here, even if limited to striking the provision giving the bankruptcy court jurisdiction with respect to future rates, would seriously undermine actions taken in reliance on the confirmation order. If the district court were to excise the part of the plan providing the bankruptcy court with jurisdiction to oversee disputes regarding the required future increases in sewer rates, there would be serious uncertainty about what would happen to the value of the new warrants, released into the market in the absence of a stay of the confirmation order. We think it is fair to assume that, at the very least, whoever ultimately held those warrants would be adversely affected. Were we to do more, as the County insists that we would be required to do, and vacate the confirmation order *in toto*, any concern about the value of these warrants would pale in comparison to the ill effects not just to investors, but to the County and, ultimately, its residents.

This case is, consequently, much like others in which we have refused to allow a party fully to air the merits of its appeal because granting the relief sought would be inequitable or practically impossible. *See, e.g.*, *Club Assocs.*, 956 F.2d at 1069-71 (lender's

appeal of plan reorganizing real estate entity was moot where other parties had stepped in and made investments to revitalize the entity in reliance on the confirmed plan); *Matos*, 790 F.2d at 865-66 (debtor's appeal of plan that allowed foreclosure sale of the debtor's home was moot where the mortgage lender had conducted foreclosure sale in reliance on the confirmed plan, even though the lender itself bought the home in the sale). And it is quite unlike the few in which we have considered applying equitable mootness but decided, notwithstanding an unstayed judgment, that the doctrine did not apply. These disputes have typically involved the allocation of money, and have not had any bearing on the rights of non-parties or (other) creditors, nor on the continued viability of an entity rehabilitated through the bankruptcy process. *See, e.g.*, *Seidler*, 44 F.3d at 949; *Markstein*, 763 F.2d at 1327.

Finally, as with many equitable determinations based on notions of fairness, we look briefly at the merits and the public interest to determine whether or to what extent a decision either way in this case might result in injustice. *See In re Club Assocs.*, 956 F.2d at 1071 ("The concept of mootness is based upon the premise that a court will undertake the task of carefully examining each issue presented on appeal."). *See also Stephens*, 704 F.3d at 1283 ("Because of the private and public interest in resolving this legal issue, we decline to apply the doctrine of equitable mootness."). As we noted above, concern for the merits is especially warranted where, as here, the challenged plan is alleged to impinge on municipal sovereignty. Here, however, we see no such injustice.

The core of the ratepayers' arguments is that, through the plan, the bankruptcy court has allowed County commissioners at one point in time to bind future County commissioners—indeed, the County as a whole—in a way that impermissibly reduces the autonomy of the County and the political voice of the voters of Jefferson County (including the ratepayers). This argument is, in our view, not very strong.

Courts are sympathetic to concerns about end-runs around political processes, *see, e.g.*, *INS v. Chadha*, 462 U.S. 919, 959 (1983), and the ratepayers have a point that constraining future budgetary decisions in this manner in a sense bypasses the usual procedures. In effect, the County has bound itself to raise rates for decades according to a particular schedule, with limited exceptions/safety valves. But the ratepayers are incorrect in claiming that this constitutes a fundamental change to the way that a municipality governs.

Elected officials can bind their successors—and consequently also their constituents, the people—to all kinds of unavoidably long-lasting financial effects, sometimes irreversibly: they spend budget surpluses; they run deficits; they raise and cut taxes; they expand and contract boundaries; they sign long-term contracts; and they enter into expensive consent decrees to resolve litigation. We know of no authority for the proposition that such government action, which impinges on the rights (or at least limits the ability) of future governments to undo, becomes an illegal end-run around constitutional governance. That a Chapter 9 bankruptcy plan subjects the residents of Jefferson County to rate increases over time, instead of forcing them to bear the financial pain all at once,

does not transmogrify it into one that per se violates the ratepayers' constitutional rights. *Cf. Schweitzer v. Comenity Bank*, 866 F.3d 1273, 1277 (11th Cir. 2017) ("the greater power normally includes the lesser"). We need not attempt to engage in subtle line-drawing exercises between permissible and impermissible commitments to future action in this appeal, because the ratepayers have not asked us to do so. They seek only a per se bar on such future commitments by their elected representatives in accordance with the plan. Having evaluated the factors relevant to an equitable mootness determination, we conclude that dismissing the ratepayers' appeal is appropriate.

We note, in concluding, that no party has so far asked the bankruptcy court to exercise its jurisdiction to force Jefferson County to adjust its sewer rates according to the provisions of the confirmed plan. We therefore express no view on whether the ratepayers (or anyone else) will be able to mount a challenge to aspects of the plan in the future should the bankruptcy court in fact purport to exercise its jurisdiction to compel an increase in rates in compliance with the plan.

IV

We reverse the order of the district court and remand for dismissal of the ratepayers' appeal from the plan confirmed by the bankruptcy court.

REVERSED and REMANDED.

APPENDIX B
MEMORANDUM OPINION OF THE DISTRICT COURT OF ALABAMA, SOUTHERN DIVISION (SEPTEMBER 30, 2014)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANDREW BENNETT; RODERICK V. ROYAL; MARY MOORE; JOHN W. ROGERS; WILLIAM R. MUHAMMAD; CARLYN R. CULPEPPER; FREDDIE H. JONES, II; SHARON OWENS; REGINALD THREADGILL; RICKEY DAVIS, JR.; ANGELINA BLACKMON; SHARON RICE; DAVID RUSSELL,

Appellants,

v.

JEFFERSON COUNTY, ALABAMA,

Appellee.

Case No. 2:14-CV-0213-SLB
Bankruptcy Case No. 11-05736-TBB9

Before: Sharon Lovelace BLACKBURN, United States District Judge.

This case is before the court on the Motion for Partial Dismissal filed by appellee Jefferson County,

Alabama, (doc. 4),[1] and Motion to Consolidate, (doc. 14), and Motion to Strike, (doc. 15), filed by appellants—Andrew Bennett; Roderick V. Royal; Mary Moore; John W. Rogers; William R. Muhammad; Carlyn R. Culpepper; Freddie H. Jones, II; Sharon Owens; Reginald Threadgill; Rickey Davis, Jr.; Angelina Blackmon; Sharon Rice; and David Russell (hereinafter "the Ratepayers"). The Ratepayers have appealed the bankruptcy court's confirmation of the County's Chapter 9 Plan, as well as certain other orders in related adversary proceedings. For the reasons below, the court finds that the County's Motion for Partial Dismissal, (doc. 4), is due to be granted in part and denied in part, and the Ratepayers' Motion to Strike, (doc. 15), and their Motion to Consolidate, (doc. 14), are due to be denied.

I. Motion to Strike

The Ratepayers, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure and Rule 7012 of the Federal Rules of Bankruptcy Procedure, ask the court to strike the County's Motion for Partial Dismissal. (Doc. 15 at 2.) Rule 12(f) allows a court to strike "from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Rule 7012 is inapplicable because the Rules of Part VII of the Federal Rules of

[1] Reference to a document number, ("Doc. ___"), refers to the number assigned to each document as it is filed in the court's record of this case. Reference to a document filed in the bankruptcy record, ("B. doc. ___"), refers to the number assigned to a document as it was filed in the bankruptcy court's record in Case No. 11-05736-TBB9. Page numbers to record citations refer to the page numbers assigned to the documents by the CM/ECF electronic filing system.

Bankruptcy Procedure govern only adversary proceedings, and an appeal from the bankruptcy court is not an adversary proceeding. *See* Fed. R. Bankr. P. 7001. The Ratepayers do not contend that the County's Motion for Partial Dismissal is "a pleading," or that it is "redundant, immaterial, impertinent, or scandalous." Rather, they assert that the Motion is premature and "legally unsupportable," and that the "Bankruptcy Rules do not allow a preemptive strike on appellants' opening brief." (Doc. 15 at 3-4.)

The court disagrees. Indeed, the Eleventh Circuit has affirmed the practice of deciding a motion to dismiss an appeal on mootness grounds before addressing the merits. *See*, *e.g.*, *In re Seidler*, 44 F.3d 945, 947 (11th Cir. 1995). Therefore, the Ratepayers' Motion to Strike, (doc. 15), will be denied.

II. Motion for Partial Dismissal

A. Facts and Claims of the Ratepayers[2]

In a Memorandum Opinion entered in 2012, the bankruptcy court set forth the following facts:

> The origins of Jefferson County, Alabama's bankruptcy case are both recent in vintage and far removed from the filing date of its chapter 9 case on November 9, 2011. Two major factors precipitating its bankruptcy are crushing debt and the loss of a large

[2] The sole function of this fact section is to frame the issue of mootness, not to fact-find. The court has interspersed the claims of the Ratepayers throughout this section in footnotes because they are easier to understand in this context than by summarizing their brief, (doc. 23), and their Statement of the Issues on Appeal, (doc. 1-7).

part of its tax revenues that were not earmarked for specific purposes.

[. . .]

The far removed precipitating factor is also partly one of recent vintage. It is a debt load well in excess of $4,000,000,000.00. The majority of this debt is directly attributable to massive borrowing in the form of warrants issued from 1997 to 2003 to finance the construction and repair of a sewer system owned by the County. . . . The aggregate of the warrants issued between 1997 and 2003 is $3,685,150,000.00 and the unpaid principal balance is around $3,200,000,000.00.

Part of the sewer related debt involves a complex and failed combination of swap and interest rate stabilization agreements. Simplistically and at the behest of former county commissioners, the County believed it could lower the interest on warrants by shifting from fixed rates to adjusting ones.

[. . .]

Superficially, the indebtedness caused by the sewer system construction and repair might appear to be only a relatively recent set of events. It is not. Why it is not is that sewer systems in the state of disrepair of those the County had and added to did not get to their level of disrepair over just the course of a few years or a few decades. Absent some catastrophic event, it took upwards of a century of neglect by the County and the other municipal governments from

which the County acquired twenty some sewer systems. The many decades of failing to properly maintain these sewer systems is the farther in time factor.

[. . .]

Ironically, it is the structure of the debt incurred to finance the sewer system upgrades and repairs that has prevented its costs from being spread onto all of the individuals and businesses located in the County. It is also this structure that makes it highly unlikely that the value—not the gross amount—of what was loaned can ever be fully repaid.

The structure is warrants. Not warrants that are general obligations, repayment of which could come from general revenues of the County. Rather, the County utilized special revenue warrants making the revenues of the sewer system the sole source of repayment of the warrant debt. Conceptually, it is this limited source of repayment that keeps the inhabitants of the local governments paying for the failures of their localities to maintain their sewer systems. . . . Why these costs cannot be directly imposed on all of the inhabitants of the County is the limited source of repayment of the sewer system debt.

[. . .]

Under the security documents, the warrant holders possess a lien that is first in priority and the ability of the County to borrow

more monies is subject to rights accorded the warrant holders under the lending documents.

Over time, special revenue warrants have been utilized for project financing on a greater and greater scale and have become for some municipalities the exclusive means of borrowing for projects such as water systems, sewer systems and other wants and needs. Why this has occurred will vary from location and time of projects. However, all have certain characteristics that make them attractive to municipalities. In many states, special revenue warrants do not require a vote by the citizens of the municipality, while bonds frequently do. This is the case for Jefferson County.[3] Another commonality is that special revenue warrants are not counted as debt for indebtedness limits imposed by states on its municipalities.[4]

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[3] One of the Ratepayers' claims is that, in fact, this is not the case for Jefferson County. (*See* doc. 1-7 at 6 ¶ 2; doc. 23 at 9, 19, 22.) However, in the Confirmation Order, the bankruptcy court found that "ratepayer approval was not required for the issuance of the Sewer Warrants." (Doc. 1-2 [B. Doc. 2248] at 23.)

[4] One of the Ratepayers' issues is, if the warrants are not debt, the County was not "insolvent" at the time it filed bankruptcy. (*See* doc. 1-7 at 14; doc. 23 at 23-24); *see also Bank of N.Y. Mellon v. Jefferson County*, No. 2:08-cv-01703-RDP, 2009 U.S. Dist. LEXIS 122093, *38 (N.D. Ala. June 12, 2009) ("The Warrants at issue are non-recourse debt. Thus, any judgment in this action must be paid from the sewer revenues which are undisputedly inadequate."); *In re Jefferson County*, 469 B.R. 92, 98 n.2 (Bankr. N.D. Ala. 2012) (explaining differences between bonds and warrants, and noting that the County has a "vested interest in maintaining that its warrants are warrants and not some

This, too, is the case in Alabama. A third is that many states do not allow municipalities to encumber their properties with liens that could be enforced by foreclosure or repossession of the properties. Yet again, this is a feature Alabama shares with other states.

Notwithstanding lawyers, judges, politicians and those in the business of selling the means of financing for municipalities—who see these three common characteristics through a lens clouded by legal niceties, private preferences, and money making—the reality is that two are not true from an economic perspective. When one understands that for any capital project its value over a useful life span equates to the revenues it generates, the granting of a lien on the revenue stream for decades is not from an economist's view much different than having a lien on the capital good. Accentuating this economic viewpoint is the appointment of the Receiver for the County's sewer system with the sole authority to operate and control it for potentially decades, if not its useful life.[5] This is not much different than a foreclosure or repossession. It

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other sort of indebtedness"). Related to this is the Ratepayers' claim that the County presented the Plan in bad faith in violation of 11 U.S.C. § 1129(a)(3). (Doc. 1-7 at 14 ¶ 11, 18-19 ¶¶ 37, 42, 43.)

[5] One of the Ratepayers' claims is that the bankruptcy court improperly assumed the duties and authority of the receiver. (Doc. 1-7 at 16 ¶¶ 24-26; doc. 23 at 20 ¶ 4; Transcript of Nov. 21, 2013 hearing at 982.)

effectively strips the County from control of its property and, if it lasts long enough, from the aggregate value of what is the sewer system.

In a similar vein, the concept that special revenue warrant financing is not a debt of the County may be accurate from a certain legal perspective.[6] It is misguided and wrong in the realm of financial matters. This case is an example of why. When sewer usage charges increase beyond a point, the ability of the County to obtain revenue from other sources for other purposes is constrained. Despite the fact that the County has not pledged its full faith and credit for the payment of these warrants, this form of debt still indirectly impairs its ability to borrow and tax. 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

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[6] The Ratepayers contest this, insofar as it would allow the County to issue warrants without voter approval or consideration of debt ceilings, or, in the alternative, they claim that this means that the County was not insolvent at the time it filed bankruptcy.

revenues.[7] 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.

The one correct common factor is that the special revenue warrant financing has reduced, if not avoided, input from all of the inhabitants of the County. No vote by the inhabitants of the County was required for the special revenue warrant financing. For those in the business of selling such financing and those desirous of building projects, this may be good, but for those who have to pay, it is not such a good thing when done in excess.

Excess is clearly what occurred with the County's special revenue warrant financing for the sewer system. Many causes for this excess have been presented to the Court. They include graft and fraud by former county commissioners and county employees; in particular, former county commissioners who headed the department overseeing the sewer system and certain of the department's

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[7] In arguing that the County was not insolvent when it petitioned for bankruptcy, the Ratepayers quoted *In re Hamilton Creek Metro. Dist.*, 143 F.3d 1381, 1387 (10th Cir. 1998): "Chapter 9 does not offer relief to a municipality simply because it is economically distressed. Relief is only available if the debtor was 'insolvent'. . . . " (Doc. 23 at 22-23) (internal citations omitted).

top personnel.[8] All of them have been found or plead guilty on federal bribery and related charges for obtaining monies and other benefits from contractors hired to build parts of the sewer system.

Not to be outdone by the public sector is the business sector. Here, numerous businesses and individuals who were officers, owners, or employees of businesses doing the construction work for the sewer system were charged with crimes including fraud and bribery associated with their work for the County. Just as with the former county commissioners and county employees, some plead guilty and others were convicted. So far, the total of public and private persons and entities determined to have committed crimes related to the County's sewer system is somewhere in the low twenties.[9]

Those involved in investment banking and municipal finance were not out of the loop when it came to dishonest or inappropriate conduct. Some of those involved in the development and sales of the types of financial instruments used in part by the

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[8] The Ratepayers allege that the bankruptcy court erred in failing to distinguish warrants tainted by bribes, which the Ratepayers claim total $1.63 billion and are void *ab initio*, from legitimate warrants. (Doc. 1-7 at 12-13 ¶¶ 1, 5; doc. 23 at 7.)

[9] The Ratepayers allege that the bankruptcy court "did not inquire into the legality of the County's issuance and execution of Swap/Warrants where an allegation of fraud, corruption, or undue influence, effecting a fraudulent transfer of the county's credit for private benefit was made." (Doc. 1-7 at 12 ¶ 2.)

County for its sewer system's needs have committed crimes related to what was sold to the County. Others have not been charged with crimes, but have entered settlements with the United States Securities and Exchange Commission where there is no admission of wrongdoing, but payments in the tens of millions of dollars have been made.

[. . .]

Starting with the first indenture (the Indenture) dated as of February 1, 1997, by and between the County and the Indenture Trustee, and through the course of eleven supplemental indentures, the County agreed to payment terms and secured payment of the warrants issued by it. Initially, the warrants bore fixed rates. By 2001, though, and continuing into 2003, the County issued variable rate and auction rate warrants. Both put the County at risk of interest rate fluctuations. [Footnote omitted.]

[. . .]

By February 2008, various defaults under the Indenture and the warrants had occurred and continued. In April 2008, the County was unable to make principal payments due on certain of the warrants. Between April of 2008 and August of that year, forbearance agreements were entered involving the County and representatives of warrant holders, among others. Unable to resolve matters with the County, the Indenture Trustee and others filed suit in September 2008, in the United

States District Court for the Northern District of Alabama against the County and its then commissioners. The case is styled *The Bank of New York Mellon, et al. v. Jefferson County, Alabama, et al.*, Case No. 2:08-CV-01703-RDP. Since the remedies sought in this federal case are substantially the same as those of a subsequent Alabama state court case, a detailed rendition of them is not given. It is sufficient to point out that one was the appointment of a receiver for the County's sewer system which was opposed by the County.

[. . .]

Although the District Court Judge determined in June 2009, that there was justification for appointment of a receiver, he abstained from this request based on the Johnson Act, 28 U.S.C. § 1342,[10] not allowing

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[10] Section 1342 states:

> The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:
>
> (1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,
>
> (2) The order does not interfere with interstate commerce; and,
>
> (3) The order has been made after reasonable notice and hearing; and,
>
> (4) A plain, speedy and efficient remedy may be had in the courts of such State.

federal appointment of a receiver with rate setting authority. [*See Bank of N.Y. Mellon v. Jefferson County*, 2009 U.S. Dist. LEXIS 122093 (N.D. Ala. June 12, 2009).] This was one of the Indenture Trustee's most desired functions for the sought after receiver. The abstention order was entered on June 12, 2009, for the receivership portion of the complaint and the residual portions of the requested relief were not decided.

[. . .]

In order to obtain a receiver with rate setting power for the sewer system, the Indenture Trustee initiated suit in the Circuit Court of Jefferson County, Alabama on August 3, 2009, in the case captioned *The Bank of New York Mellon, as Indenture Trustee v. Jefferson County, Alabama, et al.*, case number CV 2009-02318. Also named defendants in this suit were the then Jefferson County Commissioners. In this state court proceeding, the Indenture Trustee again sought appointment of a receiver for the County's sewer system, an accounting for the sewer system's revenues, *mandamus* against the county commissioners and prohibition against the county commissioners and the County regarding certain aspects of the operations of the sewer system, and a judgment for unpaid monies owed warrant holders.

Partially due to the absence of any dispute that the County had breached the terms of

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28 U.S.C. § 1342.

the Indenture and the warrants by both non-monetary and monetary defaults, the Alabama court judge granted partial summary judgment in favor of the Indenture Trustee by an order entered on September 22, 2010 (hereinafter "the Receiver Order"). By this order, John S. Young, Jr., LLC, a Delaware limited liability company, was appointed receiver for the County's sewer system and the Indenture Trustee was awarded a judgment of $515,942,500.11 against the County. Collection of the judgment is expressly limited to revenues available under the Indenture's terms to pay the sewer system indebtedness.

[. . .]

Specific findings by the Alabama receivership court regarding the County and its sewer system are that the warrant holders have been harmed by the loss of sewer system revenues that resulted in lowering the amount of monies available for payment of the warrants by (i) not increasing sewer system usage rates as required by the Indenture, and (ii) not operating the sewer system in an "economical, efficient and proper manner." More pointedly, the County did not timely and sufficiently increase customer sewer rates and failed to collect monies from sewer customers some of whom/which the County did not even know were using the sewer system. Other issues were excessive staffing and the County diverting sewer system monies for unauthorized purposes such as paying other, non-sewer related

County expenses. The repercussion of all of these and other failures by the County was to decrease monies available to pay the warrants.

[. . .]

Important for consideration now are those [portions of the Receiver Order] that demonstrate what was done by the Receiver Order and what was not done. There is no doubt that the only purpose of the receivership is to force compliance with the terms of the Indenture as was requested by the Indenture Trustee. . . . It is an order giving a private creditor a contracted for and statutory remedy to enforce portions of the indentures and warrants designed to protect interests of the warrant holders because the County had failed to do what was required of it under the terms of the loan documents.

Exclusive possession, custody and control of the sewer system along with certain non-sewer system properties and the exclusive authority to operate the sewer system was given to the Receiver. The Receiver was also granted the authority to fix and charge sewer rates, collect the system's revenues, pay its bills, implement operational efficiencies and other revenue increasing measures, and a cadre of other rights and abilities designed to increase the revenues payable to the warrant holders be it from increased sewer rates, obtaining monies from other sources, or decreasing costs.

The Receiver was denied authority without some future "express order of [the Alabama receivership court] to sell or otherwise dispose" of the sewer system or any part of it. Likewise, the Receiver Order does not alter the ownership and title to the sewer system properties. All remain owned by and titled in the County. . . . [A]nother paragraph of the Receiver Order delineat[es] that the Receiver owes duties to the sewer system and the Court, not to the County, the Indenture Trustee, or others.

[. . .]

The evidence indicates that the Receiver has done a much better job during his tenure than was done by the County during the tenures of its former county commissioners.

[. . .]

The one thing the Receiver has not accomplished is one of the most important to the Indenture Trustee: further increases in sewer usage rates.

[. . .]

During the receivership period of a little over a year before the chapter 9 [proceeding was filed], the Receiver acted as a go between in the efforts by the County, the Indenture Trustee, insurers of payments of certain of the warrants, banks providing liquidity to the parties, and others to resolve the sewer system related debts of the County. To that end, it appeared in mid 2011

that a compromise had been reached that would have reduced the warrant indebtedness to somewhere around $2,200,000,000.00 and involved the refinancing of the remaining debt.

On September 16, 2011, the Jefferson County Commission approved a term sheet with the Receiver establishing the framework for a settlement with its sewer system related creditors. The perceived settlement was never finalized.

[. . .]

There is evidence that the new commissioners are willing to take unpopular stances and undertake certain actions that might be contrary to their best political interests when it comes to re-election. One is that as part of the term sheet framework they agreed to rate increases of 8.2% per year for three years commencing on November 1, 2011, followed by up to 3.25% per year increases for what is an untold number of years. This is despite the fact that the average sewer rates increased over 300% since 1997 and would increase by a further 527% based on rates desired by the Indenture Trustee. These sorts of increases would take the average monthly residential sewer bill of $63.00 per month up to above $360.00 per month under the Indenture Trustee's wishes. Recognizing the economic and legal limits on what rate increases could be made, the Receiver studied both the structure of the rates and the ability of users to pay increased rates. Its conclusion

was an immediate 25% rate increase was justifiable with another 25% in a year achievable along with other yearly increases for the future. As is evident, none of the scenarios regarding rate increases is pleasant for those who must pay them, or for those who must thereafter face the voters.[11]

[. . .]

Perhaps the most controversial action the new county commissioners have taken is to file the County's chapter 9 bankruptcy case—an action which has been resisted by large segments of the political and business leadership of Alabama.

[. . .]

The fights over the sewer system and its revenues have played out over the course of more than three years in two court systems, one federal and one state, without resolution of the sewer related obligations and, now more importantly, resolution of all of its various debts and obligations unrelated to its sewer system. If nothing more is known, it is that pre-bankruptcy the agreement of all creditors was necessary to restructure the County's financial affairs. Obviously,

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[11] The Ratepayers claim that the rate increases mandated by the Plan are not fair and equitable, and that the bankruptcy court made no findings supported by "economic data showing [that] the rate increases are feasible. . . . " (Doc. 1-7 at ¶¶ 6, 27, 29, 39.) Essentially, they claim that, considering the median income of Jefferson County sewer ratepayers, the future rate increases are not merely unpleasant, but they are unsustainable.

> agreement by all was not obtained. If there is any bright side to the County's municipal bankruptcy, the consent of all creditors is not a requirement for, nor necessarily an impediment to, the County's ability to adjust its debts.

In re Jefferson Cnty., Alabama, 474 B.R. 228, 236-245 (Bankr. N.D. Ala. 2012).

In its Memorandum of Law in Support of Motion for Partial Dismissal, (doc. 5), the County adds the following facts:

> After multiple rounds of intense litigation and negotiations over the course of eighteen months, the County announced in June 2013 that it had reached agreements in principle with almost all of its major creditors and therefore would soon be ready to propose a plan of adjustment that would allow it to exit bankruptcy. . . . [T]he County and its creditors arrived at a final settlement and proposed plan in November 2013. [(B. Doc. 2182 [the Plan].)] Most significantly . . . the County's Plan proposed that the County would issue and sell in the public markets new sewer warrants ("New Sewer Warrants") in the amount of approximately $1.785 billion, the net proceeds of which would be used (along with other funds on hand) to redeem and retire the Retired Sewer Warrants and related obligations in a reduced, compromised amount of approximately $1.8 billion. [(B. Doc. 1977 at 153-55.)]

(Doc. 5 at 15-16.)

In arguing for the Plan's confirmation, the County had stated that the "Plan slashes the outstanding sewer debt from approximately $3.2 billion to approximately $1.7 billion—a consensual reduction of nearly half of the outstanding principal." (B. Doc. 2203 [Omnibus Reply Brief in Support of Plan Confirmation] at 14 [emphasis in original].) The County argued that the Plan was "built on three basic principles":

> 1. Cost-Cutting by the County. The County asserted that it—
>
> has cut over $100 million in General Fund expenditures by, *inter alia*, closing satellite courthouses, cutting staff and expenses in essentially every department, and drastically reducing services. . . . These measures fulfill a basic purpose of debt adjustment under chapter 9—matching expenses to revenue. The County had to cut these costs because the County cannot generate additional revenue from new sources, given the lack of home rule and the State of Alabama's refusal to replace lost occupational tax revenue.

(*Id.*)

> 2. Concessions from the Creditors. The County asserted that its creditors—
>
> have agreed to write off nearly $1.5 billion in outstanding debt, . . . [including] the largest sewer creditor (JPMorgan Chase Bank, N.A.) writing off a significant amount of its investment. . . . In addition, the Plan restructures [the non-sewer debt from being risky to

> being less risky, and] provides for repayment in full of all non-sewer warrants on terms favorable to the County, which ultimately will help the County regain access to the capital markets.

(*Id.* at 15.)

> 3. Sustainable Sewer Rates. The County asserted that—
>
> the Plan depends on a series of single-digit sewer rate increases that the County Commission—the only body constitutionally charged with the responsibility and obligation to fix sewer rates and charges—[which were determined to be determined were reasonable and feasible].

(*Id.*)

The "single-digit sewer rate increases" to which the County refers in its third basic principle manifest themselves in the Plan's Approved Rate Structure, and the Confirmation Order required the County Commission to "adopt and maintain the Approved Rate Structure in accordance with the Rate Resolution." (Doc. 1-2 at 57.) The Approved Rate Structure is a schedule that, unless a specified alternative method is employed, requires the County Commission to increase sewer rates by at least[12] 7.89% per year for the first four years (a total increase of at least 35.47%),[13] and at least 3.49% per year for "each

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[12] The Approved Rate Structure allows the County Commissioners to "increase User Charges at any time." (B. Doc. 2182 at 111.)

[13] To put this in perspective, according to a Consumer Price Index (CPI) inflation calculator provided on the website for the

remaining fiscal year that the New Sewer Warrants remain outstanding. . . . " (B. Doc. 2182 at 109-110.) Assuming a forty-year implementation, as discussed below, the minimum total increase will be approximately 365%.[14]

If the County Commission does not make the required rate increases, the bankruptcy court can order compliance with the Approved Rate Structure, because the bankruptcy court "pursuant to Bankruptcy Code section 945(a) . . . retain[ed] jurisdiction over the Case and as provided in Section 6.4 of the Plan." (Doc. 1-2 at 77.) Section 945(a) allows the bankruptcy court to "retain jurisdiction over the case for such period of time as is necessary for the successful implementation of the plan." 11 U.S.C. § 945(e). Section 6.4 of the Plan reserves "exclusive jurisdiction" to the bankruptcy court to adjudicate disputes over the "enforcement of the Approved Rate Structure." (B. Doc. 2182 at 91-92 ¶ 4(l).) The Plan contemplates that its implementation—that is, the retiring of the New Sewer Warrants—will take forty years. (B. Doc. 2203 at 14.)

The County Commission's alternative to making the "Required Percentage Increases" is to enact a specified "Adjusting Resolution." (B. Doc. 2182 at 109.) The Adjusting Resolution alternative does not give the County Commission discretion to decide for itself how it will handle sewer rates because any

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Bureau of Labor Statistics, the total inflation from 2010 to 2013 was approximately 7%. *See* CPI Inflation Calculator, available at http://www.bls.gov/data/inflation_calculator.htm.

[14] Inflation in the national economy over the last forty years has totaled 379%.

Adjusting Resolution must "fully comply with the New Sewer Warrant Indenture, including the rate and revenue covenants therein." (*Id.* at 111.) Those rate and revenue covenants require the County to take certain measures to remedy any failure to comply with the "Required Coverage Ratios," one of which requires that "Net Revenues [of the sewer system] for the Fiscal Year in question must be not less than 110% of Debt Service Requirements on all Secured Obligations payable during such Fiscal Year." (B. Doc. 2245-1 [Trust Indenture, or New Sewer Warrant Indenture dated Dec. 1, 2013] at 15, 63.) This provision precludes the County from enacting an Adjusting Resolution that decreases rates unless it can somehow offset the decrease in that fiscal year, for instance by increasing its customer base.[15]

The County publicly offered New Sewer Warrants totaling $1,785,486,521.65. (Doc. 5 at 15; doc. 7-1 at 2.) One credit rating agency, Fitch, Inc., gave these warrants a "junk bond" rating. Fitch, Inc., rated the warrants BB+ and BB, respectively. (Doc. 8-10.) "BB" investments are "speculative," and "indicate an elevated

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[15] In arguing in favor of confirming the Plan, the County explained that "[t]he only limitation on the ability of future Commissions to set rates is that the Sewer System must be self-sustaining. . . . " (B. Doc. 2203 at 28.) To realize the power of this limitation, imagine if the "only" limitation on the power of future Congresses to levy taxes was to have a balanced budget at the end of the year. While that might represent a sensible policy, it would take a constitutional amendment, not a statute, to require it. *See Dorsey v. United States*, 132 S.Ct. 2321, 2331 (2012) ("[S]tatutes enacted by one Congress cannot bind a later Congress. . . . "). For such an amendment attempt, *see Uhler v. Am. Fed'n of Labor-Cong. of Indus. Organizations*, 468 U.S. 1310, 1310 (1984) (Rehnquist, J., in chambers).

vulnerability to default risk. . . . " Fitch Ratings, Definitions of Ratings and Other Forms of Opinion at 15, available at https://www.fitchratings.com/web_content/ratings/fitch_ratings_definitions_and_scales.pdf. A November 13, 2013, Moody's report noted that "the bond trustee could . . . ask the court to compel the county to enforce its bankruptcy plan," if the County rescinded the rate increases; Moody's noted that it was "not aware of a precedent for a federal court to compel public utility rates of this nature, given the federalism issues involved in this bankruptcy." (Undocketed submission sent by the County's counsel to the court); *see also* Mary Williams Walsh, *A Municipal Bankruptcy May Create a Template*, N.Y. TIMES, Nov. 20, 2013, at B1, available at http://nyti.ms/1hMafOf. Standard and Poor's rated the Senior New Sewer Warrants BBB and the junior warrants BBB-. (Doc. 8-10.) According to its rating system, "BBB" and "BBB-" represent investment-grade bonds, with "BBB-" being the lowest investment grade. Standard & Poor's, Guide to Credit Rating Essentials at 12, available at http://img.en25.com/Web/StandardandPoors/SP_CreditRatingsGuide.pdf.

Of the proceeds from the sale of the New Sewer Warrants, $1,698,082,801.24 went toward "retiring" the existing sewer warrants (or the "Retired Sewer Warrants"), (doc. 5 at 33; doc. 6-1 at 8 (Tablack decl. ¶ 6)), which had an "aggregate principal amount of $3.08 billion as of the date on which the Plan was confirmed," (doc. 6-1 at 3). The vast majority of the remaining amount went toward funding an insurance policy backing the new warrants. (Doc. 5 at 33; doc. 6-1 at 8 ¶ 7.)

While the County's other debts were affected by the Plan, those effects appear much less significant in comparison to the restructuring of the debt related to the sewer system. (*See* doc. 5 at 19-23.) As the County has stated, "The Plan provides for repayment in full of all non-sewer warrants on terms favorable to the County. . . . " (B. Doc. 2203 at 3.) The Plan effectuates this by exchanging existing General Obligation warrants and school warrants for new ones. (Doc. 5 at 19-21.)

On November 20 and 21, 2013, the bankruptcy court held a confirmation hearing. (*See* Transcripts of Hearings held Nov. 20, 2013 and Nov. 21, 2013.) During the hearing, the bankruptcy court went through the County's proposed Plan line by line, and it heard and responded to arguments from the Ratepayers' counsel on why the Plan should not be confirmed. At one point, the Ratepayers' counsel summarized his clients' problems with the Plan into "three simple points":

> [1.] The plan validates the corrupt activity that procured the execution [of the Sewer Warrants Series 2002-C, 2003-B and 2003-C-1, warrants that the Ratepayers have called the "Swap Warrants" in their brief on this Motion, (doc. 23 at 7)].
>
> [2.] The plan validates the infringement on the constitutional rights of the citizens of the county, both to vote on their commissioners who set the rates, because it takes [the ability to set rates] out of the commissioners' hands, and to be free from overly burdensome debt without due process.

> [3.] The Plan is not feasible] because the plan is superimposed over a service area that has declining population and declining income levels, . . . [and] increas[es] costs for four years without any consideration of the exact ability of those folks to pay. . . .

(Transcript of Nov. 21, 2013 hearing at 704.)

The Confirmation Order was entered the next day, November 22, 2013. (B. Doc. 2248.) Two weeks before the bankruptcy court entered the Confirmation Order, the County had asked the court to waive the automatic stay of the Confirmation Order. (B. Doc. 2183 at 40.) Bankruptcy Rule 3020(e) ordinarily imposes an automatic fourteen-day stay on the operation of a confirmation order. The Ratepayers did not object to waiving the automatic stay at the hearing. (Transcript of Nov. 21, 2013 hearing at 1013.)

When the bankruptcy court entered the Confirmation Order on November 22, 2013, it exercised its discretion under the rule to waive the automatic stay. (Doc. 1-2 at 1, 78.) The Ratepayers filed a Notice of Appeal on December 1, 2013, (doc. 1-3), and a Protective Motion for Leave to Appeal, (doc. 1-4). They did not ask the bankruptcy court for a stay of its Confirmation Order pending this appeal.

The Plan's Effective Date was December 3, 2013. On that day, the County issued the New Sewer Warrants, the proceeds of which went in part toward retiring the "Retired Sewer Warrants." (Doc. 6-1 at 7-8.) The Depository Trust Company, "a clearinghouse system for institutional and individual investors who hold publicly traded securities," received "more than $1.454 billion" of those proceeds. (Doc. 5 at 34; doc.

10-1 at 7.) Many of the cases that made up the pre-bankruptcy "litigation erupt[ion]" were dismissed with prejudice. (Doc. 5 at 13, 37.) Some of these cases involved issues that the Ratepayers have raised; the County has maintained that, to the extent the Ratepayers' claims have "any validity at all," their claims are the County's to pursue. (B. Doc. 1977 [Disclosure Statement dated July 29, 2013] at 127.) The Ratepayers contend a conflict of interest between the County and its sewer ratepayers enables them to pursue what otherwise might be County causes of action. (*See, e.g.*, B. Doc. 2237 at 59-62;[16] doc. 23 at 19.) The Confirmation Order bars "any and all Persons from commencing or continuing any action, directly or indirectly . . . to assert . . . any Ratepayer Claims." (Doc. 1-2 at 27, 74; *see also* doc. 7-29 at 90-91 ["[A]ny Person seeking to exercise the rights of the County (including in respect of the County's Causes of Action purportedly asserted in the Bennett Action[)] . . . are permanently and completely enjoined from commencing or continuing any action. . . . "].) When discussing these provisions during the confirmation hearing, the bankruptcy court explained that these provisions prevented a "double recovery against the same defendants." (Transcript of Nov. 21, 2013 at 1005.)

B. Parties' Arguments on Appeal

1. The County

The County argues that this appeal has three parts: the Confirmation Order, the two adversary proceedings involving the Ratepayers, and the Rate-

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[16] The stamps have been marked over. This document may be doc. 2237-1, and the pages referred to pages 57-60.

payers' proof of claim. (Doc. 5 at 9.) It argues that the first two parts should be dismissed because the first part is moot and the second part is the subject of separate appeals. (*Id.*)

The County argues that the appeal of the Confirmation Order is moot constitutionally, equitably, and statutorily.[17] Its constitutional argument attacks the court's subject matter jurisdiction, asserting that the appeal is not a live Article III case or controversy because events have occurred subsequent to the appeal (namely, the Plan's consummation) that make it impossible for the court to grant the appellants "meaningful relief." (*Id.* at 39 [quoting *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001)].) Since the Plan's terms are all "inextricably interwoven," the Ratepayers' requested relief—that some of the creditors pay back some of the money and that the County not be tied to the Approved Rate Structure—would "require the entire Plan to be unwound," and this court lacks authority to compel the County to unwind the Plan. (*Id.* at 40-41.)

The County also argues that a "broader concept than constitutional mootness" exists called "equitable" mootness. (*Id.* at 49.) Equitable mootness, it claims, is a doctrine rooted in the concern for finality, and occurs when the court "cannot grant effective judicial

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[17] During oral argument on the County's Motion for Partial Dismissal, the court asked counsel for the County a hypothetical question; specifically, the court asked if the bankruptcy court's retention of jurisdiction to enforce the Adjusted Rate Schedule was "clearly unconstitutional," did this court have authority to vacate that portion of the Confirmation Order. Counsel for the County responded that the court did not have such authority. As set forth *infra*, the court disagrees.

relief." (*Id.* [quoting *In re Club Assocs.*, 956 F.2d 1065, 1069 (11th Cir. 1992)].) The County argues that "the primary question" in determining whether an appeal is equitably moot is whether the "reorganization plan has been so substantially consummated that effective relief is no longer available." (*Id.* at 52 [quoting *Miami Ctr. Ltd. P'ship v. Bank of N.Y.*, 820 F.2d 376, 379 (11th Cir. 1987) (hereinafter *Miami Center I*)].)[18] Because the Plan has been "substantially consummated" in this case, the County argues that a "strong presumption" should arise that no "equitable and effective remedy" is available even for meritorious arguments or, at least, that the Plan "should be disturbed only for compelling reasons." (*Id.* at 55 [citations omitted].)

Besides it being impossible to unravel the Plan or return the parties to the status quo, the County argues, doing so would be inequitable because it would adversely affect third parties that received distributions from the Plan and third parties who purchased New Sewer Warrants in reliance on the Plan. (*Id.* at 58-61.) Also, the relief the Ratepayers seek would "destroy the entire Plan and propel the County back to square one in bankruptcy," apparently no matter what the

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[18] The County does not distinguish between *Miami Center I* and *Miami Center Ltd. P'ship v. Bank of New York*, 838 F.2d 1547 (11th Cir. 1988) (hereinafter *Miami Center II*). The County does not list *Miami Center I* in its Table of Authorities, and never uses the opinion's full citation. In the *Miami Center II* opinion, the court went "back to square one." *Id.* at 1548. Therefore, it seems to have overruled or vacated at least some part of *Miami Center I*. Nevertheless, because the Eleventh Circuit cited to both *Miami Center* opinions in *In re Club Assoc.*, 956 F.3d 1065 (11th Cir. 1992), it appears that *Miami Center I* has continuing precendential value.

relief is, because "changing even one part of such a complex confirmed plan is tantamount to destroying all of it" when it is, as the bankruptcy court found, "comprised of 'a complex series of interrelated compromises and settlements.'" (*Id.* at 61-63 [quoting doc. 1-2 at 10].) The Plan should not be destroyed for "the benefit of a single, non-consenting party," especially when that party failed to seek a stay pending appeal and the Plan was substantially consummated. (*Id.* at 64-65 [citations and internal quotation marks omitted].)

Also, the County argues that the appeal of the Confirmation Order is "statutorily" moot because 11 U.S.C. § 364(e) "precludes this Court from unwinding the New Sewer Warrants . . . or any other aspect of the Plan." (*Id.* at 68.) The County argues that "postpetition financing under section 364 may be incurred, as here, for purposes of refinancing prepetition indebtedness," and that the protection of section 364(e) extends to all the material terms of such financing. (*Id.* at 69 [citations omitted].) Because the Ratepayers did not obtain a stay of the Confirmation Order and the purchasers of the New Sewer Warrants acted in good faith in extending the credit, section 364(e) renders the court unable to disturb the Plan and, therefore, any appeal is moot. (*Id.*)

The County argues that portions of this appeal related to orders in Adversary Proceedings Nos. 12-120 and 12-16 should be dismissed because they are the subject of separate appeals, (*see* Case Nos. 2:14-CV-0214-SLB and 2:14-CV-0215-SLB), and, thus, are duplicates in this case.

2. The Ratepayers

The Ratepayers argue that they are creditors of Jefferson County because they overpaid for sewer services insomuch as the rates they paid incorporated the cost of $1.63 billion in Retired Sewer Warrants that they argue were void (or voidable) because they were obtained through bribery and corruption. (Doc. 23 at 7-8.) In the alternative, they argue that they are interested parties or special taxpayers entitled to intervention. (*Id.* at 12; *see also* doc. 16 at 28-29 [arguing that they have standing to appeal as "person[s] aggrieved" by the Confirmation Order and have pecuniary interest in the outcome of the appeal].) They wish to represent a class of future (and/or past) Jefferson County sewer ratepayers. (*See* doc. 23 at 7 ["Ratepayers . . . extended credit in the form of . . . 'overcharges' of current and prospective sewer bills"]; *id.* at 8 ["Ratepayers are creditors who have extended credit in the form of past and prospective monthly sewer fees of $3.2 billion"] (emphasis added).) Instead of the bankruptcy court enforcing the collection of sewer fees for the next forty years (*i.e.*, "act[ing] as a receiver," *id.* at 20), the Ratepayers propose that the County comply with the demands of Amendment 73 to the Alabama Constitution and secure voter approval of new sewer warrants that would replace the old ones. (*Id.* at 8, 10-11.)

They assert that this appeal presents a live case or controversy by pointing out that the County will be under a continuing obligation to collect ever-increasing sewer rates from them to pay the New Sewer Warrant holders, and that the bankruptcy court has agreed to "enforce sewer rate increases" outside of applicable state law mechanisms. (Doc. 21 at 9; doc.

16 at 26.) They also argue that any appeal is still live since all legal issues decided by the bankruptcy court are subject to de novo review by this court. (Doc. 16 at 24.) The Ratepayers argue that they are the victims of "a legal strategy to use . . . equitable mootness . . . to deprive Ratepayers of a hearing on the merits of their claims." (*Id.* at 14.) They invoke Federal Rule of Bankruptcy Procedure 7001, reading it to require a hearing on the merits of their claims asserted in Adversary Proceedings 16 and 120. (Doc. 23 at 15.) According the Ratepayers, equitable mootness cannot override state constitutional rights and powers. (*See* doc. 21 at 33; doc. 23 at 18-19.) Plus, equity is in their favor because they "are the only group affected in their pocketbooks by the indebtedness restructured by the confirmed Plan of Adjustment," and "the only creditor group subject to ongoing [liability] from rate increases." (Doc. 21 at 10-11.) They argue that the County's representations in supporting confirmation of the Plan have been fraudulent, and that the County's "circumvention of the adversary rules was in bad faith and defeats any" request to invoke equity to its favor. (Doc. 23 at 16; doc. 21 at 16.) As for statutory mootness, they note that "[t]he new warrants provided no funding for the County[,] only money for the [prepetition] warrant holders[,] and were used to pay off [prepetition] warrants at increased cost to the County." (Doc. 23 at 31.) They argue that 11 U.S.C. § 364(e) does not provide protection to that sort of transaction. (*See* doc. 21 at 18 [quoting *In re Kmart Corp.*, 359 F.3d 866, 870 (7th Cir. 2004)].) Finally, they imply that to the extent new investors "are relying on the agreement of the bankruptcy court to enforce rate increases on the Ratepayers," such reliance cannot overcome appellate

review of whether a plan violates the Tenth Amendment. (*See* Doc. 21 at 35 [referencing "Article X"].)

C. Discussion

1. Constitutional Mootness

The County contends that the Ratepayers' appeal of the Confirmation Order is constitutionally moot.[19] According to the County:

> In an appeal from a confirmation order in a chapter 9 bankruptcy case, when the relief that an appellant seeks "would require undoing the Plan in its entirety" and undoing the Plan "would be impossible," the appeal must be dismissed as constitutionally moot because effective relief cannot be awarded. *Alexander v. Barnwell Cnty. Hosp.*, 498 B.R. 550, 559 (D.S.C. 2013). That is the case here. This Court cannot grant any meaningful relief with regard to the Bennett Ratepayers' appeal of the Confirmation Order because, even if this Court were to vacate the Confirmation Order, the relief that the Bennett Ratepayers seek simply cannot be granted without ultimately unwinding the entire Plan, which is legally and practically impossible.
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> Although the Bennett Ratepayers' description of the relief they seek in challenging the

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[19] "The doctrine of constitutional mootness" is "known to attorneys who do not practice bankruptcy law as simply 'mootness'." *In re Fontainebleau Las Vegas Holdings*, 434 B.R. 716, 738 (S.D. Fla. 2010).

> Confirmation Order has been a moving target in the bankruptcy court (and may remain unclear in this Court), distilled to its essence, the relief they seek would require (a) certain creditors associated with the Retired Sewer Warrants to make payments to the County or the Bennett Ratepayers even though the claims on which such payments would be based have been settled and released under the Plan; or (b) the County to set sewer rates below the level that the County agreed to maintain under the Plan and in the indenture for the New Sewer Warrants. Accomplishing either of those results would disrupt key elements of the Plan—requiring creditors to make payments could be accomplished only if the comprehensive global releases that were a foundation of the Plan were rescinded, and revising sewer rates would also disrupt the carefully-crafted deal made by the County in issuing the New Sewer Warrants. Because all the terms of the Plan are inextricably interwoven and were part of an overarching restructuring, unwinding any of these key parts would require the entire Plan to be unwound.

(Doc. 4 at 40-41.)

The Supreme Court recently explained the origins and contours of what the County has called "constitutional" mootness:

> Article III of the Constitution restricts the power of federal courts to "Cases" and "Controversies." Accordingly, "[t]o invoke the jurisdiction of a federal court, a litigant must

have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990).

[. . .]

There is thus no case or controversy, and a suit becomes moot, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. ____, ____, 133 S. Ct. 721, 726 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982)) (per curiam); some internal quotation marks omitted). But a case "becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox v. Service Employees*, 567 U.S. ___, ___, 132 S. Ct. 2277, 2287 (2012) (internal quotation marks omitted); *see also Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992)("if an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party, the appeal must be dismissed" (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895))). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Knox*, *supra*, at 1019, 132 S. Ct., at 2287 (internal quotation marks and brackets omitted).

Chafin v. Chafin, 133 S. Ct. 1017, 1023 (2013) (emphasis added). "A case does not become moot simply because an appellate court is unable completely to restore the parties to the status quo ante." *SunAm. Corp. v. Sun Life Assurance Co. of Can.*, 77 F.3d 1325, 1333 (11th Cir. 1996) (citing *Church of Scientology*, 506 U.S. at 12-14). "However small that concrete interest may be due to potential difficulties in enforcement, it is not simply a matter of academic debate, and is enough to save [a] case from mootness." *Chafin*, 133 S. Ct. at 1026 (quoting *Knox*, 132 S. Ct. at 2287) (internal quotations omitted).

The Ratepayers seek "typical appellate relief" from the Confirmation Order—they ask this court to reverse the bankruptcy court's Confirmation Order and that the bankruptcy court "undo what it has done." *Id.* at 1024. The fact that the Confirmation Order has taken effect—the New Sewer Warrants have issued and the Old Sewer Warrants have been retired—does not extinguish the controversy, although it may limit the scope of relief available. If, as the Ratepayers contend, the Confirmation Order's rate-structure provision is unconstitutional, the court may strike it.[20] Indeed,

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[20] The County seems to believe that the Approved Rate Structure is "antecedent to and independent of the Confirmation Order that validated it," as if the New Sewer Warrant holder's ability to enforce the Approved Rate Structure against future County Commissions in the very bankruptcy court that validated it is a mere convenience instead of one of the primary and extraordinary methods of securing the warrants. (*See* doc. 5 at 41 [emphasis added].) Indeed, that security is perhaps the power the new warrant holders required but could not obtain and the assurance the present County could not provide outside of bankruptcy. The live question on appeal is whether they can obtain it in bankruptcy.

the bond rating company Fitch noted this problem with the New Sewer Warrants and rated the creditworthiness of those warrants accordingly. The Ratepayers have a legally cognizable interest in not paying rates ordered by the bankruptcy court that is acting pursuant to an unconstitutional (the court must assume for now) Confirmation Order, and, thus, they are not precluded from pursuing their appeal. Stated differently, the court could "fashion some form of meaningful relief," *Church of Scientology*, 506 U.S. at 12 (emphasis in original), by vacating the portion of the Confirmation Order that retains jurisdiction in the bankruptcy court to order rate increases according to the Approved Rate Schedule.[21]

The court finds that there is still a live controversy between the parties and, therefore, this appeal is not constitutionally moot. The County's Motion for Partial Dismissal, (doc. 4), based on constitutional mootness will be denied.

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21 The County contends that the Ratepayers "could not compel the Jefferson County Commission to enact new rates even if the Confirmation Order were reversed." (*Id.* at n.12.) True, they must pay whatever rates the Commission imposes. But what the Ratepayers seek to avoid is paying rates set by a Commission who can be taken to the bankruptcy court if it enacts rates in violation of the Approved Rate Structure. Part of the relief they seek is the ability to elect Commissioners who, instead of "tak[ing] unpopular stances" or "actions that [are] not desired by many of their constituents," *In re Jefferson County*, 474 B.R. at 244, are accountable to them, and not to federal enforcement of the Approved Rate Structure. Vacating the Approved Rate Structure of the Confirmation Order would grant them that relief.

2. Statutory Mootness

Citing 11 U.S.C. § 364(e), the County argues that this "appeal of the Confirmation Order should also be dismissed for the separate and independent reason that it is statutorily moot." (Doc. 5 at 68.)

Section § 901(a) makes 11 U.S.C. § 364(c)-(f) applicable in Chapter 9 cases. 11 U.S.C. 901(a). The relevant provisions of § 364, entitled "Obtaining Credit," provide:

> (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—
>
> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.
>
> (d)
>
> (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—
>
> (A) the trustee is unable to obtain such credit otherwise; and
>
> (B) there is adequate protection of the interest of the holder of the lien on the

> property of the estate on which such senior or equal lien is proposed to be granted.
>
> [. . .]
>
> (e) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(c)-(e). "The purpose of [§ 364(e)] is to encourage the extension of credit to debtors in bankruptcy by eliminating the risk that any lien securing the loan will be modified on appeal." *Matter of Saybrook Mfg. Co.*, 963 F.2d 1490, 1493 (11th Cir. 1992).

The County contends that "[p]ostpetition financing under section 364 may be incurred . . . for purposes of refinancing prepetition indebtedness." (Doc. 5 at 69 [citing *In re AMC Corp.*, 485 B.R. 279, 287-88 (Bankr. S.D.N.Y.) *aff'd*, 730 F.3d 88 (2d Cir. 2013) and *In re Texaco, Inc.*, 92 B.R. 38, 42-43 (S.D.N.Y. 1988)].) According to the County:

> [B]ecause the County issued the New Sewer Warrants to satisfy prepetition debt and the bankruptcy court approved the financing

> under section 364(e),[22] that section plainly prevents any court from unwinding the County's issuance of the New Sewer Warrants under the Plan. But the section 364(e) protection extends beyond that to all aspects of the Plan—because the issuance of those warrants depended upon the implementation of the remainder of the County's Plan, including the implementation of a new structure of sewer rates and the global settlement of legacy sewer debt issues. Thus, all of the County's Plan falls within the ambit of section 364(e).

(*Id.* at 70 [emphasis in original; footnote added].)

According to the Eleventh Circuit, "bankruptcy courts are indeed courts of equity, and they have the power to adjust claims to avoid injustice or unfairness. However, . . . this equitable power is not unlimited. A bankruptcy court's equitable power must and can only be exercised within the confines of the Bankruptcy Code." *In re Empire for Him, Inc.*, 1 F.3d 1156, 1160 (11th Cir. 1993) (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988), and *Matter of Saybrook Mfg.,* 963 F.2d 1490, 1495 (11th Cir. 1992))(internal citations and quotations omitted). Therefore, only transactions authorized by § 364(c) or (d) are protected by § 364(e). *See Matter of Saybrook Mfg. Co.*, 963 F.2d at 1493 (By its own terms, section

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[22] Subsection (e) does not provide the bankruptcy court with any authority to approve postpetition financing; subsection (e) addresses only the effect on such postpetition financing on appeal. *See* 11 U.S.C. § 364(e). The authority to approve postpetition financing is provided in subsections (c) and (d). *See* 11 U.S.C. § 364(c), (d).

364(e) is only applicable if the challenged lien or priority was authorized under section 364.)

Whether issuance of the New Sewer Warrants, together with the Approved Rate Structure, to pay off the Old Sewer Warrants was a transaction authorized by section 364(c) and/or (d) is an issue of first impression in this Circuit. "By their express terms, sections 364(c) [and] (d) apply only to future—*i.e.*, post-petition—extensions of credit. They do not authorize the granting of liens to secure pre-petition loans." *Matter of Saybrook Mfg. Co.*, 963 F.2d at 1495; *see also In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. 716, 746 (S.D. Fla. 2010) (citing Collier on Bankruptcy ¶ 364.06[2], at 364-25); *Bland v. Farmworker Creditors*, 308 B.R. 109, 116 ("[C]ross-collateralize is to get prepetition loans secured by postpetition assets" and "a lender cannot 'cross-collateralize or "refinance and re-collateralize" a prepetition secured debt by substantially all of the debtor's assets.'").

Section 364(c) and (d) authorize only particular types of actions or concessions to obtain postpetition credit or financing, and § 364(e) only protects the validity of the postpetition lender's debt and/or certain priorities and liens. Therefore, before this court can decide that § 364(e) bars an appeal of the refinancing plan, it must decide whether the terms of the refinancing plan were authorized pursuant to § 364(c) and/or (d). *Matter of Saybrook Mfg.*, 963 F.2d at 1493 ("By its own terms, section 364(e) is only applicable if the challenged lien or priority was authorized under section 364.")

Subsection (c) authorizes the court to allow "the obtaining of credit or the incurring of debt" by the

County[23] if it is unable to obtain unsecured credit. 11 U.S.C. § 364(c). This subsection authorizes the County to obtain credit or incur debt with one of three conditions: (1) the postpetition credit or debt has priority over other administrative expenses; (2) the postpetition credit or debt is secured by a lien on unencumbered property; or (3) the postpetition credit or debt is secured by a junior lien on encumbered property. *Id.* If the County is unable to secure credit under (c), the bankruptcy court may authorize it to obtain credit or incur debt that has a senior or equal lien on encumbered property if the holder of the lien on the property is adequately protected. 11 U.S.C. § 364(d)(1). Neither subsection (c) nor subsection (d) authorizes the bankruptcy court to allow the County to obtain credit or incur debt by giving the lender or the bankruptcy court unlawful or unconstitutional rate-making authority.

Moreover, subsection (e) by its terms protects the specific forms of postpetition lending authorized by § 364. 11 U.S.C. § 364(e). Its protection is limited to the validity of the debt and the priority of the lien; these elements of postpetition debt may not be modified on appeal if a stay of the postpetition lending is not granted. *Id.*

To the extent the County seeks to shield all terms of the sale of the New Sewer Warrant on review by invoking § 364(e), the court will deny its Motion for Partial Dismissal based on statutory mootness.

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[23] Under the provisions allowing a Chapter 9 bankruptcy, the County acts as the trustee and there is no bankruptcy estate.

3. Equitable Mootness

The County contends that the appeal of the Confirmation Order is due to be dismissed as "equitably moot" because Ratepayers did not obtain a stay of the Order pending appeal and the Plan has been "substantially consummated." It contends:

> [T]his appeal presents the quintessential case for dismissal based on equitable mootness. An exceedingly complex Plan that was overwhelmingly supported by the County's creditors has been substantially consummated. Over $1.7 billion has changed hands in payments exchanged between hundreds, if not thousands, of persons and entities. The Retired Sewer Warrants and the associated Indenture have been canceled, and there is no legal or practical ability to revive them. Likewise, the Court has no ability to cancel the New Sewer Warrants and to order the County to repay the proceeds from the sale of those warrants. Third parties have relied on the bankruptcy court's Confirmation Order in purchasing the New Sewer Warrants, and the proceeds of the sales of the New Sewer Warrants allowed the holders of the Retired Sewer Warrants to receive distributions under the Plan. The County's non-sewer debt has also been restructured, and numerous lawsuits have been dismissed with prejudice as a result of the Plan.

(Doc. 5 at 50-51.) Therefore, it argues reversing any part of the Confirmation Order would necessitate unwinding the entire Plan, which is legally and

practically impossible at this point in time and which would threaten the County's emergence from bankruptcy.

"The doctrine of equitable mootness is a prudential, not a constitutional, doctrine that evolved in response to the particular necessities surrounding consummation of confirmed Chapter 11 bankruptcy reorganization plans." *In re Bodenheimer, Jones, Szwak, & Winchell LLP*, 592 F.3d 664, 668 (5th Cir. 2009) (quoting *In re Hilal*, 534 F.3d 498, 500 (5th Cir. 2008)) (internal quotations omitted). This doctrine is called "equitable mootness" because its legitimacy does not rest on a specific provision of the Bankruptcy Code or on Article III of the Constitution, *see In re Pacific Lumber Co.*, 584 F.3d 229, 240 (5th Cir. 2009), but on "equitable considerations of finality and good faith reliance on a judgment," *In re Lett*, 632 F.3d at 1226 (quoting *In re Club Associates*, 956 F.2d 1065, 1069 (11th Cir. 1992)). The problem with the doctrine's extension to this Chapter 9 case is twofold: (1) its application is "in some tension with [the Supreme Court's] recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging," *see Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014) (quoting *Sprint Comm., Inc. v. Jacobs*, 134 S. Ct. 584, 591 (2013) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976))) (internal quotations omitted);[24] and (2) it is based on

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[24] The Supreme Court did not do away with all legal theories "prudential" in nature. *See Lexmark*, 134 S.Ct. at 1387 n.3. Instead, it reframed the matter as one of statutory interpretation. *Id.* at 1387-88 and n.4. In June 2014, the Supreme Court yet again reminded parties seeking dismissal

Chapter 11 concepts that may be inapplicable to or inappropriate for this Chapter 9 case, *see In re Seidler*, 44 F.3d 945, 947 n.3 (11th Cir. 1995). Although the Supreme Court's recent decisions seem to question the continued viability of prudential concerns as grounds for dismissal,[25] this court need not decide whether equitable mootness remains viable in Chapter 11 proceedings, because it finds equitable mootness does not apply to challenges to a Confirmation Order in Chapter 9 proceedings.

Equitable mootness is a "judicial anomaly" best used as a "scalpel," *In re Pacific Lumber Co.*, 584 F.3d 229, 240 (5th Cir. 2009); it is the "exception and not the rule," *In re Semcrude, L.P.*, 728 F.3d 314, 321 (3d Cir. 2013). Courts frequently dealing with appeals of confirmation orders of Chapter 11 corporate reorganization plans have recognized that efficiency is of paramount importance to businesses in distress. Therefore, for private parties, courts are able to "strik[e] the proper balance between the equitable considerations of finality and good faith reliance on a judgment and the competing interests that underlie

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based on prudential grounds, this time in a case on ripeness, of its "virtually unflagging" obligation to hear cases, but the Court declined to "resolve the continuing vitality of the prudential ripeness doctrine" because its factors were "easily satisfied" in that case. *Susan B. Anthony List v. Driehaus*, 134 S.Ct. 2334, 2347 (2014).

[25] The Fifth Circuit has recently noted that "the continued vitality of prudential "standing" is now uncertain in the wake of the Supreme Court's recent decision in *Lexmark International, Inc. . . . .*" *Excel Willowbrook, L.L.C. v. JP Morgan Chase Bank, Nat. Ass'n*, 758 F.3d 592, 603 n.34 (5th Cir. 2014) (quoting *Lexmark Int'l*, 134 S.Ct. at 1388 ("[A] court . . . cannot limit a cause of action . . . merely because 'prudence' dictates.")).

the right of a party to seek review of a bankruptcy court order adversely affecting him." *See In re Club*, 956 F.2d at 1069. Thus, when a Chapter 11 plan has been substantially consummated, no legal or factual error that threatens the entire deal is worth the cost of undoing the deal—it is too inefficient and unfair—and, therefore, the court need not even hear the arguments. When "a successful appeal would be fatal to a plan, prudence may require the appeal be dismissed because granting relief to the appellant would lead to a perverse outcome." *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 168 (3d Cir. 2012), *as corrected* (Oct. 25, 2012), *cert. dismissed*, 133 S. Ct. 1001 (2013). *But see Lexmark*, 134 S. Ct. at 1388 ("Just as a court cannot apply its independent policy judgment to recognize a cause of action that Congress has denied, it cannot limit a cause of action that Congress has created merely because 'prudence' dictates."). The judge-made doctrine of equitable mootness was developed for and should only be used when, "granting relief on appeal [is] almost certain to produce a perverse outcome—chaos in the bankruptcy court from a plan in tatters and/or significant injury to third parties. Only then is equitable mootness a valid consideration." *In re Semcrude, L.P.*, 728 F.3d 314, 320 (3d Cir. 2013) (internal citations omitted).

The County contends that the doctrine of equitable mootness should apply in Chapter 9 appeals exactly as it applies in Chapter 11 appeals.[26] The Eleventh

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[26] The County cites only to *Alexander v. Barnwell County Hospital*, 498 B.R. 550, 559-60 (D.S.C. 2013), in arguing that the equitable mootness doctrine's primary concept—substantial consummation—applies in Chapter 9 cases. (Doc. 5 at 52 n.16 [citing *Alexander*, 498 B.R. at 559-60].) In *Alexander*, the dis-

Circuit has held that "'substantial consummation' is a chapter 11 concept," and that the concept was inapplicable to this chapter 13 case." *In re Seidler*, 44 F.3d at 947 n.3 (citing 11 U.S.C. 1101(2) and 103(f)).[27] This court finds that "equitable mootness" is not applicable in a Chapter 9 appeal challenging terms of the Confirmation Order as unconstitutional although all remedies may not be available to the appellants.

In 1977, the House Report on the new Bankruptcy Act identified "two major differences [between Chapter 9, municipal reorganization, and Chapter 11,] general reorganization law: first, the law must be sensitive to the issue of the sovereignty of the States; [and] second, a municipality is generally not a business enterprise operating for profit, and there are no stockholders."[28] H.R. Rep. No. 95-595, at 263

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trict court cited § 1101(2) and Chapter 11 caselaw to find that an appeal was equitably moot; it also found the appeal was constitutionally moot. 498 B.R. at 559-60. Apparently, the district court did not question whether Chapter 9 embraces the concept of substantial consummation.

[27] Instead of analyzing mootness using the "subsidiary questions" that "strik[e] the proper balance" in Chapter 11 appeals, the court noted that these questions are not dispositive ones, then asked only "whether effective judicial relief is available to [the appealing creditors] should they prevail on the merits [of the creditors' appeal from 'the adversary proceeding determining validity of [a competing] lien.'" *In re Seidler*, 44 F.3d at 947, 949. In other words, it needed only to determine that the appeal represented an Article III case, and found that the appeal "continue[d] to be justiciable." *Id.* at 949.

[28] An earlier draft of the Bankruptcy Act from the Senate would have given bankruptcy judges "full and complete responsibility for cases under title 11," but given responsibility for Chapter 9 and railroad reorganizations to the district courts. *See* S. Rep. No. 95-989, at 154 (1978), *reprinted in* 1978 U.S.S.C.A.N. 5787, 5940.

(1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6221. "The bankruptcy of a public entity," such as the County, "is different from that of a private person or concern. Unlike any other chapter of the Bankruptcy Code, Chapter 9 places federal law in juxtaposition to the rights of states to create and govern their own subdivisions." *In re City of Colorado Springs Spring Creek Gen. Imp. Dist.*, 177 B.R. 684, 693 (Bankr. D. Colo. 1995). This difference between Chapter 9 and other bankruptcies requires courts to recognize that Congress enacted Chapter 9 in a "constitutional balance" that contemplates "the delicacies of the state-federal relationship." *In re City of Stockton, Cal.*, 478 B.R. 8, 23 (Bankr. E.D. Cal. 2012). Prudential concerns, created in response to complex, but private, corporate reorganizations, cannot insulate a bankruptcy court's decision on constitutional issues involving public governmental entities.

The prudential concerns of a Chapter 9 plan are different from the prudential concerns of a Chapter 11 plan. "[T]wo policies underlying Chapter 11" are "preserving going concerns and maximizing property available to satisfy creditors." *Bank of Am. Nat. Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999). The policy underlying Chapter 9 "is not future profit, but rather continued provision of public services." *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 34-35 (Bankr. D. Colo. 1999). These major differences in the purposes of Chapter 9 and Chapter 11 reorganizations alter analysis of whether equitable considerations should factor into this court's decision to hear the Ratepayers' appeal. *Cf. In re City of Desert Hot Springs*, 339 F.3d 782, 789 (9th Cir. 2003) ("[S]ignificant differences between a chapter

11 bankruptcy and a chapter 9 bankruptcy . . . change the analysis of the question of finality. . . . "). The County asserts that the "equitable-mootness doctrine exists to promote finality," (doc. 5 at 64), but it does not acknowledge that the equitable mootness doctrine requires a weighing of "finality and good faith reliance" against "competing interests that underlie the right of a party to seek review of a bankruptcy court order adversely affecting him," *see In re Club*, 956 F.2d at 1069. In the case of a Chapter 9 reorganization plan—finality and reliance may be required to yield to the Constitution and the interest of the public in the provision of governmental services.

In this case, one of the costs of finality is to allow a non-Article III court to decide important constitutional questions that place substantial future financial obligations on the citizens of Jefferson County without representation. The court notes that the County once argued that a predecessor to this case presented "knotty state-law questions," including "whether a county can validly alienate its ratemaking power in an ordinary contract, without some form of legislative authorization if not a vote of the citizens." *See Bank of New York Mellon v. Jefferson County*, Case No. 08-CV-1703-RDP, doc. 77 at 10-12 (N.D. Ala. Mar. 23, 2009) (Jefferson County's Motion to Stay). The County argued that important issues of federalism, which were enshrined in law in various abstention doctrines, should cause a federal court to decline hearing the very questions that the bankruptcy court seemingly decided, *see id.*, and the district court agreed, *see*, *e.g.*, *id.*, doc. 100 at 53 (N.D. Ala. June 12, 2009); *see also In re Cottonwood Water & Sanitation Dist., Douglas Cnty., Colo.*, 138 B.R. 973, 979 (Bankr. D. Colo. 1992) ("[M]unicipal

bankruptcies involve significant problems which are not encountered in the private sector. Important constitutional issues arise when a municipality enters the bankruptcy arena."); 11 U.S.C. § 943(b)(6) (requiring "electoral approval necessary under applicable nonbankruptcy law in order to carry out any provision of the plan"). However, applying the doctrine of equitable mootness as the County espouses, would prevent both state and federal Article III courts from deciding those "knotty state law" and constitutional issues and would prevent any review of a federal bankruptcy court's assumption of jurisdiction to enforce its unreviewed actions. *See In re Pacific Lumber Co.*, 584 F.3d 229, 243 (5th Cir. 2009) (declining to dismiss appeal as equitably moot and noting that "[f]ederal courts should proceed with caution before declining appellate review of the adjudication of [constitutional] rights under a judge-created abstention doctrine.").

Although this court agrees that some part or parts of the Confirmation Order may be impossible to reverse, the County's ceding of its future authority to set sewer rates to the bankruptcy court as a term of the New Sewer Warrants is not one of those parts. If, as the Ratepayers contend, this part of the Confirmation Order is unconstitutional, this court may so declare and prohibit enforcement of that term. A similar constitutional issue would not arise in private contracts under a Chapter 11 plan.

Because Chapter 11 concerns private business entities, the good faith reliance of private investors on the bargains that bring about voluntary reorganization plans are treated with deference, and courts may refuse to undo these agreements when equity so

demands. *See Miami Center II*, 838 F.2d at 1156. In proposing the adoption of a Chapter 11 perspective in this Chapter 9 case, the County points out the inequity to the purchasers of the New Sewer Warrants. However, because the County is a political subdivision of the State of Alabama, significant public interests are at stake.[29] The Ratepayers are not investors or shareholders whose stake in this case is limited to the amount of their investment; they are citizens of the County dependant upon the County for provision of basic sewer service. As such, they are the revenue source for payment of the New Sewer Warrants; however, their interest is not limited to a finite financial amount.[30] Rather, their interest in continuing to receive essential sewer service is not protected by the political system of County governance nor do they have a voice in future rate-making. As the Alabama Attorney General recognized in seeking to intervene on behalf of the then-unrepresented ratepayers in a state court case preceding the bankruptcy, the out-

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[29] In a different ratemaking context, Justice Marshall once noted that "given the substantial element of public interest at stake in a case such as this, it is appropriate to recall Mr. Justice Stone's oft-quoted admonition: 'Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.'" *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 732 (1973) (quoting *Virginian R. Co. v. Systems Federation No. 40*, 300 U.S. 515, 552 (1937)) (Marshall, J., concurring in part and dissenting in part).

[30] The bankruptcy court was "acutely aware" that "the demographics of Birmingham are such that the unfortunate reality is [that] a large part of [the sewer's] collection system is . . . in the lower[-]income areas." (Transcript of Hearing on Nov. 21, 2013, at 723.)

come of this litigation "will have a substantial impact on the rights of ratepayers and their ability to obtain service at just and reasonable rates from a public utility which is a monopoly provider." *Bank of New York Mellon v. Jefferson County, Alabama*, No. CV-2009-2318, Motion to Intervene at ¶ 3; *see also* Press Release, Luther Strange, Alabama Attorney General, AG Seeks to Intervene in Jefferson County Sewer Case (June 15, 2011), *available at* http://www.ago.state.al.us/News-66.

In light of the public and political interests at stake in any Chapter 9 proceedings, the court will deny the County's appeals to equity to allow allegedly unconstitutional provisions of the Confirmation Order to stand without review.

Even if the court considered equitable mootness as appropriate in Chapter 9 proceedings, the court would, nevertheless, deny the County's motion to dismiss.

> Equitable mootness, a concept primarily applied in the bankruptcy context, "is 'a pragmatic principle grounded in the notion that, with the passage of time after a judgment in equity and implementation of that judgment, effective relief on appeal becomes impractical, imprudent, and therefore inequitable.'" *AVCO Corp. v. Citation Corp.* (*In re Citation Corp.*), 371 B.R. 518, 522 (N.D. Ala. 2007) (quoting *MAC Panel Co. v. Va. Panel Corp.*, 283 F.3d 622, 625 (4th Cir. 2002)). To decide whether an appeal is equitably moot, a court "must determine whether the 'reorganization plan has been so substantially consummated that effective relief is no

> longer available.'" *First Union Realty Estate Equity & Mortgage Investments* (*In re Club Associates*), 956 F.2d 1065, 1069 (11th Cir. 1992) (quoting *Miami Center Ltd. Partnership v. Bank of New York,* 820 F.2d 376, 379 (11th Cir. 1987)).
>
> Substantial consummation by itself is not dispositive, however, and a court must consider all relevant circumstances to decide whether it can grant effective relief, including whether a stay pending appeal has been obtained, what type of relief the appellant seeks, and what effect granting that relief would have on third parties not before the court. *In re Club Associates*, 956 F.2d at 1069. The court is charged with "striking the proper balance between the equitable considerations of finality and good faith reliance on a judgment and the competing interests that underlie the right of a party to seek review of a bankruptcy court order adversely affecting him." *Id.*

Davis v. Shepard, 2014 WL 2768808, *6 (N.D. Ala. 2014). As set forth above, the court finds that it can grant some relief to the Ratepayers, if successful on appeal, in the form of striking any allegedly unconstitutional terms in the Confirmation Order regarding the bankruptcy court's authority to set the rates for sewer service.

In a Chapter 11 reorganization, the appellants' failure to obtain a stay of the confirmation order pending appeal is a significant, but not dispositive, factor in favor of dismissing an appeal as equitably

moot.[31] (*See* doc. 5 at 65-67.) In this case, the court finds that seeking a stay was futile and cost-prohibitive.

The County successfully moved the bankruptcy court to waive the automatic fourteen-day stay and now complains that the Ratepayers, who sought an appeal nine days after confirmation, should have opposed their motion. In this case the County has admitted that it "intend[ed] to close [the deal on the sewer warrants], if the court confirms . . . and to moot out any appeal." (Transcript of Nov. 20, 2013 hearing at 7-8.) The bankruptcy court also expressed its intention that the Plan be consummated quickly; at the confirmation hearing, it stated:

> This deal has to be put together quickly. It has to be closed quickly for various reasons, some of which are legal, some of which are tactical. But the one that I am focused on is that the original deal came undone because of market conditions, and I don't want to leave this deal out there very long so that we have interest rate shifts or something else that we may not contemplate that will undo the deal. And that is why I'm doing what is somewhat of an unusual, maybe an extraordinary [way to expedite the deal].

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[31] *In re Winn-Dixie Store, Inc.*, 286 Fed. App'x 619, 623 (11th Cir. 2008) ("Importantly, although not dispositive to the availability of judicial relief, when a party has failed to seek a stay of the confirmation order pending appeal to the district court, for practical reasons it is often difficult for courts to afford relief to the appealing party because the court is unable to rescind transactions taken in consummation of the reorganization plan and confirmation order enforcing said plan.") (internal citations omitted).

(Transcript of Nov. 21, 2013 hearing at 840-41.) This court is not inclined to dismiss Ratepayers' appeal as "equitably moot" based on the rush to consummation. *See In re Paige*, 584 F.3d 1327, 1343 (10th Cir. 2009) ("[W]here, as here, the parties attempting to convince the court not to reach the merits have accelerated the consummation of the plan despite their knowledge of a pending appeal—in this case, by waiving the requirement that the consummation await the resolution of all pending appeals—we are less inclined to grant their wish that the court abstain from reaching the merits on appeal."). Under the circumstances, no stay would have been granted even if Ratepayers had moved the court and somehow were capable of obtaining an appeal bond.[32]

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[32] Stays cost money, and in a case, which involved the sale of $1,785,000,000 worth of investment securities, the price of an appeal bond would be cost prohibitive to Ratepayers. *Cf. In re Chemtura Corp.*, 09-11233 REG, 2010 WL 4638898, at *1 n.4 (Bankr. S.D.N.Y. Nov. 8, 2010) ("And on this record . . . any material stay of the effectiveness of the Confirmation Order would be unthinkable. If the request [was] even considered, the necessary bond, in this case with a [total enterprise value] of $2.05 billion, would have to run in the hundreds of millions of dollars."); *Miami Center Ltd. Partnership v. Bank of New York*, 838 F.2d 1547, 1549 (11th Cir. 1988) (noting that bankruptcy court, in case involving at least $255,600,000 changing hands, conditioned granting a stay pending an estimated year-long appeal upon appellant posting a $140,000,000 bond). When withdrawing their emergency motion for a stay on December 3, 2013, (*see* B. Doc. 2268), counsel for another group of ratepayers noted that the ratepayers obviously could not file a supersedeas bond adequate for a claim of over a billion dollars. (*See* Transcript of Dec. 3, 2013 hearing at 11.) The court does not fault the Ratepayers for failing to collect the millions of dollars that an appeal bond would require.

The Plan, as confirmed, conditioned its Effective Date on the Plan not being subject to any stay. (B. Doc. 2182 at 78.) In fact, any stay would have allowed the purchasers of the New Sewer Warrants to back out of the deal entirely, mooting the confirmation of the Plan. (Doc. 24 at 16.) In the face of the bankruptcy court's stated concerns and the Plan's express provisions, a motion for a stay pending appeal would have been futile. Equity does not require futile gestures. *Munchak Corp. v. Cunningham*, 457 F.2d 721, 725 (4th Cir. 1972) ("Equity does not require the doing of a futile act as a condition to the granting of equitable relief.") (citation omitted); *Stewart v. United States*, 327 F.2d 201, 203 (10th Cir. Wyo. 1964) ("But, equity will not require a useless thing, or insist upon an idle formality.").

In short, the fact that "the Bennett Ratepayers did nothing," to stay the consummation of the Plan is not "particularly inexcusable" to this court. (*See* doc. 5 at 66 [emphasis in original].) The equitable considerations for mooting an appeal in a Chapter 11 case are not the same in a Chapter 9 case. Here, the equities lie with the Ratepayers, and the questions they raise about the legality and constitutionality of the Confirmation Order affect public and political interests—not merely private interests—and, thus, counsel for Article III review of the Confirmation Order.

The County's Motion for Partial Dismissal will be denied as to its contention that the Ratepayers' appeal of the Confirmation Order is equitably moot.

4. Motion to Dismiss Appeal of Orders in the Adversary Proceedings and Motion to Consolidate

The County argues that the Ratepayers cannot "include in the present appeal [Case No. 2:14-CV-213-SLB] challenges to the adversary-proceeding orders because this matter, which is an appeal in the County's main bankruptcy case, is not an appeal in the adversary proceedings." (Doc. 5 at 73.) The court notes that the Ratepayers' Statement of the Issues on Appeal filed in the "main" bankruptcy case, (doc. 1-7), contains issues related to orders in two adversary proceedings—AP No. 12-0016-TBB [hereinafter AP 16] and AP No. 12-0120-TBB [hereinafter AP 120]. The Notice of Appeal states the Ratepayers are appealing the following orders:

> (1) Order Severing Complaint in Intervention and Motion for Class Certification; signed on 8/15/2012 *Adversary Proceeding 16*, Docket No. 139 (RE: related AP 16 Docket No. 126—Complaint in Intervention Filed by Bennett Ratepayers filed July 13, 2012), together with the following Rulings from AP 16 [—] to the extent construed to be preclusive of Ratepayers claims or causes of action in either Adversary Proceeding 120, the Bankruptcy Case or on appeal:
>
> a. Memorandum Opinion On Net Revenues And Applicability of 11 U.S.C. § 928(b) [AP 16 Docket No. 119], dated June 29, 2012;

b. Order On Net Revenues And Applicability of 11 U.S.C. § 928(b) [AP 16 Docket No. 121], dated July 2, 2012;

c. Order On Net Revenues And Applicability of 11 U.S.C. § 928(b) [Bankr. Docket No. 1101], dated July 2, 2012; [duplicate of subparagraph b, *supra*]

d. Agreed Order (I) Resolving Jefferson County's Motion for Reconsideration; Reserving Certain Issues and Directing Entry of Partial Final Judgment in AP 16; and (III) Establishing a Schedule in AP 67 [AP 16 Docket No. 152], dated October 9, 2012;

e. Agreed Order (I) Resolving Jefferson County's Motion for Reconsideration; Reserving Certain Issues and Directing Entry of Partial Final Judgment in AP 16; and (III) Establishing a Schedule in AP 67 [Bankr. Docket No. 1350], dated October 9, 2012; [duplicate of subparagraph d, *supra*]

f. Memorandum Opinion On Net Revenues And Applicability of 11 U.S.C. § 928(b) [AP 16 Docket No. 151], dated October 9, 2012; and

g. Partial Final Judgment [AP 16 Docket No. 153], dated October 9, 2012.

(2) Order Denying Motion to Reconsider this Court's Order Staying this Adversary Proceeding (Related to Doc #98) Signed on

7/1/2013 (Entered: 07/01/2013) *AP 120* Docket No. 108.

(3) Order that the Request for a Stay is granted and this Adversary Proceeding is stayed in its entirety pending further order of this court. Signed on 6/7/2013 (RE: related document(s) 92 Reply filed by Defendant Jefferson [C]ounty, Alabama). (Entered: 06/07/2013) *AP 120* Docket No. 95.

(4) Order Sustaining Objection of Jefferson County, Alabama to Proofs of Claim filed by Roderick V. Royal and Others (Claims 1292 and 1305) Signed on 11/12/2013 [and related docs. 1945, 2013, 2016-2017, 2141, 2151, 2196].

(5) Order Denying Motion for Clarification or Reconsideration Based On Two Cases Cited as Authority by the Court on Objection of Jefferson County, Alabama to Proofs Of Claim Filed by Roderick V. Royal and Others (Related Doc 2160 and Order Denying Motion to Alter or Amend or for Relief from a Final Judgment (Related Doc 2174), Signed on 11/26/2013. Modified on 11/26/2013 to correct text. (Entered: 11/26/2013). Bankruptcy Case Docket No. 2251.

(6) Findings of Fact, Conclusions of Law and Order Confirming the Chapter 9 Plan of Adjustment for Jefferson County, Alabama Signed on 11/22/2013 (RE: related document(s)1911 Amended Chapter 9 Plan filed by Debtor Jefferson County, Alabama, 2182

> Amended Chapter 9 Plan filed by Debtor Jefferson County, Alabama). The Plan, as previously modified and as modified by any modifications made at the Confirmation Hearing, is APPROVED and CONFIRMED. The Plan Settlements Motion 2183 is GRANTED in its entirety. Any resolutions of objections to confirmation of the Plan or to the Plan Settlements Motion explained on the record at the Confirmation Hearing are hereby incorporated by reference. All unresolved objections, statements, joinders, comments, and reservations of rights in opposition to or inconsistent with the Plan or the Plan Settlements Motion have been fully considered by the Court and are hereby OVERRULED with prejudice on the merits and in their entirety. The Administrative Claims Bar Date shall be January 31, 2014. (Entered: 11/22/2013). Bankruptcy Case Docket No. 2248.

(Doc. 1-3 at 1-4 [emphasis added].)

"Adversary proceedings are separate lawsuits from which separate appeals may lie. Accordingly, separate notices of appeal must be filed with regard to each separate adversary proceeding." *In re Robinson*, 196 B.R. 459, 460 n.2 (Bkrtcy. E.D. Ark. 1996), *cited in* doc. 5 at 73. Ratepayers filed three Notices of Appeal in the bankruptcy court and filed three appeals in this court—Case Nos. 2:14-CV-0213-SLB; 2:14-CV-0214-SLB; and 2:14-CV-0215-SLB. The Notice of Appeal in this case, which purports to be the appeal of the Confirmation Order and denial of the Ratepayers' proof of claim, lists documents from

the adversary proceedings, each of which is the subject of its own appeal.

In response to the County's Motion to Dismiss, Ratepayers filed a Motion to Consolidate. (Doc. 14.) Consolidating Ratepayers' appeals would not allow them to raise every issue in each of their cases, which appears to be their desire. Indeed given the unfocused nature of their issues and their briefs, the court finds limiting Ratepayers to specific issues in specific appeals may aid the court in their resolution far more than consolidating the cases. Therefore, the Ratepayers' Motion to Consolidate, (doc. 14), will be denied.

The court will grant the County's Motion to dismiss from this case Ratepayers' appeal of the orders entered in the adversary proceedings. Specifically, this court will not consider on appeal in this action:

(1) Order Severing Complaint in Intervention and Motion for Class Certification, AP 16, doc. 139, and/or the related documents a-g;

(2) Order Denying Motion to Reconsider, AP 120, doc. 108, and/or related documents AP 120, doc. 98; and

(3) Order granting request for stay, AP 120, doc. 95, and/or related document AP 120, docs. 92.

CONCLUSION

For the foregoing reasons, the court is of the opinion that the Ratepayers' appeal is not moot; therefore the County's Motion to Dismiss the appeal as moot will be denied. The Motion to Dismiss the Ratepayers appeal of orders entered in the Adversary

Proceedings will be granted. The Ratepayers' Motion to Strike and Motion to Consolidate will be denied. An Order denying in part and granting in part the County's Motion for Partial Dismissal, (doc. 4); denying the Ratepayers' Motion to Consolidate, (doc. 14); and denying their Motion to Strike, (doc. 15), will be entered contemporaneously with this Memorandum Opinion.

DONE this 30th day of September, 2014.

/s/ Sharon Lovelace Blackburn
United States District Judge

APPENDIX C
ORDER OF THE DISTRICT COURT
(DECEMBER 1, 2014)

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

ANDREW BENNETT; RODERICK V. ROYAL; MARY MOORE; JOHN W. ROGERS; WILLIAM R. MUHAMMAD; CARLYN R. CULPEPPER; FREDDIE H. JONES, II; SHARON OWENS; REGINALD THREADGILL; RICKEY DAVIS, JR.; ANGELINA BLACKMON; SHARON RICE; DAVID RUSSELL,

Appellants,

v.

JEFFERSON COUNTY, ALABAMA,

Appellee.

Case No. 2:14-CV-0213-SLB

This case is presently pending before the court on Motion for 28 U.S.C. § 1292(b) Certification, (doc. 37),[1] filed by Jefferson County, Alabama [the County].

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[1] Reference to a document number, ("Doc. ___"), refers to the number assigned to each document as it is filed in the court's

The County asks the court to certify "the following controlling question of law as to which there is substantial ground for difference of opinion: Whether, under the Tenth Amendment to the U.S. Constitution and 11 U.S.C. § 904, and without the municipality's consent, a federal court has the authority to strike a selected provision of a Chapter 9 plan of adjustment?" (*Id.* at 2.) Appellants oppose certification. (*See generally* doc. 40.) The County's Motion for 28 U.S.C. § 1292(b) Certification of its stated issue, (doc. 37), is DENIED; however, the court CERTIFIES its Memorandum Opinion, (doc. 35), and Order, (doc. 36), for immediate appeal.

Section 1292(b) provides:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, [she] shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days

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record of this case. Reference to a document filed in the bankruptcy record, ("B. doc. ____"), refers to the number assigned to a document as it was filed in the bankruptcy court's record in Case No. 11-05736-TBB9. Page numbers to record citations refer to the page numbers assigned to the documents by the CM/ECF electronic filing system.

> after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C. 1292(b).

The County's Motion for Partial Dismissal was grounded on mootness. (*See generally* doc. 4.) In deciding against the County, the court noted that it could review the Confirmation Order, despite consummation of the Plan and the Ratepayers'[2] failure to obtain a stay pending appeal. The court did not decide, and was not asked to decide, any issue regarding whether, and to what extent, specific remedies were available to the court.

Therefore, the court DENIES the County's request that it certify the following issue for appeal: "Whether, under the Tenth Amendment to the U.S. Constitution and 11 U.S.C. § 904, and without the municipality's consent, a federal court has the authority to strike a selected provision of a Chapter 9 plan of adjustment."

Nevertheless, the court CERTIFIES for interlocutory appeal, pursuant to 28 U.S.C. § 1292(b), its Memorandum Opinion, (doc. 35), and Order, (doc. 36), which denied the County's Motion for Partial Dismissal of the bankruptcy appeal on mootness

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[2] The Ratepayers/Appellants are Andrew Bennett; Roderick V. Royal; Mary Moore; John W. Rogers; William R. Muhammad; Carlyn R. Culpepper; Freddie H. Jones, II; Sharon Owens; Reginald Threadgill; Rickey Davis, Jr.; Angelina Blackmon; Sharon Rice; and David Russell.

grounds. The court is of the opinion that its Memorandum Opinion and Order involve controlling questions of law, to wit: Whether the Ratepayers' appeal of the bankruptcy court's Confirmation Order is moot (constitutionally, statutorily, or equitably) given significant consummation of the terms of the Confirmation Order and the Ratepayers' failure to obtain a stay pending appeal.

Mootness is a question of law. *See Doe v. Wooten*, 747 F.3d 1317, 1321-22 (11th Cir. 2014)(citing *Troiano v. Supervisor of Elections*, 382 F.3d 1276, 1282 (11th Cir. 2004)); *Via Mat Intern. South America Ltd. v. United States*, 446 F.3d 1258, 1262 (11th Cir. 2006)(citing *United States v. Logal*, 106 F.3d 1547, 1551 (11th Cir. 1997) and *Ala. Disabilities Advocacy Program v. J.S. Tarwater Developmental Center*, 97 F.3d 492, 496 (11th Cir. 1996)).

Moreover, the parties agree on the events occurring after the bankruptcy court entered its Confirmation Order. During the bankruptcy proceedings, the County publicly offered New Sewer Warrants totaling $1,785,486,521.65. (Doc. 5 at 15; doc. 7-1 at 2.) Of the proceeds from the sale of the New Sewer Warrants, $1,698,082,801.24 went toward retiring the then-existing Sewer Warrants, (doc. 5 at 33; doc. 6-1 at 8 (Tablack decl. ¶ 6)), which had an "aggregate principal amount of $3.08 billion as of the date on which the Plan was confirmed," (doc. 6-1 at 3). The majority of the remaining amount raised by the sale of the New Sewer Warrants went toward funding an insurance policy backing the New Sewer Warrants. (Doc. 5 at 33; doc. 6-1 at 8 ¶ 7.) The Confirmation Order was entered on November 22, 2013, (B. Doc. 2248), and, by its terms, it was "immediately effective and

enforceable" and was "not be subject to any stay otherwise applicable under the Bankruptcy Rules, including Bankruptcy Rule 3020(e)."[3] (Doc. 1-2 at 78.) Before the Confirmation Order was entered, the County had asked the court to waive the automatic stay of the Confirmation Order, (B. Doc. 2183 at 40), and the Ratepayers did not object, (transcript of Nov. 21, 2013 hearing at 1013). The Ratepayers filed a Notice of Appeal on December 1, 2013, (doc. 1-3), and a Protective Motion for Leave to Appeal, (doc. 1-4). They did not ask the bankruptcy court for a stay of the Confirmation Order pending this appeal. The Plan's Effective Date was December 3, 2013. On that day, the County issued the New Sewer Warrants and retired the then-existing Sewer Warrants. (Doc. 6-1 at 7-8.)

The County argued before this court that the Ratepayers' failure to obtain a stay of the Confirmation Order and the actions taken to consummate the terms of the Confirmation Order rendered the Ratepayers' appeal of that Confirmation Order moot. Although this court found the Ratepayers' appeal of the Confirmation Order was not moot, it notes that there are substantial grounds for differences of opinion as to whether post-confirmation activity rendered moot their appeal of the Confirmation Order. This court found that, contrary to the County's argument, the Ratepayers' appeal of the confirmation Order was not statutorily moot pursuant to 11 U.S.C. § 364(e) because issuance of the New Sewer Warrants was not a transaction authorized by § 364 (c) or (d). (Doc. 35 at 31-34 [citing, *inter alia*, *Matter of Saybrook Mfg.*, 963 F.2d

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[3] Bankruptcy Rule 3020(e) ordinarily imposes an automatic fourteen-day stay on the operation of a confirmation order.

1490, 1493 (11th Cir. 1992)].) The court also found that the Ratepayers' appeal was not equitably moot pursuant to the substantial consummation doctrine as applied in Chapter 11 cases due to the significant differences between Chapter 11 and Chapter 9 cases. (*Id.* at 38-42.) And, the court found that the Ratepayers' appeal of the Confirmation Order was not equitably moot based on their failure to obtain a stay because any request for such a stay was futile and cost prohibitive. (*Id.* at 44-46 [citing, *inter alia*, *In re Paige*, 584 F.3d 1327, 1343 (10th Cir. 2009)].) Each of these holdings represents matters of first impression in this Circuit. While this court believes that each issue was correctly decided, it recognizes, nevertheless, that substantial grounds for differences of opinion exist.

An immediate appeal from the court's Memorandum Opinion, (doc. 35), and Order, (doc. 36), may materially advance the ultimate termination of the litigation, especially if the Circuit Court finds in favor of the County, thus ending the Ratepayers' appeal of the Confirmation Order. Although some issues will remain, the heart of the Ratepayers' dispute concerns the constitutionality of certain terms of the Confirmation Order. A finding by the Eleventh Circuit that the Ratepayers' appeal of the Confirmation Order is moot sooner rather than later will eliminate needless time and effort by this court and the parties resolving complex issues concerning the validity and enforceability of the Confirmation Order, as well as the particularly difficult issue of fashioning a remedy should any part of the Confirmation Order be found unconstitutional.

Therefore, the court CERTIFIES for immediate, interlocutory appeal the controlling questions of law: Whether the Ratepayers' appeal of the Confirmation Order is moot–either constitutionally, statutorily, and/or equitably–based on consummation and/or the Ratepayers' failure to obtain a stay pending appeal. Pursuant to § 1292(b), the parties have ten days to file an petition for permissive appeal with the Eleventh Circuit Court of Appeals. 28 U.S.C. § 1292(b); *see also* Fed. R. App. P. 5(a). The parties are ORDERED to file with this court a copy of any application for permissive appeal they or it may file with the Eleventh Circuit Court of Appeals. Further proceedings in this case are STAYED pending the decision of the Eleventh Circuit Court of Appeals.

DONE this 1st day of December, 2014.

/s/ Sharon Lovelace Blackburn
United States District Judge

APPENDIX D
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING THE CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA (NOVEMBER 6, 2013)

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,

Debtor.

Case No. 11-05736-TBB9

Chapter 9

On November 20-21, 2013, the Court held a hearing (the "Confirmation Hearing") on confirmation of the Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated November 6, 2013) [Docket No. 2182], which made certain modifications to the Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated July 29, 2013) [Docket No. 1911] (as subsequently further supplemented, amended, or modified, including by the Plan Supplement, the "Plan"[1]) proposed by

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[1] Capitalized terms used but not otherwise defined in this Confirmation Order have the meanings ascribed to those terms

Jefferson County, Alabama, a political subdivision of the State of Alabama and the debtor in the above-captioned chapter 9 bankruptcy case (the "County"). The record of the Confirmation Hearing reflects all appearances that were made at the Confirmation Hearing.

The Court has reviewed and considered the following documents in connection with confirmation of the Plan:

- the Plan and the exhibits to the Plan;

[. . .]

Outstanding Amount on any series or subseries of non-commuted Sewer Warrants shall be deemed to fully discharge the applicable Sewer Warrant Insurer's obligations under the applicable Sewer Wrap Policy and to fully release all Sewer Wrap Payment Rights with respect to such Sewer Warrants.

24. Validation of New Sewer Warrants. The Court does hereby validate and confirm all proceedings had and taken in connection with the following: (a) the Plan; (b) all covenants, agreements, provisions and obligations of the County set forth in the Plan; (c) the

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in the Plan. Any term used in this Confirmation Order that is not defined in the Plan or in this Confirmation Order, but that is defined in title 11 of the United States Code (the "Bankruptcy Code") or the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Except as set forth herein, the rules of interpretation and construction set forth in Section 1.2(b) of the Plan shall apply to this Confirmation Order. Among other things, those rules of interpretation and construction provide that the word "including" shall be deemed to mean "including, without limitation".

Rate Resolution and Approved Rate Structure; (d) all covenants, agreements, provisions and obligations of the County set forth in the New Sewer Warrant Indenture; and (e) the New Sewer Warrants and the provisions made to pay and secure payment of such obligations. When the New Sewer Warrants have been executed and delivered in accordance with the Plan, the New Sewer Warrants and the pledges, covenants, agreements and obligations set forth therein and in the New Sewer Warrant Indenture shall stand validated and confirmed. At the time of the delivery of the New Sewer Warrants, the County is hereby directed to cause to be stamped or written on each of the New Sewer Warrants a legend substantially as follows:

> "VALIDATED AND CONFIRMED BY JUDGMENT AND CONFIRMATION ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA, ENTERED ON THE ___ DAY OF, ___ 2013."

This validation will be full, final, complete, binding, and conclusive as to the County, all Creditors, all past, current, and future ratepayers and users of the Sewer System, all parties in interest, and all other Persons. Accordingly, the validity and enforceability of the Rate Resolution, the New Sewer Warrants, the New Sewer Warrant Indenture, and the covenants made by the County for the benefit of the holders thereof and those Persons providing the New Sewer Wrap Policy and the Reserve Fund LOC (including the revenue and rate covenants in the New Sewer Warrant Indenture) shall not be subject to any collateral attack or other challenge by any Person in any court or other forum from and after the Effective Date.

25. Validation of Approved Rate Structure. The Court hereby approves the Approved Rate Structure as a valid provision made to pay or secure payment of the New Sewer Warrants that is appropriate, reasonable, and non-discriminatory. Both the prospective sewer rates contained in the Approved Rate Structure and the sewer rates on which the Approved Rate Structure builds are lawful and appropriate, including under Amendment 73 of the Alabama Constitution. From and after the Effective Date, the County Commission shall adopt and maintain the Approved Rate Structure in accordance with the Rate Resolution and as necessary for the County to satisfy the obligations arising under the New Sewer Warrants and the New Sewer Warrant Indenture (and to otherwise comply with all applicable state and federal laws regarding the maintenance and operation of the Sewer System), including increases in sewer rates to the extent necessary to allow the timely satisfaction of the County's obligations under the New Sewer Warrants and the New Sewer Warrant Indenture (and to otherwise comply with all applicable state and federal laws regarding the maintenance and operation of the Sewer System). Without limitation, from and after the Effective Date, (a) this Confirmation Order shall constitute a consent decree binding upon, specifically enforceable against, and a basis for mandamus against the County, the County Commission, and all other Persons in accordance with the Plan (including in an action brought by the New Sewer Warrant Trustee); (b) the validity and enforceability of the Approved Rate Structure and the Rate Resolution shall not be subject to any collateral attack or other challenge by any Person in any court or other forum from and after the Effective Date; and (c) the Court shall retain

exclusive jurisdiction to enforce the Approved Rate Structure and the Rate Resolution, to require the County to otherwise comply with the New Sewer Warrants and the New Sewer Warrant Indenture, and to hear and adjudicate any action or proceeding enforcing, challenging, or collaterally attacking the Approved Rate Structure or the Rate Resolution. All rights, claims, and defenses of the County, the New Sewer Warrant Trustee, and any other affected party are preserved with respect to any Person that attempts to collaterally attack the Approved Rate Structure or the Rate Resolution from or after the Effective . . . with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Confirmation Order; and (c) to enforce prohibitions against any subsequent collateral attack on the validations contained in the Plan and this Confirmation Order. The Court shall reserve all powers as are necessary or appropriate to enforce or to give effect to the Court's retained jurisdiction under the Plan and this Confirmation Order, including by way of injunction.

39. Finality and Immediate Effect of this Order. This Confirmation Order (a) is a final order and the period in which an appeal must be filed shall commence upon the entry hereof; (b) shall be immediately effective and enforceable upon the entry hereof; and (c) for good cause shown, based on the record of the Confirmation Hearing, shall not be subject to any stay otherwise applicable under the Bankruptcy Rules, including Bankruptcy Rule 3020(e).

40. Authority to Consummate. The County is authorized to cause the Effective Date to occur and to otherwise consummate the Plan at any time after the

entry of this Confirmation Order subject to satisfaction or waiver (by the required parties) of the conditions precedent to the Effective Date set forth in Section 4.18(a) of the Plan. Subject to Section 4.18 of the Plan and notwithstanding Bankruptcy Rules 3020(e) or 7062 or otherwise, upon the occurrence of the Effective Date, the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the County, all Creditors, and all other Persons in accordance with their respective terms.

41. Conflicts Between this Order and the Plan. The provisions of this Confirmation Order, including the findings of fact and conclusions of law set forth herein, and the provisions of the Plan are integrated with each other, nonseverable, and mutually dependent unless expressly stated by further order of the Court. The provisions of the Plan, the Plan Supplement, and this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is any direct conflict between the terms of the Plan or the Plan Supplement and the terms of this Confirmation Order that cannot be reconciled, then, solely to the extent of such conflict, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

DONE AND ORDERED this the 22nd day of November, 2013.

/s/
United States Bankruptcy Judge

APPENDIX E
ORDER OF THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING (OCTOBER 31, 2018)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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, ET AL.,

Plaintiffs-Appellees,

v.

JEFFERSON COUNTY, ALABAMA,

Defendant-Appellant.

No. 15-11690-BB

Appeal form the United States District Court for the Northern District of Alabama

Before: TJOFLAT, MARTIN and JORDAN, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having

requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

Entered for the Court

/s/ Adalberto Jordan
United States Circuit Judge

APPENDIX F
WARRANT PURCHASE AGREEMENT— TERMS AND ACCEPTANCE

ISSUER: Jefferson County, Alabama

SENIOR MANAGER: Citigroup Global Markets Inc., acting on behalf of itself and the other Underwriters listed on the signature page below

SECURITIES: The Jefferson County, Alabama, Sewer Revenue Warrants, Series 2013-A to 2013-F, the details of which are set forth in the final pricing wire attached to Schedule I.

ACCEPTANCE DEADLINE: November 20, 2013, 5:00PM (New York prevailing time)

EFFECTIVE DATE AND TIME: November 20, 2013, 12:57 P.M. (New York prevailing time)

CLOSING DATE: December 3, 2013

1. Offer to Purchase the Securities; Execution of Terms and Acceptance

The Issuer and the Senior Manager, acting on behalf of itself and the underwriters listed on the signature page below (together with the Senior Manager, the "*Underwriters*"), are entering into this Warrant Purchase Agreement (the "*Agreement*") to provide for the purchase and sale of the Securities described in Schedule I.

The Underwriters hereby offer to purchase, jointly and severally, all (but not less than all) of the Securities from, and to enter into this Agreement

with, the Issuer. This offer is subject to acceptance by the Issuer by the Acceptance Deadline and, if not so accepted, will be subject to withdrawal by the Underwriters by written notice delivered to the Issuer at any time prior to acceptance. The Issuer shall accept this Agreement by its execution of this Warrant Purchase Agreement Terms and Acceptance ("*WPA Terms and Acceptance*"). Upon such execution, the Agreement will be binding upon the Underwriters and the Issuer. This Agreement is effective as of the Effective Date and Time.

2. Documents Comprising the Agreement

This Agreement consists of this WPA Terms and Acceptance and the following Schedules, all of which are incorporated herein and constitute part of this Agreement as if fully restated herein. The Schedules are as follows:

Schedule I: Terms of the Securities

Schedule II: Defined Terms

Schedule III: General Provisions and Conditions

Schedule IV: Issuer and Underwriter Representations and Warranties

Schedule V: Items to be Delivered at Closing

All capitalized terms used in this WPA Terms and Acceptance and not otherwise defined are used as defined in Schedule II or, if not defined in either this WPA Terms and Acceptance or Schedule II, as defined in the Official Statement.

3. Purchase of the Securities

The Underwriters, jointly and severally, shall purchase from the Issuer, and the Issuer shall sell to the Underwriters, all (but not less than all) of the Securities on the Closing Date at the aggregate Purchase Price set forth below. The Securities shall bear (or accrete) interest at the rates per annum, mature on the dates, be offered to the public at the prices and be subject to redemption prior to maturity and to such other terms and provisions, all as set forth in Schedule I. The Securities otherwise shall be as described in the Approval Resolution, the Act and the Issuer Documents. The Underwriters' agreement to purchase the Securities from the Issuer is made in reliance upon the Issuer's representations, covenants and warranties and on the terms and conditions set forth in this Agreement.

4. Purchase Price

The Purchase Price of the Securities is $1,738,582,801.24 (representing the principal amount of the Securities of $1,785,436,521.65, less Underwriters' discount of $10,360,699.86, and less net original issue discount of $36,543,020.55). The Purchase Price shall be payable on the Closing Date by the Underwriters to or as directed by the Issuer by wire transfer in immediately available funds. In accordance with Section 9 of the WPA General Provisions and Conditions, the Senior Manager also will be reimbursed for certain specified out-of-pocket expenses that are not included as part of the expense component of the Underwriters' discount, relating to travel expenses of the Senior Manager and County for meetings with the rating agencies and expenses asso-

ciated with investor road show presentations. The Issuer acknowledges that the 'Underwriters will be using a portion of their management fees to pay the fees of Greenberg Traurig, LLP, counsel to certain institutional investors.

5. Official Statement

The Issuer hereby consents to and ratifies the use and distribution by the Underwriters of the Preliminary Official Statement in connection with the public offering of the Securities by the Underwriters, and further confirms the authority of the Underwriters to use, and consents to the use of, the final Official Statement with respect to the Securities in connection with the public offering and sale of the Securities. In accordance with Section 3(a) of the WPA General Provisions and Conditions, the Issuer agrees, at its cost, to provide to the Underwriters 10 executed copies and 25 conformed copies of the Official Statement. To the extent required by applicable MSRB Rules, the Issuer hereby confirms that it does not object to distribution of the Official Statement in electronic form.

6. Ratings

The following ratings on the Securities shall be in effect on the Closing Date:

	Fitch	S&P	Moody's
Senior underlying	BB+	BBB	___
Insured	___	AA-	A2
Subordinate	BB	BBB-	

7. Closing Date

The delivery of and payment for the Securities shall be the "Closing" for the Securities and shall occur at or prior to 1:00 p.m., New York City time, on the Closing Date, or at such other time or on such other date as may be mutually agreed by the Senior Manager and the Issuer. The location of the Closing shall be the Birmingham, Alabama offices of Bond Counsel.

8. Issue Price Certificate

Upon request of Bond Counsel, the Senior Manager shall execute and deliver on the Closing Date an issue price or similar certificate, in form and substance reasonably satisfactory to the Issuer, Bond Counsel, and the Senior Manager.

9. Accountant's Letter/Feasibility Consultant's Letter

In connection with the posting of the Preliminary Official Statement, the Senior Manager received an Agreed-Upon Procedures letter dated November 4, 2013, prepared by the Issuer's auditor, Warren Averett, LLC ("Warren Averett"). At Closing, Warren Averett shall deliver a letter advising that additional procedures, as agreed to by Warren Averett and the Senior Manager, were performed as of a date not more than five days prior to the Closing.

In connection with the posting of the Preliminary Official Statement, the Senior Manager received the written consents of Brown and Caldwell, as consulting engineer to the County, and of Galardi Rothstein Group, as Feasibility Consultant to the County, both dated

November 4, 2013, consenting to the references to them in the Preliminary Official Statement and certain other matters. In connection with the execution of this Agreement, the Feasibility Consultant shall prepare a supplement to its Feasibility Study for inclusion in the Official Statement, which shall update such study to reflect the interest rates, principal amounts, and other final pricing terms of the Warrants.

10. Indemnification

The indemnification and contribution provisions contained in Section 10 of the WPA General Provisions and Conditions (Schedule III) shall, to the extent permitted by law, apply to the issuance and sale of the Securities and shall be part of this Agreement.

11. Counterparts

This Agreement may be executed in one or more counter-parts with the same force and effect as if all signatures appeared on a single instrument.

12. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties. This Agreement shall only be amended, supplemented or modified in a writing signed by both of the parties hereto.

13. Signatures

Upon execution by the Issuer and the Senior Manager, this Agreement shall be binding upon the Issuer and the Underwriters as of the Effective Date and Time.

ACCEPTED AND AGREED:

ISSUER: Jefferson County Alabama

By:

/s/ David Carrington
Name: David Carrington
Title: President, Jefferson County Commission

SENIOR MANAGING UNDERWRITER:
Citigroup Global Markets Inc.

By:

/s/ David M. Brownstein
David M. Brownstein
Managing Director
Citigroup Global Markets Inc., on behalf of itself and the following:

CO-MANAGING UNDERWRITERS:

Merchant Capital, L.L.C.
Drexel Hamilton, LLC
First Tuskegee Capital Markets
Securities Capital Corporation
Jefferies & Company, Inc.
Loop Capital Markets, LLC
Morgan Stanley & Co., LLC
RBC Capital Markets
Siebert Brandford Shank & Co., LLC

Schedule I
Terms of the Securities

Maturity Dates, Principal Amounts, Interest Rates, Prices/Yields, CUSIPs and Redemption Provisions are as set forth in the pricing wire dated "11/19/13 06:21pin," which is attached to this Schedule I.

10/01/2035 6,932,795.55 38,015M 7.95 18.237 1/2

10/01/2036 3,337,000.00 20,000M B.00 16.685 1/2

Call Features:

OPTIONAL REDEMPTIONS 10/01/2023-10/01/2034 @ 105 OF CAV DT (10/01/2035 @ 102.5 OF CAV) (10/01/2036 @ 100)

8324,297,136

SUBORDINATED LIEN SEWER REVENUE CONVERTIBLE CAPITAL APPRECIATION WARRANTS SERIES 2013-F

MOODY'S
S&P: BBB–
FITCH: BB
DATED: 12/03/2013
DUE: 10/01

WARRANTS

Maturity	10/01/2039
Principal Amount	66,636,575.00
Maturity Value	137,395M
YLD to MAT	7.50
Approx. $ Price Per 100$	48.50
Add'l TKDN (%)	1/2

Conversion Date:	10/01/2023

Maturity	10/01/2046
Principal Amount	92,828,295.25
Maturity Value	195, 985M
YLD to MAT	7.75
Approx. $ Price Per 100$	47.3650
Add'l TKDN (%)	1/2
Conversion Date:	10/01/2023

Maturity	10/01/2050
Principal Amount	164,832,265.50
Maturity Value	352, 975M
YLD to MAT	7.90
Approx. $ Price Per 100$	46.698
Add'l TKDN (%)	1/2
Conversion Date:	10/01/2023

Call Features:

CALLABLE 10/01/2023 @105

DTP 10/01/2034-10/01/2038

Sinking Fund Schedule

2039 Term Zero

10/01/2036 24,870

10/01/2037	53,825
10/01/2038	27,720
10/01/2039	30,980

Sinking Fund Schedule

2046 Term Zero

10/01/2043	34,230
10/01/2044	43,445
10/01/2045	53,575
10/01/2046	64,735

Sinking Fund Schedule

2050 Term Zero

10/01/2047	77,090
10/01/2048	90,745
10/01/2049	105,805
10/01/2050	79,335

Priority of orders as follows:

1. Group Net
2. Member

Priority Policy:

The Senior Manager requests the identification of all priority orders at the time the orders are entered.

Jefferson County and the senior manager may determine that oversold maturities should remain open during the institutional order period if deemed to be in the best interest of the County.

The compliance addendum MSRB Rule G-11 will apply.

The Award is expected on Wednesday, November 20, 2013 at Eastern.

Delivery is expected on Tuesday, December 3, 2013.

This Issue is book entry. This issue is clearing through DTC.

	Participation
Citigroup Global Markets Inc	60.000%
Merchant Capital, L.L.C.	10.000%
Drexel Hamilton, LLC	5.000%
First Tuskegee Bank	4.000%
Securities Capital Corporation	4.000%
Jefferies LLC	3.000%
Loop Capital Markets	4.000%
Morgan Stanley & Co. LLC	3.000%
RBC Capital Markets	3.000%
Siebert Brandford Shank & Co.	4.000%

By: Citigroup Global Markets Inc New York, NY

Recipient: Citigroup Global
State: NY

APPENDIX G
PROOF OF CLAIM OF 1.630 BILLION
(JUNE 4, 2012)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA

Name of Debtor: Jefferson County, Alabama

Case Number: 11-05736 *TBB

Name of Creditor: Roderick V. Royal, Birmingham City Council Presidential et al.

Name and address where notices should be sent:

Law Offices of Calvin B. Grigsby, as Attorney-in-fact
311 California Street, Suite 320
San Francisco, CA 94104
Telephone number: (415) 860-6446
Email: cqrigsbyinc.com

Name and address where payment should be sent (if different from above):

Same.

1. Amount of Claim as of Date Case filed: $1,630,000,000.
2. Basis of Claim: ANNEX A
3. Last four digits of any number by which creditor identifies debtor:

   None

3a. Debtor may have scheduled account as: None

3b. Uniform Claim Identifier: None

4. Secured Claim

   Amount Unsecured: 1,630,000,000

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed and redacted copies of documents providing evidence of perfection of a security interest are attached.

   Do not send original documents. Attached documents may be destroyed after scanning.

   If the documents are available, please explain: See Attached Exhibits to Proof of Claim Basis Part 5

8. Signature:

   - I am the creditor's authorized agent.

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information and reasonable belief.

Print Name: Calvin Grigsby
Company: Law Office of Calvin Grigsby
Address and telephone number
311 California St., #320
San Francisco, CA 94104
415-393-4800 x311
cgrigsby@grigsbyinc.com

/s/ Calvin Grigsby

Annex A

List of Creditors':

Roderick V. Royal, Birmingham City Council President, Steven Hoyt, Birmingham City Council, Speaker Pro Tempore, Mary Moore, Alabama State Legislator, John W. Rogers, Alabama State Legislator, Andrew Bennett, Jefferson County Tax Assessor, Bessemer Division, William R. Muhammad, Carlyn R. Culpepper, Lt. Col. Rt., Freddie H. Jones, II, Sharon Owens, Reginald Threadgill, Rickey Davis, Jr., Angelina Blackmon, Sharon Rice, David Russell, each a ratepayer of the Jefferson County sewer system and jointly representatives of a class of approximately 130,000 ratepayers of Jefferson county sewer bills

Item 2 (Annex A)–Basis for Claim

Creditors' claims against the Debtor-County are based on published financial data and other evidence which establish the cost to the Debtor-County, and hence directly to the ratepayer class, of dishonest, unlawful and sometimes criminal conduct on the part of employees of the County, certain private parties and others involved in municipal finance. These County employees, private employees and others collusively converted the $2.6 billion in fixed interest rate warrants used to pay the cost of consent decree mandates, to over $5 billion of interest rate swaps and $3.2 billion of variable/auction rate warrants required to facilitate the swaps. The purpose of this conversion was the fees and profits generated inasmuch as the consent decree project finance proceeds had already been raised and either spent on consent decree projects or sitting in escrow accounts prior to this collusive activity.

In a Memorandum Opinion dated January 19, 2012, this Court noted that those found to have "committed crimes related to the County's sewer system is somewhere in the low twenties" and further observed that those involved "in investment banking and municipal finance were not out of the loop when it came to dishonest or inappropriate conduct." 465 B.R. 243, 253 (N.D. AL, Jan. 19, 2012) (Bennett, T.).

Creditors submit that the "partial summary judgment" granted by the September 22, 2010 Order of the Alabama Circuit Court (the "Order") does not necessarily deal with all counterclaims, cross-claims and third party claims or "[claims] when multiple parties are involved." In fact, the Circuit Court stated on the very first page of the Order, "The Court, in the granting of [the Trustee's] 'Motion for Partial Summary Judgment' has before it several complex issues." Before these complex issues could be resolved, the Debtor-County herein sought protection under the Bankruptcy Code. The Bankruptcy Court recognized the partial disposition of the case in the Alabama Circuit Court when, in a hearing on November 11, 2011, the Court said, "But the problem is there is still relief outstanding out there [which] is what concerns me." (Tr. p.14, 15). Creditors' claims will of necessity result in corresponding reductions of the claims of certain bank warrant holders and other Creditors involved with Debtor-County in this collusive activity which resulted in a wrongful diminution of the Debtor-County's estate.

Creditors base their claims on wrongful gain or unjust enrichment on the part of certain bank warrant holders, credit enhancers, lenders and interest rate swap participants and sundry professionals represented by Trustee, New York Bank Mellon, or employed by

Trustee and/or its beneficiaries arising from transactions identified below which have unlawfully increased sewer fees on the Creditors. Such wrongdoing occurred because the lenders acted collusively with the Debtor-County. The Debtor-County has passed along the costs of its complicit financial wrongdoing to Movants' class and will continue to do so. Recovery of damages from financial institutions represented by the Trustee (*i.e.*, certain creditors herein) and other related parties will enhance the bankrupt estate by compensating it for the costs of wrongful issuance of the Swap/Refunding Bonds. Enhancing the bankrupt estate will result in significant relief to Movants' class which is the real debtor-in-interest here since the Debtor-County is, in financial matters, essentially a pass-through entity.

Creditors are subject to water supplies being cut-off and judgment liens against their homes, real property and personal property for non-payment of illegally increased sewer fees. Debtor, on the other hand, is merely a "non-recourse" pass-through entity and ultimate liability to satisfy the Trustee–Creditor rests with Creditors. Creditors and the ratepayer class represented by Creditors are the real "Debtors-in-interest" in this proceeding.

For reasons relating to the conflict of interest fully described in the accompanying Rule 23 Motion, Creditors rather than the County or the Attorney General are appropriate Rule 23 representatives of the ratepayer class.

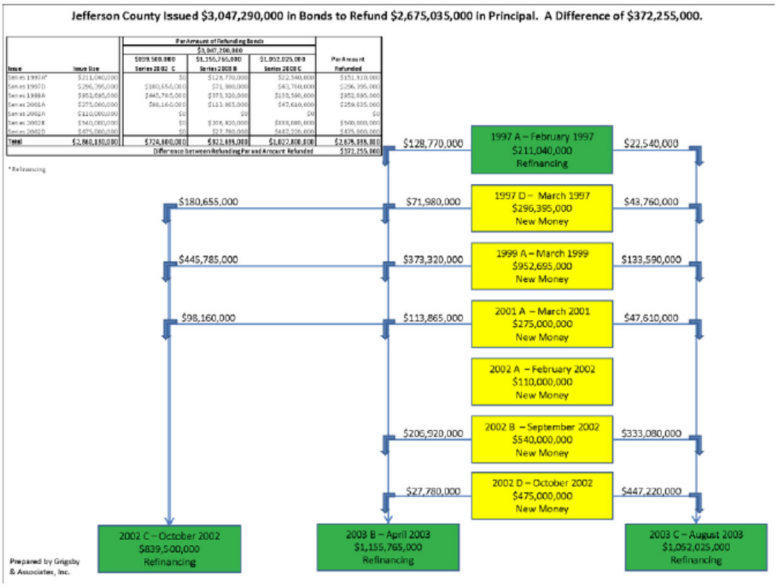
Chronology of Events:

On December 9, 1996, the Court issued a Consent Decree in the Clean Water Act litigation against the County.

February 1, 1997 Debtor executes an Indenture between the County and AmSouth Bank of Alabama, which is the predecessor in interest to The Bank of New York Mellon. Exhibit A-1 and A-2.

On August 24, 2001, the County validated the 4th Supplemental Indenture underlying issuance of 2002A New Money Warrants of $110,000,000 but did not validate the Series 2002C, Series 2003B and Series 2003C refinancing bonds, as described in green below. (See Exhibit B). See complaint showing adverse interest against taxpayers and citizens of Jefferson County—Exhibit B 1.

Under the 1997 Indenture warrants were issued as follows:



The December 31, 2003 Jefferson County Financial report shows outstanding sewer warrants comprised of predominantly fixed rate debt of $2.4 billion. (See Exhibit C) This debt was issued for the financing of new capital projects and is shown in the yellow boxes above (the "fixed rate new money debt").

This fixed rate new money debt was replaced with refinancings to variable/auction rate debt for the purposes of producing exorbitant profits of $172 million from interest rate swaps procured by fraud and corruption as outlined in the SEC consent decree issued November 4, 2009 (Exhibit D) and the Syncora complaint against both the Debtor and JPMorgan for fraudulent inducement to provide bond insurance (Exhibit E) (the "variable/auction rate swap refinancing debt") and as shown in Class Creditors Motion to Intervene Reply attached as Exhibit F-1 through F-4, at Exhibit J, thereto. The SEC cease and desist order found consistent with the instant claims, inter alia, that the costs to bribe the commissioners increased the cost of the variable rate financings required as a condition precedent to execute the lucrative swaps.

The variable/auction rate swap refinancing debt is shown in the chart above in green. This debt was issued to create the variable component for interest rates swaps. See generally Motion to Intervene attached as Exhibit F-5.

The debtor, Jefferson County, agreed to pay swap providers $172 million of unfair swap markups (in excess of a reasonable fair market value $5 million markup) passed along to ratepayers and incurred a $358 million loss passed along to the ratepayers in converting the fixed rate new money debt required for the consent decree projects to the variable/auction

rate swap refinancing debt required to create lucrative interest rate swaps. (See Exhibit G, 2008 Jefferson county CAFR, note 14 under subheadings, "Series 2002C Warrants (loss on refunding of $112 million)," "Series 2003B Warrants (loss on refunding of $122 million)", and "Series 2003C Warrants (loss on refunding of $124 million)," pages 55-57).

Under the 1997 Warrant Indenture, under which the receiver was initially appointed by Judge Johnson in the Alabama Circuit Court, the Indenture Trustee was required to insure, along with the County, that variable/auction rate refinancing debt could not be validly issued absent the preconditions in Article X of the 1997 Indenture. None of these preconditions were met as further outlined in the "Factual Summary" of the attached Class Creditors Motion to Intervene. Reply. Exhibit F-1 through F-4.

THE COUNTY'S ISSUANCE OF THE VARIABLE/AUCTION RATE SWAP REFINANCING DEBT IS THEREFORE ULTRA VIRES AND VOID AB INITIO UNDER ALABAMA STATE LAW REQUIRING ALL COSTS FOR THE VARIABLE/ AUCTION RATE SWAP REFINANCING DEBT IN EXCESS OF THE FIXED RATE NEW MONEY DEBT (THE "OVERCHARGED AMOUNTS") TO BE REPAID TO THE RATE PAYERS AS A VALID CLAIM IN THIS BANKRUPTCY PROCEEDING.

THE OVERCHARGED AMOUNTS ARE AS FOLLOWS:

1 INCREASE IN PRINCIPAL DUE FROM RATEPAYERS FROM VARIABLE/AUCTION RATE REFUNDING DEBT AFTER SEPTEMBER 30, 2002, THAT PRODUCED SWAP

PROFITS BUT NO ADDITIONAL CONSTRUCTION FUNDS OVER AND ABOVE THE FIXED RATE NEW MONEY DEBT-$600,000,000.

2. ADDITIONAL INTEREST PASSED THROUGH TO THE RATEPAYERS FROM INCREASED PRINCIPAL AND HIGHER DEFAULT AUCTION RATES OF THE FRAUDULENTLY PROCURED VARIABLE/AUCTION RATE SWAP REFINANCING DEBT----------$500,000,000.

3. AUDITOR'S DETERMINATION OF LOSSES FROM VARIABLE/AUCTION RATE SWAP REFINANCING DEBT---------- $358,000,000.

4. DISGORGEMENT OF SWAP PROFITS PASSED TO RATEPAYERS ---------- ----------$172,000,000.

TOTAL----------$1,630,000,000.

On September 16, 2008, the complaint was filed in the federal district court for the Northern District of Alabama Case to appoint a receiver with the authority to raise rates required to repay all of the overcharges to rate payers which was subsequently transferred to state circuit court.

On September 22, 2010, the Alabama Circuit Court renders an Order appointing a Receiver and allowing said Receiver to control the sewage system and collect for warrants pursuant to a rate covenant in the 1997

Indenture. The rate covenant from this 1997 Indenture requires the ratepayers to pay not only the original fixed rate bonds but also institutionalizes ratepayer Overcharged Amounts to cover all the illegal profits from fraudulent activities and all of the increased principal resulting from repaying fixed rate bonds with exotic auction rate bonds with interest rate swaps that increased costs to ratepayers of $1.63 billion as detailed above.

On June 14, 2011, the Receiver announced a request to the Alabama circuit court to double the rates. Ten days later, on June 24, 2011, Creditors filed a motion to intervene all of which is described in the attached Exhibit F-1 through F-4.

On November 9, 2011, County filed this petition under Chapter 9 the U. S. Bankruptcy Code. On March 19, 2012, the Bankruptcy Court issued a Memorandum and Order which stated: "Simultaneous with and automatically on the filing of the County's chapter 9 case, the real and personal properties constituting its sewer system were no longer in the possession or custody of the Alabama receivership court. Instead, exclusive jurisdiction over these properties resides with this Court. Lastly, the Net Revenues, the amount of which is subject to further determination of this Court, are not subject to the automatic stays of 11 U.S.C. § 362(a) or 11 U.S.C. § 922(a)." [Emphasis added] This Memorandum and Order recites that there was significant unlawful conduct but does not quantify the amounts owed to the Debtor's estate from that unlawful activity and, therefore, then repayable to the ratepayers in the same amount as overpayments to the Debtor.

As a result of the automatic stay on further proceedings in the Alabama Circuit Court where only a partial summary judgment was granted, no final disposition of all claims of interveners therein were made. Consequently, following Debtor's bankruptcy petition, Creditors' claim is asserted herein under Rule 2019 of the Federal Rules of Bankruptcy Procedure and as further described in the FRCP Rule 23 class certification motion filed concurrently herewith, and is consistent with the Bankruptcy Court's exclusive jurisdiction over all of Debtor's property and the equitable distribution of that property among all of Debtor's creditors.

APPENDIX H
AFFIDAVIT OF JAMES H. WHITE, III
(JULY 29, 2013)

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

IN RE: JEFFERSON COUNTY, ALABAMA, a Political Subdivision of the State of Alabama,

Debtor.

Case No. 11-05736-TBB9

Chapter 9

BEFORE ME, a Notary Public in and for the County and State aforesaid, personally appeared James H. White, III, who is known to me and being by me first duly sworn, deposes and says:

My name is James H. White, III and I am Chairman of Porter White Capital Advisors, Inc., a financial consulting firm ("PW&Co"). A copy of my Curriculum Vitae is attached as Exhibit 3 to this Affidavit. Since the late 1970's I have been engaged on behalf of PW&Co or its affiliates on numerous occasions on a voluntary or professional basis in a variety of projects relating to the Jefferson County sewer system ("Sewer System"). The first such engagement was as a nonpaid member of a committee formed by the Jefferson County Commission in the late 1970's

to consider problems in the treatment of sewage in a Sewer System plant discharging into the Cahaba River resulting from low flows in the river during summer months. Other projects included in the early 1980's a comprehensive model of sewer system operations suitable for predicting required capital expenditures and sewer rates; the financing in the early 1980's of sewer system improvements; analysis of interest rate swaps entered into by Jefferson County at various times from 1997 forward; as a subcontractor to BE&K in 2003, the analysis of the County's sewer system financing structure leading to a report released in September, 2003; as financial advisor to the County in the period 2007 to July 2008 during which the County attempted to deal with the disruption to its outstanding sewer financings caused by failure of bond insurance companies and disruption in the worldwide financial markets associated with the "Great Recession." Neither I nor any of the firms with which I have been associated have been involved with planning, promoting, underwriting or arranging any of the County's outstanding sewer debt. I also served as financial advisor to The Water Works and Sewer Board of the City of Birmingham ("Water Board") during a period of several years during the 1990's and was employed by counsel to the Water Board on or about July 15, 2013, to assist counsel in preparing comments on the Disclosure Statement filed on behalf of Jefferson County in the Chapter 9 bankruptcy case now pending in the Bankruptcy Court for the Northern District of Alabama. From time to time subsequent to July 2008, PW &Co has provided financial advice to others in connection with Jefferson County debt. Such advice has been consistent with this affidavit and

any advice we have rendered to counsel for the Water Board.

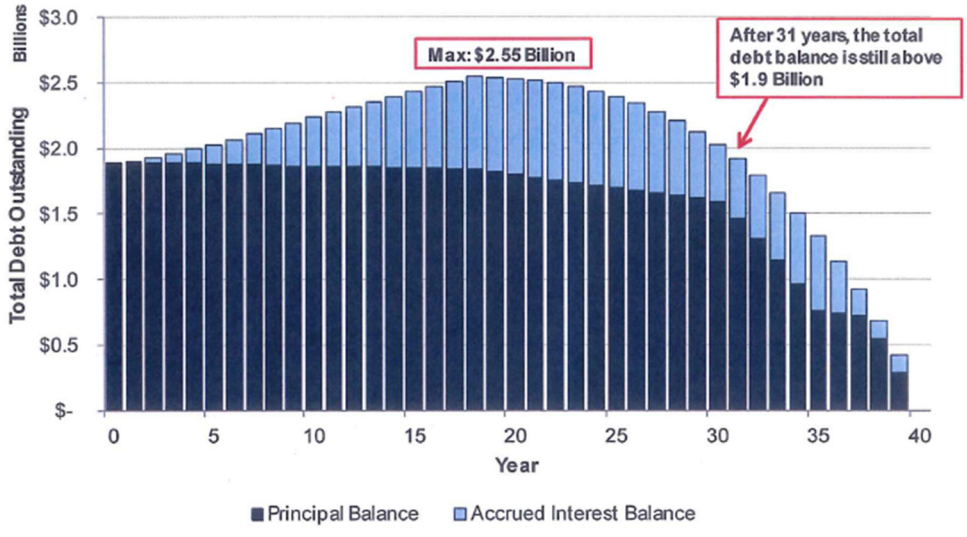
Exhibits 1 and 2 attached hereto were prepared by me or under my supervision. I hereby affirm, to the best of my knowledge and belief, that Exhibits 1 and 2 accurately display the information set forth therein, all of which is based on Exhibit 9 to the Disclosure Statement referred to above.

/s/ James H. White, III

Sworn and subscribed before me this the __ day of July 2013.

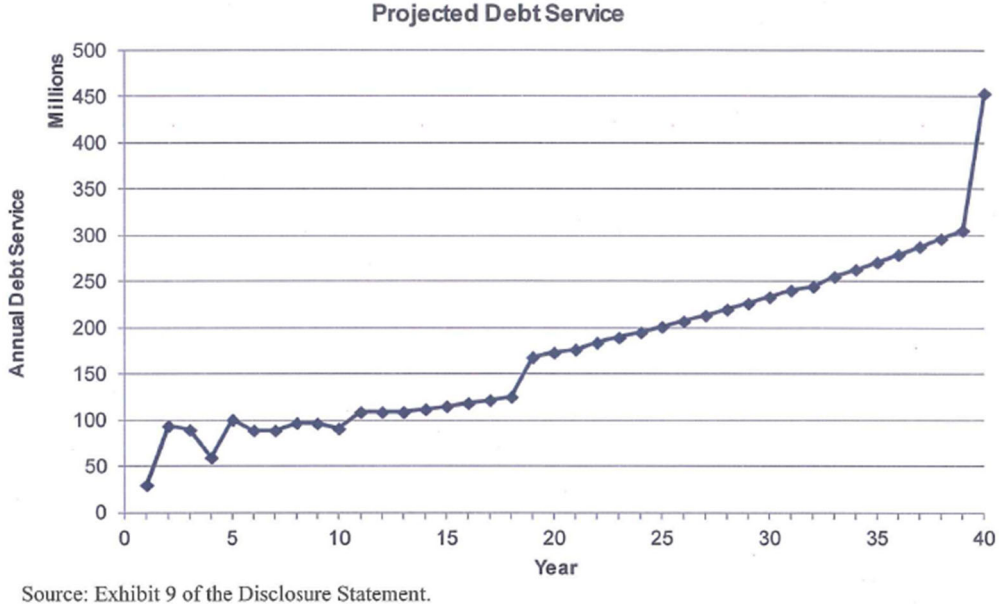
/s/
Notary Public
My commission expires: 1/5/14

Exhibit 1



Source: Internal analysis of information found in Exhibit 9 of the Disclosure Statement.
Note: Exhibit 9 of the financial plan lays out the anticipated financing for each bond. We used municipal finance software, DBC® Finance, to model both the principal and interest payments over the life of the financing and the accrued interest that is not paid and compounds on the capital appreciation bonds and the convertible capital appreciation bonds. DBC® Finance is commonly used by underwriters, financial advisors, and issuers to structure/size bond issues, calculate debt service, and perform refunding analysis.

Exhibit 2



Source: Exhibit 9 of the Disclosure Statement.
Note: Page 3 of Exhibit 9 shows the projected debt service on the proposed financing. The graph above uses the debt service information in the column labeled 'Gross Debt Service', with one exception in the final year of the financial plan (2053). The graph above shows the gross debt service, while the table on page 3 of Exhibit 9 shows the debt service after reducing the total debt service by the full amount of the debt service reserve.

APPENDIX I
TRANSCRIPT OF PROCEEDINGS—
RELEVANT EXCERPTS
(NOVEMBER 20, 2013)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN THE MATTER OF:
JEFFERSON COUNTY, ALABAMA,

Debtor.

Case No. 11-05736-TBB

Before: The Hon. Thomas B. BENNETT,
United States Bankruptcy Judge.

[November 20, 2013 Transcript, p. 381]

THE COURT: That's the answer to your question.

Q. The debt service, as you testified, is roughly six billion dollars in terms of the gross debt service during the four year period?

A. I don't believe I testified to that amount. I believe that was provided by Mr. Klee.

Q. Is that your understanding that the total gross debt amount is six billion odd dollars?

A. I believe the total debt service payments are in that neighborhood.

Q. Right. And the total amount covered by the rate covenant is roughly fourteen billion dollars; is that correct?

A. I'm not sure where you're getting that number.

Q. It's the number right up at the top of the left-hand corner on page two.

THE COURT: I think the number you're looking at is gross revenues. Gross sewer revenues, fourteen billion two seventy-four one, 2012 plus, which based on that, I presume, is for the life of the indentures.

Q. And my question is, does the rate increase that you just mentioned, the seven point eight, plus the increase each year, does that then equal that fourteen billion?

A. Yes.

Q. So the plan of confirmation will require without any ability of a subsequent commission to change it, that sewer rates in the amount of fourteen billion be imposed on the sewer service area; is that correct?

MR. PFISTER: Objection.

THE COURT: Sustained.

MR. PFISTER: Calls for a legal conclusion.

THE COURT: Actually the question as phrased is a mischaracterization of what the underlying facts on the exhibit you're looking at set forth.

The fourteen billion is gross revenues. It's not a rate.

MR. GRIGSBY: You just testified that your total rates in the rate covenant would be fourteen billion. That was his testimony, Your Honor.

THE COURT: The rates that are projected that are—the rates generate some revenues. Okay. And on the particular exhibit, they would generate the fourteen billion and some change.

Q. Okay. So, just to capture, the rate payers under this plan of confirmation will be required to pay fourteen billion dollars, which is your numbers that you have basically done to show that the system will be feasible.

A. The projections would result in about fourteen billion dollars in sewer revenues over the forty year forecast period.

When you characterize that as immutable, I would take exception. I think we spent a great deal of time talking about a variety of factors that may result in lower revenues being required to be generated.

Q. Okay. But let's say that a new commission comes in—

THE COURT: Those are nominal dollars, am I correct, they are not discounted?

A. That's correct.

MR. GRIGSBY: That's the gross.

THE COURT: It's more than that. It is—the dollars forty years from now are treated the same in value as the dollars today which is what the nominal is.

MR. GRIGSBY: I understand that concept. Believe me. That is the gross arithmetic total of all of the rate increases that are being imposed by the plan; is that correct?

THE COURT: Without reference to their current valuation on the current dollars.

Q. Without the current value, that's just the gross arithmetic total. If you add everything everybody has got to pay under the plan in the service area, it's fourteen billion dollars.

A. In nominal dollars, correct.

Q. Now, if a new commission comes in and decides, even though under certain circumstances if we can show we refinanced the warrants or if we can show that, you know, the service area has expanded and more revenue is coming in, we don't have to charge as much, there are a number of reasons that the rates can be changed; is that correct?

A. Yes.

Q. Okay. What if a new commission comes in and they decide we don't like those reasons, we're going to reduce the total amount collected over forty years to seven billion dollars which is enough to pay the debt service and have some money left over for O&M, but we're not covering the CAPEX.

Would that be possible under this fund?

A. No.

Q. And why not?

A. There is an indenture requirement and a rate covenant that requires the county to meet its financial obligations which would include CAPEX.

Furthermore, there is the approved rate resolution that is enforceable by the bankruptcy court.

Q. Okay. But, I mean, public finance, we have rate resolutions by one commission and a new commission comes in . . .

[. . .]

APPENDIX J
SYNCORA LAWSUIT
(APRIL 29, 2010)

SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF NEW YORK

SYNCORA GUARANTEE INC.,

Plaintiff,

v.

JEFFERSON COUNTY, ALABAMA,
JPMORGAN CHASE BANK, N.A., and
JPMORGAN SECURITIES, INC.,

Defendants.

Index No. 601100/10

Plaintiff Syncora Guarantee Inc. ("Syncora"), by its attorneys Quinn Emanuel Urquhart & Sullivan, LLP, brings this Complaint against Jefferson County, 'Alabama ("Jefferson County" or the "County"), as well as JPMorgan Chase Bank, N.A. ("JPMorgan Chase") and J.P. Morgan Securities, Inc. ("JPMorgan Securities") (together, "JPMorgan") (collectively "Defendants"), and alleges as follows:

Introduction

1. This action arises out of one of the biggest cases of municipal corruption in United States history

and a massive fraud perpetrated by Defendants Jefferson County and JPMorgan in connection with billions of dollars of municipal debt that the County, with the aid of JPMorgan, issued to finance a sewer system remediation project. As part of an unprecedented scheme of corruption and abuse, which has resulted in over 20 criminal convictions (including several County Commissioners), and multiple SEC enforcement actions (including ones against JPMorgan and two of its former senior bankers), Jefferson County and JPMorgan fraudulently induced Syncora, a New York-based insurer, to provide over $1 billion in insurance coverage for certain of the County's municipal debt.

2. The municipal debt involved in this case was issued by Jefferson County to fund certain remedial action that the County was legally required to take with respect to its sewer system. Between 1997 and 2003, the County raised billions of dollars to fund its sewer remediation through the issuance of several series of warrants that were secured exclusively by the revenues generated by the sewer system. At issue in this action are the 2002-C and certain of the 2003-B series warrants, which consist of auction rate and variable rate demand warrants that were issued by the County and underwritten by JPMorgan Securities in October 2002 and May 2003, and collectively had an original principal amount of approximately $1.2 billion (as more specifically defined below, the "Warrants"). In connection with the Warrants, the County also entered into a number of interest rate swap transactions with JPMorgan Chase.

3. Between 2002 and 2004, Jefferson County and JPMorgan approached Syncora about issuing policies

that would provide insurance against any failure by the County to pay principal and interest on the Warrants and other warrants issued by the County. Municipal governments, and their bond underwriters, seek this kind of insurance coverage to improve the credit rating of their offerings and make their municipal debt more marketable to investors. The County and JPMorgan solicited Syncora by providing it with the Official Statements (including in draft form) and other promotional materials for the Warrants created by the County and JPMorgan in which the County and JPMorgan made representations to Syncora about the County's ability to repay the debt and the propriety of the transactions.

4. In addition, the County's and JPMorgan's solicitation efforts included several meetings with Syncora in New York between 2002 and 2004, including meetings at JPMorgan's Park Avenue headquarters in August 2002 and March 2003 and a meeting at Syncora's offices in New York in April 2004, where officials from both the County and JPMorgan further represented that the issuances of the Warrants were legitimate transactions and that the County would be able to repay the debt.

5. Based on these representations from the County and JPMorgan, Syncora agreed to provide the requested insurance coverage for the Warrants. Between October 2002 and December 2004, Syncora issued two policies that insured the County's principal and interest payments for the Warrants, as well as a surety bond that provided additional coverage for these and other warrants (collectively, the "Policies").

6. Unbeknownst to Syncora, however, these representations—which were material to Syncora's deci-

sion to issue the Policies—were false, and both the County and JPMorgan had purposefully misrepresented and concealed material information known to them at the time regarding (1) bribes that JPMorgan had paid to Jefferson County Commissioners in exchange for the appointment of JPMorgan Securities as lead underwriter for the Warrants and the approval of lucrative swap agreements between JPMorgan Chase and the County related to the Warrants, and (2) the inability of the County to repay the Warrants absent a significant restructuring of its municipal debt and the identification of substantial new, and yet unidentified, sources of revenue.

7. Although actively concealed from Syncora by the County and JPMorgan at the time, the JPMorgan bribery scandal has recently come to light through well-documented press reports and court documents. These sources reflect that beginning in July 2002, at the direction of certain Jefferson County Commissioners, JPMorgan made a series of unlawful payments to certain Alabama-based investment firms, which then transmitted a portion of the payments to certain Jefferson County Commissioners who, in turn, approved JPMorgan Securities' appointment as lead underwriter for the Warrants and authorized the swap agreements between the County and JPMorgan Chase. These Alabama firms did not participate in the underwriting of the Warrants or the associated swap transactions; thus, the sole purpose of these payments by JPMorgan was to bribe Jefferson County Commissioners in order to secure JPMorgan's appointments as lead underwriter and swap provider. JPMorgan has been censured by the SEC for its involvement in this corruption, and two JPMorgan bankers—including

the primary JPMorgan banker involved in procuring the Policies from Syncora—have been charged by the SEC with securities fraud in connection with the bribery scheme.

8. Jefferson County and JPMorgan also misrepresented and concealed from Syncora their knowledge of the sewer system's precarious financial condition and the County's likely inability to repay the Warrants. In March 2003, about a month before Syncora issued its policy on the 2003-B Warrants, the County received a report from Paul B. Krebs & Associates Inc. ("Krebs"), an engineering and consulting firm it had commissioned to review the County sewer system's revenues. The report issued by Krebs (the "Krebs Report" or the "Report") painted a dim picture of the sewer system's financial condition. It predicted that within a few years the sewer system would have a revenue shortfall of 89%. The Krebs Report also made clear that—contrary to the County's representations to Syncora and others—the County could not realistically raise sufficient revenues from existing sources to meet its debt obligations. The County would have to identify significant new sources of revenue to have any conceivable chance of repaying the Warrants.

9. Neither the County nor JPMorgan disclosed the Krebs Report or its findings to Syncora. In fact, the Report did not come to light until it was produced in discovery during a 2008 receivership action brought by Syncora and others against Jefferson County after the County defaulted on the Warrants due to the revenue shortfalls that had been predicted in the concealed Krebs Report. In light of the County's concealment of the Krebs Report, the federal district judge presiding over that proceeding concluded that

"the record which is now before the court is replete with evidence of fraudulent conduct and suppression by the County and its various representatives."

10. Had the County and JPMorgan not misrepresented and concealed from Syncora the true facts regarding the unlawful payments that JPMorgan made to secure its position as lead underwriter for the Warrants and swap provider to the County, and the sewer systems' precarious financial condition, Syncora never would have issued the Policies.

11. Accordingly, Syncora brings this action for fraud and aiding and abetting fraud, seeking to recover well over $400 million in recissionary damages representing the net amounts that Syncora has paid, or anticipates being called upon to pay, under the Policies.

The Parties

12. Plaintiff Syncora, formerly known as XL Capital Assurance Inc., is a New York stock insurance company with its principal place of business in New York, New York.

13. Defendant Jefferson County is a municipal corporation of the State of Alabama.

14. Defendant JPMorgan Chase is a wholly-owned bank subsidiary of J.P. Morgan Chase & Co., a Delaware corporation with its principal place of business at 270 Park Avenue in New York, New York.

15. Defendant JPMorgan Securities is a wholly-owned subsidiary of J.P. Morgan Chase & Co., a Delaware corporation with its principal place of business at 270 Park Avenue in New York, New York.

Jurisdiction and Venue

16. This Court has jurisdiction over Defendants pursuant to CPLR §§ 301 & 302(a). Defendants committed tortious acts within this state by fraudulently inducing Syncora to issue the Policies which were executed in New York. Between 2002 and 2004, Jefferson County officials and JPMorgan representatives solicited Syncora to issue the Policies. On several occasions in 2002, 2003 and 2004, officials from Jefferson County traveled to New York to induce Syncora to insure the County's payment obligations. These solicitation efforts included meetings at JPMorgan's office in August 2002 and March 2003, and a meeting at Syncora's office in April 2004. Additionally, Defendants have caused injury to Syncora in New York. As a New York corporation, Syncora makes payments pursuant to the Policies from New York.

17. Each of the Defendants have sufficient minimum contacts with New York to justify the Court's exercise of personal jurisdiction over them. JPMorgan's principal place of business is in New York. Between 1997 and 2003, Jefferson County regularly engaged the services of New York financial institutions, including JPMorgan, with respect to the warrants the County issued during that period. The Warrants were underwritten by JPMorgan in part from its offices in New York and were delivered to investors in New York. The trustee for the Warrants is the Bank of New York Mellon Corporation ("BNY Mellon" or the "Trustee"), a New York-based financial institution. Moreover, Jefferson County officials engaged in solicitation activities in New York, including sending officials to New York to meet with Syncora employees to induce Syncora to provide the requested coverage. Thus,

Jefferson County knew or should have known that its tortious conduct would cause injury in New York and would cause it to have to answer for that conduct before a New York court.

18. Venue is proper pursuant to CPLR § 503. Syncora's principal place of business is in New York County.

19. On April 15, 2009, Syncora submitted a Notice of Claim to Jefferson County, Alabama and on April 28, 2010, Syncora submitted an Amended and Supplemented Notice of Claim to Jefferson County, Alabama. Both the Notice of Claim and Amended and Supplemental Notice of Claim were submitted to Jefferson County in accordance with Alabama Code §§ 6-5-20 & 11-12-8. To date, the County has made no payments to Syncora pursuant to either Notice of Claim.

Factual Background

I. The Warrants and the Policies

A. Jefferson County Issues the 2002-C and 2003-B Series Warrants

20. In the early 1990s, the Environmental Protection Agency, together with a group of County citizens, sued Jefferson County over alleged violations of the Clean Water Act in relation to significant environmental damage that was being caused by the County's sewer management and processing system. This action was resolved in December 1996, when the United States District Court for the Northern District of Alabama issued a consent decree requiring the County to implement major remedial actions with respect to the sewer system.

21. Between 1997 and 2003, the County borrowed billions of dollars in order to finance the mandated improvements to its sewer system. The County raised these funds by issuing several series of municipal debt instruments known as warrants. Warrants are a form of public debt similar to bonds or notes. In exchange for their investment in the warrants, investors were entitled to receive certain interest and principal payments over a period of time as set out in a published schedule.

22. At issue in this case are two series of warrants issued as part of the County's sewer system financing scheme: the Series 2002-C Sewer Revenue Refunding Warrants, with an original principal amount of $893,500,000, and the Series 2003-B-2, 2003-B-3, 2003-B-4, 2003-B-5, 2003-B-6, and 2003-B-7 Sewer Revenue Refunding Warrants, with an aggregate original principal amount of $300,000,000 (collectively, the "Warrants").

23. The Warrants are limited recourse obligations, which means that the County's contractual obligation to pay principal and interest on them is secured solely by the net revenues generated by the sewer system.

24. The terms and conditions of the Warrants are governed by a trust indenture between the County and the trustee for the holders of the warrants, BNY Mellon, dated February 1, 1997 (including supplements executed in respect of each warrant issuance, together, the "Indenture"), which also sets out certain obligations on the part of the County and the Trustee in favor of the Warrant holders and other interested parties, including Syncora in its role as insurance provider for the Warrants.

25. The Warrants consist of two particular types of warrants: auction rate warrants and variable demand warrants. Both types of warrants are variable rate, meaning that their interest rates could change over time. In an effort to hedge its interest rate risk with respect to the variable interest rate warrants, Jefferson County entered into a number of interest rate swap agreements with JPMorgan, pursuant to which the County essentially exchanged its variable interest rate payment obligations on the Warrants for a fixed rate obligation to be paid to JPMorgan. These swap agreements were an integral part of this financing because they effectively permitted the County to issue variable rate warrants (which are often more attractive to investors) while paying a fixed rate of interest on those notes. They were also a source of significant fee revenue for JPMorgan, which received fees both for underwriting the Warrants and for acting as the County's counterparty under the swap agreements.

B. Jefferson County and JPMorgan Induce Syncora to Issue the Policies

26. Between 2002 and 2004, Jefferson County and JPMorgan solicited Syncora to issue policies that would insure the County's payment obligations under the Warrants and certain other debt issuances. At that time, it was common for municipalities like Jefferson County that sought to issue debt to the public markets, and their underwriters, to seek such insurance coverage from monoline insurers like Syncora. This insurance was sought in order to improve the bond rating of the issuance, and was expected to make the debt more marketable to investors, many of whom came to expect that payments on municipal debt would be insured.

27. Before agreeing to issue each of the Policies, Syncora undertook reasonable due diligence with respect to the County and its financial condition, the circumstances surrounding the issuance of the Warrants, and the risks that it was insuring. Syncora's due diligence included, among other steps, an evaluation of financial statements and projections related to the County and its sewer system, an examination of the offering materials, including the Official Statements, for the Warrants that were the subject of the insurance, an examination of the Indenture to understand the rights and obligations of the County in respect of the Warrants, and financial analysis regarding the County's ability to repay the Warrants.

28. Syncora's due diligence also included several in-person meetings with Jefferson County officials and representatives of JPMorgan at JPMorgan's headquarters on Park Avenue in New York City. These meetings included ones held on August 13, 2002 and March 13, 2003, where the County and JPMorgan made presentations and responded to Syncora's questions regarding the issuance of the Warrants, the financial condition of the sewer system, and the ability of the County to repay its debts.

29. As detailed more fully below, the materials and information provided to Syncora by the County and JPMorgan, which Syncora relied upon in considering whether to issue the Policies, included numerous material misrepresentations and omissions.

30. *First*, the County and JPMorgan misrepresented and/or concealed material information regarding bribes that JPMorgan had paid through intermediaries to Jefferson County Commissioners to secure its appointment as lead underwriter on the Warrants

as well as to obtain lucrative business as the counterparty on certain of the County's interest rate swap agreements.

31. *Second*, the County and JPMorgan misrepresented and/or concealed material information regarding troubling findings that had been issued by Krebs, an independent engineering firm hired by the County to evaluate the sources of revenue available to meet the County's payment obligations on the Warrants. The concealed findings included a conclusion by Krebs that the County's current revenue sources would not be sufficient to meet the debt obligations that Syncora was being asked to insure.

32. As detailed more fully below, Syncora relied upon these misrepresentations and omissions in concluding that the Warrants that Syncora was being asked to insure were municipal financings issued pursuant to legitimate and legal underwritings by a county with sufficient existing sources of revenue to meet its future payment obligations. On the basis of those conclusions, Syncora agreed to issue the Policies. Specifically, on October 25, 2002, Syncora issued a Municipal Bond Insurance Policy insuring the County's payment obligations on the 2002 Warrants (the "2002 Policy"), on May 1, 2003, Syncora issued a second Municipal Bond Insurance Policy insuring the County's payment obligations on the 2003 Warrants (the "2003 Policy"), and on December 30, 2004, Syncora issued a Debt Service Reserve Insurance Policy insuring payments related to the Warrants and certain other warrants issued by the County, up to a principal amount of $164,863,746.40 (the "Surety Bond").

II. Defendants Conceal JPMorgan's Bribery Scheme from Syncora

A. JPMorgan Secures Its Role as Lead Underwriter for the Warrants and Swap Provider through Bribery

33. Starting in March 2002, Charles LeCroy, then a Managing Director for JPMorgan Securities, proposed to his superiors that he could obtain business for JPMorgan in Jefferson County by making payments to local firms that had connections to the Commission. These local firms were selected by LeCroy due to the close ties of their principals and employees to certain County Commissioners. Between 2002 and 2004, JPMorgan made millions of dollars in payments to these firms, which in fact did little or no legitimate work on JPMorgan's behalf; instead they acted as JPMorgan's intermediaries in passing through a portion of the payments they received from JPMorgan to bribe Commissioners in order to secure business for JPMorgan.

i) 2002-C Series Warrants

34. In July 2002, LeCroy and another JPMorgan Securities' Managing Director, Douglas MacFaddin, lobbied the Commission to appoint JPMorgan as lead underwriter for a $1.4 billion sewer bond deal. LeCroy and MacFaddin heavily lobbied two Commissioners, Jeff Germany and Steve Small, who had lost their primary elections and thus would be forced to leave office that November. On July 11, 2002, Germany, Small and the rest of the Jefferson County Commission voted to approve a $1.4 billion financing plan and selected JPMorgan to serve as lead underwriter.

35. A few days later, on July 15, 2002, in a taped telephone conversation, LeCroy told MacFaddin that Germany and another Commissioner specifically told him that in exchange for their support for JPMorgan's bid to be appointed lead underwriter, JPMorgan would need to make payments to two firms—Gardnyr Michael Capital Inc. ("Gardnyr Michael") and ABI Capital Management LLC ("ABI Capital")—who were allied with those Commissioners. In the conversation, LeCroy told MacFaddin that he responded to this request by telling the Commissioners: "Whatever you want—if that's what you need, that's what you get—just tell us how much."

36. Subsequently, the bond offering approved by the Commission was increased to $1.8 billion and broken up into three separate transactions—the 2002-B, 2002-C, and 2002-D offerings. On October 23, 2002, the County selected Gardnyr Michael, ABI Capital and JPMorgan Securities to serve as co-underwriters for the 2002-B and 2002-D offerings, and named JPMorgan Securities as the sole underwriter for the 2002-C offering, which, at $839 million, was the largest of the three offerings. In connection with the 2002-C series warrants, the County entered into a swap agreement with JPMorgan Chase.

37. Notwithstanding the fact that neither Gardnyr Michael nor ABI Capital participated in the 2002-C offering. JPMorgan paid Gardnyr Michael and ABI Capital $250,000 each in connection with that offering.

38. On October 28, 2002, five days after the 2002-C offering closed and JPMorgan Chase had executed a swap agreement with the County, LeCroy and MacFaddin discussed in tape recorded telephone

conversations that they had agreed with Germany to pay $250,000 each to Gardnyr Michael and ABI Capital for the 2002-C transaction. During the telephone conversation, LeCroy and MacFaddin expressed consternation about how to characterize the payments to Gardnyr on the invoice. As MacFaddin explained to LeCroy, the contact at Gardnyr Michael "didn't really advise us on the swap . . . [o]r the structure . . . [o]r anything like that." MacFaddin eventually put it plainly, telling LeCroy, "what we're saying is, it's really [Commissioner] Jeff Germany who is directing us to pay these guys. It's not, we're not paying them because they were our advisor."

39. On October 30, 2002, Gardnyr Michael submitted a one-line, $250,000 invoice to JPMorgan describing its role as "Co-Manager on Jefferson County, Alabama Swap." In a taped telephone call, LeCroy and MacFaddin discussed their mutual concern over the way Gardnyr Michael had worded the invoice because the document made it sound like the firm had done work on the swap transaction. The two agreed to redraft the invoice because, as MacFaddin said, it contained "fairly flawed language."

40. LeCroy and MacFaddin re-crafted Gardnyr Michael's invoice to use the following language: "Directed Fee Payment Pursuant to Instructions from Commissioner Jeff Germany related to the Interest Rate Swap executed between JPMorgan and Jefferson County as part of the Series 2002-C Revenue Refunding Warrants." Gardnyr Michael and ABI Capital immediately submitted new invoices, each using this exact language.

41. During the first week of November 2002, JPMorgan sent wire transfers to Gardnyr Michael and

ABI Capital totaling $500,000, an amount equal to one-third of the $1.5 million underwriting fee JPMorgan received for the transaction. The $250,000 payments to Gardnyr Michael and ABI Capital were larger than the underwriting fees either firm earned on the 2002-B or 2002-D transactions.

42. Shortly thereafter, Gardnyr Michael wired $200,000 to a firm consultant who was a longtime friend of Jeff Germany's and a contributor to his failed re-election campaign. ABI Capital paid $111,750 to one of its consultants, also a long-time friend of Germany and a campaign contributor.

ii) 2003-B Series Warrants

43. JPMorgan and the County engaged in a similar kickback scheme in connection with the 2003-B offering.

44. In November 2002, Larry Langford became president of the Jefferson County Commission and head of the Commission's finance committee and immediately made it clear that his close friend William Blount, the head of Blount Parrish & Co. ("Blount Parrish"), would have to be involved in every financing transaction entered into by the County.

45. Beginning in January 2003, LeCroy and MacFaddin lobbied Langford and the Commission to hire JPMorgan as the underwriter and swap provider for the 2003 Warrants. Because Blount Parrish, like Gardnyr Michael and ABI Capital, was prohibited by law from serving as the swap provider due to insufficient capital, Blount proposed to Langford that the County select Goldman Sachs Capital Markets Inc. ("Goldman Sachs") as its swap provider. Blount Parrish

served as a consultant to Goldman Sachs, such that it could receive a kickback on the transaction.

46. JPMorgan approached Langford in an effort to prevent Goldman Sachs from being selected as the swap provider for the 2003-C offering. LeCroy and MacFaddin proposed that if the Commission selected JPMorgan Chase as the swap provider, JPMorgan would agree to pay kickbacks to Goldman Sachs, which would be shared with Blount Parish.

47. Langford agreed to JPMorgan's proposal, and on February 25, 2003, the Commission approved a resolution authorizing the offering of the 2003-C series warrants, with JPMorgan Securities serving as the lead underwriter and JPMorgan Chase as the interest rate swap provider. In connection with the offering, on March 23, 2003, the County entered into a $1.1 billion interest rate swap agreement with JP-Morgan Chase.

48. The payment scheme was memorialized in two letters to Langford, one from JPMorgan and the other from Goldman Sachs.

49. JPMorgan's letter to Langford, dated March 28, 2003, stated in relevant part that the County had specifically requested JPMorgan Chase to use Goldman Sachs in the swap agreement as a condition of selecting JPMorgan Chase as the swap counterparty so Goldman Sachs would receive "a specified percentage of JPMorgan's net economic benefit." Langford signed this letter on behalf of the County.

50. Goldman Sachs also sent a letter to Langford, dated March 28, advising him that it intended to pay "consulting fees in connection with its participation in the above-noted swap to Blount Parrish."

51. JPMorgan subsequently paid Goldman Sachs $3 million and, another firm, Rice Financial Products Co. ("Rice Financial"), $1.4 million, pursuant to the terms of the agreement it reached with Langford.

52. In a taped telephone conversation, LeCroy joked to MacFaddin that JPMorgan had engaged in "philanthropic work" by "giving a charitable donation to Goldman [Sachs]." making it perfectly clear that the fees paid to Goldman Sachs did not reflect the provision of any actual services.

53. On May 27, 2003, Goldman Sachs wired Blount Parrish $300,000, thus satisfying Langford's desire to reward Blount.

54. On June 6, 2003, Blount Parrish's principal, William Blount, issued a $6,000 check to a lobbyist firm run by Albert LaPierre, a close associate of Langford. That same day, LaPierre wrote a $6,500 check to cash, and gave $6,000 of that cash to Langford. On June 12, 2003, Blount wrote a $69,000 check to LaPierre's firm. Four days later, LaPierre wrote a check for the same amount to Langford. Also, during this period, Blount arranged for, and later repaid, a $50,000 loan that Langford received from a local Alabama bank.

B. Jefferson County and JPMorgan Conceal JPMorgan's Unlawful Payments

55. For the purpose of soliciting the Policies from Syncora, Jefferson County and JPMorgan provided Syncora with materials they had prepared in connection with the Warrants, with the expectation that Syncora would rely upon them in considering whether to issue the Policies. The materials included, among other

things, the Official Statements (including in draft form), financial statements, and rating agency presentations associated with each of the issuances. The County and JPMorgan also made multiple presentations to Syncora, including at two in-person meetings held at JPMorgan's headquarters in New York City that were attended by a County official as well as representatives of JPMorgan.

56. The materials and information provided to Syncora by the County and JPMorgan were materially false and misleading in that they concealed JPMorgan's payments to ABI Capital and Gardnyr Michael in connection with the 2002-C series warrants, and JPMorgan's direct and indirect payments to Goldman Sachs, Rice Financial and Blount Parrish in connection with the 2003-B series warrants. For example:

57. In connection with Syncora's decision to issue the 2002 Policy, the County and JPMorgan provided Syncora with drafts and the final version of the Official Statement for the 2002-C series warrants. The Official Statement, which was jointly prepared by the County and JPMorgan, included numerous statements that were materially false or misleading, including the following:

a. In a section entitled "Underwriting," the Official Statement stated that "JPMorgan has agreed to purchase such Series 2002-C Warrants for an aggregate purchase price of par" and that "JPMorgan will be paid a fee of $1,551,728.13 for its services in underwriting such Series 2002-C Warrants." These statements were materially false and misleading in that they failed to disclose that almost a third of the fees paid to JPMorgan

were not for its underwriting services but rather were for the purpose of JPMorgan making illegal payments to ABI Capital and Gardnyr Michael, a portion of which were transmitted to County Commissioners as kickbacks. The Official Statement failed to disclose both the illegal payments to ABI Capital and Gardnyr Michael and the kickback payments to the County Commissioners.

b. In a section entitled "Fixed Payer Swap Transactions," the Official Statement stated that "the County will enter into interest rate swap transactions with JPMorgan Chase Bank" and certain other banks and described the financial terms of those swap agreements. These statements were materially false and misleading in that they failed to disclose the kickbacks paid by JPMorgan to County Commissioners in consideration for the swap agreement having been approved and that the swap agreement was illegal under state and federal law in that it had been obtained through the payments of bribes and/or kickbacks.

c. Appended to the Official Statement was an "Opinion of Bond Counsel" that stated that the "Series 2002-C Warrants have been duly authorized, sold, executed, authenticated and delivered as provided by the Indenture and in accordance with the applicable provisions of the constitution and laws of the State of Alabama." The Indenture, in turn, included a covenant entitled "Compliance with Requirements of Law," stating that "[t]he

> County will comply with all of the terms, provisions and requirements of . . . state or federal laws which are applicable to the County by reason of the ownership and operation of System or the issuance of the Parity Securities." As the County and JPMorgan both knew, the Opinion of Bond Counsel was materially false and misleading since the kickbacks paid by JPMorgan to County Commissioners both violated state and federal law and also breached the County's covenant under the Indenture.

58. Also in connection with Syncora's decision to issue the 2002 Policy, the County and JPMorgan provided Syncora with copies of a presentation provided to rating agencies for their assignment of credit ratings to the 2002-C series warrants. The County and JPMorgan also made a presentation to Syncora at a meeting held at JPMorgan's headquarters in New York City on August 13, 2002, and responded to Syncora's questions regarding the 2002-C issuance. This meeting was attended by the Jefferson County Finance Director, Steve Sayler, and by several representatives of JPMorgan, including Charles LeCroy. The presentations provided to Syncora were materially false and misleading in that they purported to provide a full and accurate description of the material facts related to the Series 2002-C series warrants but failed to disclose the illegal payments by JPMorgan to ABI Capital and Gardnyr Michael and the kickbacks paid to the County Commissioners. For example, the presentation materials for the August 13, 2002 meeting described the swap transaction for the 2002-C series warrants and did not mention the bribery scheme or

the JPMorgan's payments to ABI Capital and Gardnyr Michael in connection with the transaction.

59. Similarly, in connection with Syncora's decision to issue the 2003 Policy, the County and JPMorgan provided Syncora with drafts and the final version of the Official Statement for the 2003-B series warrants. The Official Statement, which was jointly prepared by the County and JPMorgan, included numerous statements that were materially false or misleading, including the following:

a. In a section entitled "Underwriting," the Official Statement stated that "JPMorgan has agreed to purchase Floating Rate Warrants for an aggregate purchase price of par" and that "JPMorgan will be paid a fee of $4,565,395.34 for its services in underwriting such Floating Rate Warrants." These statements were materially false and misleading in that they failed to disclose that a portion of the fees paid to JPMorgan were not for its underwriting services but rather were for the purpose of JPMorgan making illegal payments to Goldman Sachs and Rice Financial, a portion of which were transmitted to County Commissioners as kickbacks. The Official Statement failed to disclose both the illegal payments to Goldman Sachs and Rice Financial and the kickback payments to the County Commissioners.

b. In a section entitled "Fixed Payer Swap Transactions," the Official Statement stated that "the County has entered into an interest rate swap transactions with JPMorgan Chase Bank" and described the financial

terms of those swap agreements. These statements were materially false and misleading in that they failed to disclose the involvement of Goldman Sachs or the illegal payments from JPMorgan to Goldman Sachs and Rice Financial or the kickbacks from those amounts paid to County Commissioners. These statements were furthermore materially false and misleading in that they failed to disclose that the interest rate swap agreement with JPMorgan Chase was illegal under state and federal law in that it had been obtained through the payments of bribes and/or kickbacks.

c. Appended to the Official Statement was an "Opinion of Bond Counsel" that stated that the "Series 2003-B Warrants have been duly authorized, sold, executed, authenticated and delivered as provided by the Indenture and in accordance with the applicable provisions of the constitution and laws of the State of Alabama." The Indenture, in turn, included a covenant entitled "Compliance with Requirements of Law," stating that "[t]he County will comply with all of the terms, provisions and requirements of . . . state or federal laws which are applicable to the County by reason of the ownership and operation of System or the issuance of the Parity Securities." As the County and JPMorgan both knew, the Opinion of Bond Counsel was materially false and misleading since the kickbacks paid by JPMorgan to County Commissioners both violated state

and federal law and also breached the County's covenant under the Indenture.

60. Also in connection with Syncora's decision to issue the 2003 Policy, the County and JPMorgan provided Syncora with copies of a presentation provided to rating agencies for their assignment of credit ratings to the 2003-B series warrants. The County and JPMorgan also made a presentation to Syncora at a meeting held at JPMorgan's headquarters in New York City on March 13, 2003, and responded to Syncora's questions regarding the 2003-B issuance. This meeting was attended by Saylor on behalf of the County and LeCroy, among others, on behalf of JPMorgan. The presentations provided to Syncora were materially false and misleading in that they purported to provide a full and accurate description of the material facts related to the Series 2003-B series warrants but failed to disclose the illegal payments by JPMorgan to Goldman Sachs and Rice Financial and the kickbacks paid to the County Commissioners. For example, the presentation materials provided by Defendants for the March 13, 2003 meeting at JPMorgan's office described in detail the swap transactions for both the 2003-B series warrants and the 2002-C series warrants. The presentation, however, concealed the involvement of ABI Capital and Gardnyr Michael in the swap transaction for the 2002-C series warrants, and the involvement of Goldman Sachs, Rice Financial and Blount Parrish in the swap transaction for the 2003-B series warrants. It also concealed the payments that JPMorgan made to these institutions in connection with the swap transactions, and that those payments were part of a larger bribery scheme with respect to the Warrants.

61. In connection with Syncora's decision to issue the Surety Bond, Syncora relied upon each of the above representations made by the County and JP-Morgan in connection with the issuance of the 2002 Policy and the 2003 Policy. Since the Surety Bond could be drawn to cover any failure by the County to make payments under the 2002-C series warrants or the 2003-B series warrants (among others), Defendants' representations with respect to those warrants were equally applicable and material to Syncora's consideration of whether to issue the Surety Bond.

62. Additionally, on April 16, 2004, representatives from Jefferson County and JPMorgan traveled to Syncora's offices in New York to solicit Syncora to issue the Surety Bond. Among the attendees at the presentation were Langford and LeCroy—both of whom were at the heart of the bribery scheme. In describing the Warrants that would be insured by the Surety Bond, and the associated swap transactions, Langford and LeCroy, as well as the other representatives of Jefferson County and JPMorgan, concealed JPMorgan's bribes to County officials in connection with the Warrants. Syncora relied on Defendants description of the Warrants and the propriety of those transactions in agreeing to issue the Surety Bond.

63. Both Jefferson County and JPMorgan had a duty to disclose their unlawful conduct to Syncora. Defendants actively solicited Syncora to provide over $1 billion in financial guarantees for the Warrants. They knew that neither Syncora nor any other insurer would agree to provide this insurance for the Warrants if it was known that JPMorgan had bribed County officials in connection with the Warrants. At the time, the Defendants' illegal conduct was known only

to them, and there was no way for Syncora to discover this conduct other than through disclosure by Defendants. Defendants also knew that Syncora was proceeding on the flawed understanding that JPMorgan had obtained its various positions with respect to the Warrants by lawful means, and that neither Jefferson County nor JPMorgan was engaging in any illegal conduct in connection with the Warrants. Morals and good conscience required Defendants to disclose their unlawful conduct to Syncora so that Syncora could make an informed decision regarding whether to issue the Policies and take on the associated financial risk.

64. Syncora issued the Policies in reliance upon Defendants' misrepresentations and concealment of material facts. Had Syncora known of the Defendants' unlawful conduct and corruption it never would have agreed to issue the Policies. This information was material to Syncora's decision to issue the Policies since Syncora would not have agreed to be associated in any respect with the criminal activity of the County and JPMorgan. Moreover, had Syncora been advised that County Commissioners were taking bribes from JPMorgan in connection with the Warrants, Syncora would have concluded that it could not rely upon the information it had been provided by the County and JPMorgan in respect of the Warrants and that Jefferson County officials could not be trusted to take appropriate action to ensure the County's repayment of the Warrants.

C. Langford is Prosecuted for Accepting Bribes

65. On April 30, 2008, the Securities and Exchange Commission (the "SEC") filed a civil action against Langford, Blount, and LaPierre, alleging that

Langford accepted more than $156,000 in improper benefits from Blount in exchange for Langford's arranging to have Blount Parrish participate in the County's swap agreements.

66. Then, on December 1, 2008, the United States Attorney for the Northern District of Alabama filed a 101-count criminal indictment against Langford, Blount and LaPierre for their bribery scheme relating to, among other things, the bond offerings and related swap transactions described above. Blount and LaPierre both pled guilty to conspiracy charges, and on October 28, 2009, Langford was convicted at trial of 60 counts of bribery, mail fraud, wire fraud and tax evasion.

D. SEC Censures and Fines JPMorgan

67. On April 21, 2009, the SEC informed JP-Morgan that it had authorized the filing of an enforcement action against JPMorgan, alleging violations of the federal securities laws with respect to the transactions described herein.

68. On November 4, 2009, the SEC announced that it had settled its claims against JPMorgan. Pursuant to the terms of JPMorgan's settlement with the SEC, it agreed to pay a $25 million penalty, make a $50 million payment to Jefferson County, and forfeit more than $647 million in claimed termination fees. The SEC also censured JPMorgan for its conduct.

E. SEC Brings Civil Charges Against Former JPMorgan Bankers

69. On the same day that it announced the settlement of its charges against JPMorgan, the SEC filed fraud charges against LeCroy and MacFaddin,

alleging violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 15B(c)(1) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and Municipal Securities Rulemaking Board Rules G-17 and G-20.

III. Jefferson County and JPMorgan Fail to Disclose the Krebs Report and the County's Inability to Repay the Warrants

A. Jefferson County and JPMorgan Falsely Represent to Syncora that the Warrants Would Be Repaid with Existing Sources of Revenue

70. Prior to issuing the Policies, and as part of its regular underwriting process, Syncora investigated the County's ability to pay principal and interest on the Warrants in order to assess the level of risk that they would be assuming if they issued the Policies. Since revenues from the County's sewer system were the sole means by which the Warrants were to be repaid, information concerning the likelihood that the sewer system would in fact generate revenues sufficient to enable the County to meet its payment obligations on the Warrants when due was crucial to Syncora's underwriting process.

71. In order to reassure Syncora about the County's ability to meet its payment obligations, as well as investors and other interested parties, the County and JPMorgan disseminated information in connection with the issuance of the Warrants regarding the sewer system's projected revenues and operations, all of which was intended to comfort Syncora and others about the County's ability to repay the principal and interest on the Warrants when due. The information

supplied by the County and JPMorgan presented a positive picture of the sewer system's financial viability and stability, including substantial and continuing assurances about the County's ability to charge sufficient rates and fees to generate the cash needed to make all current and future payments due on the Warrants.

72. Moreover, the County and JPMorgan routinely supported their reassuring representations with reports and certifications from Krebs, an independent engineering consulting firm that was hired by the County to analyze the adequacy of the system's rates and charges to meet the County's debt load. Between 1997 and 2002, Krebs had produced a series of independent reports that had been favorable and reassuring about the County's ability to meet its debt obligations and which the County had routinely referenced and disclosed in connection with issuances of warrants.

73. The representations made by the County and JPMorgan regarding the sewer system's financial viability were intended to, and did in fact, assure Syncora that there was very little risk that it would be called upon to make any payments under the Policies. Of particular significance to Syncora was the promise that the County would continue to raise rates on the sewer system as needed from time to time to ensure that the County could meet its payment obligations on the Warrants.

74. For example, in each of the Official Statements issued by the County, and prepared by JPMorgan, in connection with the 2003-B series warrants, they represented that:

- "If and to the extent the County must incur additional indebtedness to pay for the County's ongoing capital improvement program, the County expects that sewer rates will have to be increased in order to pay debt service on any such additional borrowings."
- The County had committed "to make and maintain such rates and charges for the services supplied from the System and make collections from the users thereof in such manner as shall provide, in each Fiscal Year, Net Revenues Available for Debt Service in an amount that shall result in compliance with each of the following two requirements (such requirements being referred to herein collectively as the 'Rate Covenant'):

  > "(i) the sum of (A) the Net Revenues available for Debt Service for a given Fiscal Year and (B) the Prior Years' Surplus as of the beginning of such Fiscal Year shall not be less than 110% of the aggregate amount payable during such Fiscal Year as debt service on all outstanding Parity Securities; and
  >
  > "(ii) the Net Revenues Available for Debt Service for a given Fiscal Year shall not be less than 80% (or, in the case of any Fiscal Year beginning on or after October 1, 2007, 100%) of the aggregate amount payable during such Fiscal Year as debt service on all outstanding Parity Securities."

> "The County has sole jurisdiction to set the rates for sewer services" and those "rates are not subject to review by any federal, state or similar regulatory authority" other than a "judicial review as to reasonableness."

75. The expectation that the County would be both able and willing to raise rates to meet its payment obligations was further referenced in the Section 12.5 of the Indenture, which provides:

- "The County hereby covenants and agrees to fix, revise and maintain such rates for the System as shall be sufficient (i) to provide for payment of interest and premium (if any) on the principal of the Parity Securities [*i.e.* the Warrants], as and when the same become due and payable."
- "The County will make from time to time, to the extent permitted by law, such increases and other changes in the rates and charges as may be necessary to comply with the provisions of the preceding paragraph and to provide [net revenues in an amount sufficient to cover at least 100% of the aggregate amount due on the Warrants.]"[1]

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1 The rates covenant in Section 12.5(b) of the Indenture obligates the County to raise rates each year such that when revenues from a given year are combined with any surplus from the previous year, the total amount will cover 110% of the aggregate amount due on the Warrants. Moreover, the rate covenant requires that the annual rate increases by themselves generate revenues sufficient to cover 85% of the aggregate amount due on the Warrants. After October 1, 2007, the annual rate increases are required to cover 100% of the amounts due on the Warrants, irrespective of any prior surplus.

76. The County and JPMorgan provided copies of the Official Statements (including in draft form) and the Indenture to Syncora as a means of inducing Syncora to issue the Policies.

77. These obligations were further confirmed at the March 13, 2003 meeting between Syncora and representatives of the County and JPMorgan at JP-Morgan's offices in New York. For example, in materials prepared by the County and JPMorgan and distributed at that meeting, Defendants represented that "[t]he County has Exclusive Rate Setting Authority" and that "sewer rates will be adjusted as necessary." The materials further represented that "[t]he County benefits from strong financial management."

78. Additionally, at a April 16, 2004 meeting between Syncora and representatives of the County and JPMorgan at Syncora's offices in New York, Defendants again represented that the County would be able to repay the Warrants.

79. The presentation made clear that JPMorgan had superior knowledge regarding the County's "sewer rate model." Specifically, the presentation stated that "JPMorgan has worked extensively with the County" regarding its management of debt for the sewer system. And, thus, JPMorgan has "knowledge of the sewer rate model."

80. JPMorgan provided Syncora with an April 8, 2003 presentation pursuant to which JPMorgan further solicited Syncora, on both its behalf and that of the County, to provide insurance for the 2003-13 series warrants. In that presentation, JPMorgan represented to Syncora that the County would raise sewer rates

"as needed" and that those rates would be "affordable" to customers of the Jefferson County sewer system.

B. The Krebs Report Finds Jefferson County Has Insufficient Revenue Sources to Repay the Warrants

81. In April 2002, the County requested that Krebs prepare a study to evaluate the County's "current revenue generating structures" and to identify any "possible new revenue sources and . . . their probable impact on sewer system revenues."

82. The work that Krebs was commissioned to perform was set forth in an agreement between Krebs and the County entitled "Agreement for Professional Services Associated With Preliminary Review amid Possible Recommendations for Changes in Sources of Revenue" (the "Krebs Agreement"). That agreement was executed on behalf of the Jefferson County Commission by its then president, Gary White. White would later be convicted of conspiracy to defraud the United States, conversion to use property of another, and civil forfeiture.

83. While the County had informed Syncora of the existence of the work that Krebs had previously been retained by the County to perform, it did not tell Syncora about the special project that Krebs had been asked to undertake with regard to identifying alternative sources of revenue in order to avert the financial calamity for the sewer system that the County was forecasting.

84. On March 13, 2003, Krebs issued a draft of its report to Jefferson County. A few weeks later Krebs, on March 31, 2003, Krebs issued the final report

(the "Krebs Report" or "Report"), which was virtually identical to the March 13 draft report, providing 20 copies to the County as provided for under the Krebs Agreement.

85. On April 3, 2003, Krebs also issued a memorandum to the County's Financing Team that summarized some of the findings from the Krebs Report and provided certain pro forma financial statements. The Financing Team included two representatives from JPMorgan, including Charles LeCroy.

86. While the Krebs Agreement had provided for Krebs' review of "new revenue sources," Krebs additionally included in the Report a detailed description of the severe revenue shortfalls that would befall the County if it relied purely on its existing revenue sources. The Report stated that the size of the sewer system debt presented a major problem for the County and that the County could not realistically raise revenues sufficient to meet its future debt obligations, including repayment of the Warrants.

87. Specifically, the Report concluded that the County would need an 89% annual increase in revenues in order to pay its future debts over the coming years:

> For the fiscal year ended September 30, 2002, the [Sewer authority] earned revenues from all sources of approximately $116.5 million. However, in approximately six years, using projected operating costs, annual debt service and required debt service coverage, it is estimated that the revenue requirements for operating the utility could approximate $220 million . . . . This change will represent a projected increase in revenue requirements

> of almost 89 percent over historical revenues, and it presents a significant problem in both debt management for the Commission and affordability by the rate payers.

88. In other words, given the then-current state of affairs, the Krebs Report concluded that the County was facing significant annual shortfalls on its future debt obligations.

89. The Krebs Report further explained that because of an economic concept known as "price elasticity of demand," it would be impossible for the County to generate the necessary revenues solely by increasing rates and fees. Price elasticity of demand provides that as the price of a commodity increases, the demand for that commodity decreases, which limits the extent to which greater revenues can be generated simply by raising prices. Price elasticity can impact returns on even essential goods or services, such as waste management and processing.

90. The Krebs Report explained that if the County sought to increase rates, commercial users "driven by the profit motive," which comprised over 59% of all billable sewer usage, "would take whatever measures may be available" to conserve and reduce their sewer usage, thereby significantly reducing the revenues generated by such users. Moreover, "residential customers could be expected to act in a similar manner" notwithstanding that sewer service is a basic service, and the Krebs Report warned that all users would actively reexamine and minimize their usage of the system as rates continued to rise.

91. As such, the Report concluded that the County could not meet its obligations regarding the Warrants

without implementing a number of drastic revenue raising strategies, such as the acquisition of nearby sewer systems, the establishment of a "system development fee" whereby private developers would share the cost of expanding sewer system infrastructure with the County, and a dramatic reduction in management and operating expenses. However, many of these recommendations were either not feasible or were beyond the County's ability to implement as they would have required approval of the state legislature.

92. The Report was unequivocal, explicit and strongly worded: The sewer system was facing a financial crisis and was in imminent danger of failing to generate the cash needed to repay the County's substantial debts. Specifically, the Krebs Report concluded that "there can be no debate about the urgency for action; this is not a matter on which action can long be deferred without serious consequences."

93. While there was no dispute as to the accuracy of Krebs' conclusions in the Report, the County, and specifically Commissioner White, was extremely unhappy that the Krebs Report had now memorialized the sewer system's dire financial condition in a formal written report.

94. White's displeasure with the Report prompted a meeting with Christopher Krebs, the principal of Krebs. In an e-mail exchange shortly after that meeting, Krebs recounted that he had "met with Commissioner White this morning to find out why he was so displeased with my Sources of Revenue Report" As Krebs went on to explain:

> [Commissioner White] told me in no uncertain terms that he was not interested in an anal-

> ysis of the sources of revenue as he had a pretty good idea of what those were without any assistance from me.

95. In other words, while Commissioner White had no disagreement with Krebs' conclusion that the County was in perilous financial condition, he had not wanted such findings memorialized in a written report.

C. The County and JPMorgan Conceal Krebs Findings from Syncora

96. The County and JPMorgan did everything they could to avoid disclosing the truth regarding the condition of the County's sewer system revenues. The County failed to disclose that Krebs had been retained to review and develop potential new sources of revenue for the future and both the County and JPMorgan failed to disclose when they received Krebs' findings regarding the sewer system's revenue inadequacies.

97. There were no public disclosures of this information in the Official Statements accompanying the Warrants, the County's financial statements, or in any of the materials provided to Syncora as part of the underwriting process by Jefferson County or JPMorgan. Indeed, the County failed to disclose the completion of the Krebs Report to Syncora notwithstanding the fact that the County had a contractual duty under the Indenture to disclose to each of its insurers, including Syncora, any annual engineering reports, which encompassed the Krebs Report. Despite this obligation, the County intentionally withheld and suppressed the Krebs Report.

98. The County further affirmatively attempted to mislead Syncora into believing that there were no reports by Krebs that Syncora had not reviewed. In connection with each prior debt issuance, Jefferson County had disclosed the existence of financial analysis of the sewer system. Further, in 2003, the County disclosed that it had retained the engineering firm of BE&K to conduct an analysis of its capital improvements program. The County, however, concealed the fact that in April 2002 it had retained Krebs to conduct an analysis of future revenues. It also concealed the Krebs Report after it was issued in March 2003. The disclosure of the BE&K retention, combined with the historical practice of disclosing all of its retained firms, rendered the lack of any disclosure that Krebs was under retention misleading and was a further suppression of the truth about the sewer system's future financial position.

99. In fact, it was not until a receivership action was pursued against the County that these true facts came to light and the Krebs Report surfaced. In that litigation, upon considering the Krebs Report and the County's surrounding conduct, Judge Proctor of the United States District Court for the Northern District of Alabama found that the County had made material and blatantly false misrepresentations about the sewer system's capacity to generate revenues sufficient to meet the County's obligations to repay the Warrants, and therefore the risk Syncora was assuming under the Policies.

100. In an opinion issued on June 12, 2009, the Court concluded:

> The evidence presented to the Court indicates that the County has known for years that

> the System revenues (the only recourse available) were insufficient to cover its obligations on this debt [*i.e.*, the Warrants.] . . . [T]he record which is now before the court is replete with evidence of fraudulent conduct and suppression by the County and its various representatives.

101. Similarly, JPMorgan concealed Krebs' findings from Syncora. JPMorgan became aware of the perilous state of the sewer system's finances no later than April 3, 2003, when LeCroy and another JPMorgan employee, Eileen Foley, received the memorandum from Christopher Krebs stating that "debt coverage tests are not being met" and concluding that "[s]imply adjusting the amount of annual debt service . . . will not . . . correct the problem faced by the Commission . . . ."

102. Notwithstanding this, JPMorgan did not disclose Krebs' findings in an April 8, 2003 presentation to Syncora in which JPMorgan assured Syncora that the County would be able to repay the Warrants through increases in sewer rates. JPMorgan thus was both directly complicit in the County's misrepresentations regarding the viability of the sewer system's finances, and itself misrepresented the ability of the County to repay the warrants through increases in sewer rates.

103. Both Jefferson County and JPMorgan had a duty to disclose Krebs' findings to Syncora, including Krebs' conclusions that the County would not have sufficient revenues to repay the Warrants and would not be able to raise sewer rates such that it would have sufficient revenue to repay the Warrants. Defendants knew that this information was material

to Syncora's decision to issue the Policies and accept the risks associated with those Policies. Information regarding the projected revenues of the sewer system, including the ability (or inability) to raise rates to generate additional revenue, was integral to the underwriting process and thus material to Syncora's decision to issue the Policies. As the County and JPMorgan knew, had Syncora known the true information regarding the revenue problems facing Jefferson County as reflected in Krebs' findings, it would never have agreed to thereafter issue the 2003 Policy or the Surety Bond.

IV. The County Engages in Fraud and Defaults on the Warrants

104. The sewer system improvement program implemented by the County and funded by the Warrants has been fraught with fraud, corruption and abuse. Twenty-one former County officials and contractors who were involved in the sewer system remediation project have been indicted or convicted of crimes related to those projects. Many of these convictions involve charges of bribery of public officials relating to contracts funded by the County's warrants. Four former County Commissioners, including the President of the Commission, have been convicted of crimes related to work on the sewer system. In addition, one former Commissioner has pled guilty to accepting bribes in relation to the County's warrants and one has been sued by the Securities Exchange Commission and also indicted for the same conduct.

105. As a result of this massive corruption, the County's sewer system is mired in a deep financial crisis. In April 2008, the sewer system failed to

generate revenues sufficient to meet the payment obligations due on the Warrants and the County has subsequently defaulted on its payment obligations to the Warrant holders.

V. Syncora's Payments Under the Policies

106. Following the County's defaults, Syncora has been called upon to make a number of payments under the Policies. It has paid approximately $109 million in claims under the 2002 Policy, approximately $75 million in claims under the 2003 Policy, and approximately $27 million in claims under the Surety Bond. In addition, Syncora has entered into an agreement with certain holders of the 2003-C series warrants, pursuant to which it has paid or agreed to pay $105 million in settlement of their current and future claims under the 2003 Policy. Syncora further estimates that its future claims obligations under the Policies will be in excess of $100

107. Syncora therefore brings this action against the County and JPMorgan for fraudulent inducement and aiding and abetting fraud for misrepresenting and/or failing to disclose the bribes paid by JPMorgan to the County Commissioners in connection with the Warrants and the findings of Krebs that the County's revenues were insufficient to meet its obligations. Syncora seeks to recover as rescissionary damages amounts including all of its past and future payment obligations under the Policies. Syncora estimates that its damages are well in excess of $400 million.

{Details of Causes of Action Intentionally Omitted}

CAUSES OF ACTION

First Cause of Action:
Fraud Related to Bribes
(2002 Policy, 2003 Policy, and Surety Bond)
(Against Jefferson County and JPMorgan)

108. Syncora repeats and realleges all the allegations contained herein.

109. Between October 2002 and December 2004, Syncora issued the Policies, which provide insurance against a failure by the County to pay principal and interest on the Warrants.

110. Jefferson County and JPMorgan induced Syncora to issue the Policies through material and fraudulent misrepresentations and omissions. These misrepresentations were made in the materials, including the Official Statements for the Warrants, that Defendants provided to Syncora for the purpose of inducing Syncora to issue the Policies. They were also made during August 13, 2002 and March 12, 2003 presentations to Syncora by Defendants in New York.

111. The fraudulent misrepresentations and omissions by the Defendants included statements concealing that JPMorgan had secured its positions as underwriter of the Warrants and swap provider to the County through bribes to County Commissioners. The Defendants knew that these statements were false and/or incomplete at the time that they were made.

112. Morals and good conscience required Defendants to disclose this material information to Syncora. Defendants had exclusive knowledge of their bribery scheme in connection with the Warrants, and knew

that, in issuing the Polices, Syncora assumed the propriety of the transactions and Defendants' conduct in connection with those transactions.

113. Additionally, pursuant to McKinney's Insurance Law § 3105, Defendants had an obligation to disclose the bribery scheme to Syncora because they knew that if Syncora became aware of Defendants' misconduct it would not have issued the Policies.

Prayer for Relief

WHEREFORE, Syncora respectfully prays for an order:

- finding Defendants jointly and severally liable to Syncora for compensatory and punitive damages in amounts to be determined at trial, together with pre judgment interest at the maximum rate allowable by law;
- awarding Syncora reasonable costs and expenses incurred in this action, including, to the extent applicable, counsel fees; and
- awarding such other relief as the Court deems just and proper.

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

By: /s/ Jonathan E. Pickhardt
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Syncora Guarantee Inc.

Dated: New York, New York
April 29, 2010

APPENDIX K
MOTION TO INTERVENE
(JUNE 24, 2011)

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
BIRMINGHAM CIVIL DIVISION

THE BANK OF NEW YORK MELLON,
As Indenture Trustee,

Plaintiffs,

v.

JEFFERSON COUNTY, ALABAMA, ET AL.,

Defendants.

THE BANK OF NEW YORK MELLON,
As Indenture Trustee,

Plaintiffs,

v.

RODERICK V. ROYAL, Birmingham City Council President, MARY MOORE, Alabama State Legislator, ANDREW BENNETT, Jefferson County Tax Assessor, Bessemer Division, WILLIAM R. MUHAMMAD, CARLYN R. CULPEPPER, Lt. Col. Rt., FREDDIE H. JONES, II, SHARON OWENS, REGINALD THREAD II, RICKEY DAVIS, JR., ANGELINA BLACKMON, SHARON RICE, DAVID RUSSELL, LULA D. WALTER and D.B. JOHNSTON

Intervenors-Defendants..

Case No.: CV-2009-02318

Roderick V. Royal, Birmingham City Council President, Mary Moore, Alabama State Legislator, Andrew Bennett, Jefferson County Tax Assessor, Bessemer Division, William R. Muhammad, Carlyn R. Culpepper, Lt. Col. Rt., Freddie H. Jones, II, Sharon Owens, Reginald Threadgill, Rickey Davis, Jr., Angelina Blackmon, Sharon Rice, David Russell, Lula D. Walter and D.B Johnston (hereinafter collectively the "Intervenors"), respectfully move to intervene in the above captioned action on their behalf as ratepayers of the Jefferson County Sewer System to protect their interests as ratepayers in the rate proceedings proposed by the Receiver, John S. Young, Jr., LLC, in the Receiver's First Interim Report on Finances, Operations, and Rates of the Jefferson County Sewer System filed with this Court on June 14, 2011. In support of this motion, the Intervenors state as follows:

1. This application is timely. The Receiver filed its First Interim Report recommending rate increases on June 14, 2011, and the Intervenors submit this application on June 24, 2011.

2. The Intervenors are persons who are rate payers connected to the Sewer System who are obligated to pay any rate increases authorized by the order of this Honorable Court. The Intervenors believe these potential rate increases to be proposed or implemented by the court appointed receiver, Mr. Young will be unconstitutional in violation of (a) Article 94(a), (b) sections 222, 225 and 226, Article 7, and (c) Article

45 of the State of Alabama Constitution, will violate Code of Alabama @)11-8-10, will be confiscatory and will exceed their ability to pay, will be higher than those comparable sewer rates in other Alabama counties, and will result in grievous injury resulting from implementations of liens against their property, impairment of their credit ratings, and sale of their homes and commercial properties connected to the sewer system if such increased rates are not paid. Accordingly, the Intervenors are so situated that any order by this Court adhering to Mr. Young's rate increases will impair or impede their ability to protect against an unconstitutional, unlawful, unreasonable, and confiscatory rate increase, unless the court allows the requested intervention under Rule 24 of the Alabama Rules of Civil Procedure.

3. On September 22, 2010, this court issued an order pursuant to a motion for summary judgment appointing a receiver to operate the Jefferson County (the "County") sewer system (the "Sewer System") and proscribe and fix sewer rates paid by Intervenors and the class of ratepayers the Intervenors may be permitted by the court to represent.

4. On October 24, 2002, pursuant to a Sixth Supplemental Indenture dated as of October 1, 2002, the County and the plaintiff (or predecessors) as trustee (the "Trustee") issued $839,500,000 in refunding warrants, designated Series 2002-C in order to facilitate swap transactions procured by the fraudulent and corrupt activities hereinafter described (the "Series 2002-C swap/refundings"). (*See*, Exhibit A, Official Statement dated 1012002, hereto).

5. On May 1, 2003, pursuant to a Ninth Supplemental Indenture dated as of April 1, 2003, the

County and Trustee issued $1,155,765,000 in refunding warrants, designated Series 2003-B in order to facilitate swap transactions procured by the fraudulent and corrupt activities hereinafter described (the "Series 2003-B swap/refundings"). (*See*, Exhibit B, Official Statement 4/2003, hereto).

6. On August 5, 2003, pursuant to a Tenth Supplemental Indenture dated as of August 1, 2003, the County and Trustee issued $1,052,025,000 in refunding warrants, designated Series 2003-C in order to facilitate swap transactions procured by the fraudulent and corrupt activities hereinafter described (the "Series 2003-C swap/refundings"). (*See*, Exhibit C, Official Statement dated 8/2003, hereto).

7. Neither the Sixth Supplemental Indenture, Ninth Supplemental Indenture, nor Tenth Supplemental Indenture were validated before the Court when the provisions of that certain Trust Indenture dated as of February 1, 1997 (the "Original Indenture"), was validated by the order of the Jefferson County Circuit Court entered August 24, 2001. (Exhibit D, hereto) Accordingly, the validation of the Original Indenture creates no bar to this Motion to Intervene to invalidate the issuance of the Series 2002-C, 2003-B and 2003-C swap/refundings and declare the Order enforcing the rights created under the related Sixth Supplemental Indenture, Ninth Supplemental Indenture, or Tenth Supplemental Indenture void from their inception or void ab initio.

8. The issuance of Series 2002(C), 2003(B) and 2003(C) refunding warrants under the Sixth Supplemental Indenture, Ninth Supplemental Indenture, and Tenth Supplemental Indenture, respectively, which amended that certain Trust Indenture dated

as of February 1, 1997 (the "Original Indenture"), between Jefferson County, Alabama (the "County") and The Bank of New York Mellon, as trustee ((the "Trustee"), which purports to be authorized by Code of Alabama @ 11-28-4 ((Refunding warrants), in the aggregate amount $3.047 billion (the "swap/refunding warrants") to refund original new money sewer system construction warrants of $2.675 billion (the "refunded warrants") thereby

i. increasing the debt due from Jefferson County ratepayers of in excess of $372 million, and

ii. resulting in a loss to Jefferson county sewer rate payers of $366 million (*see*, Exhibit E-Jefferson County Financial Statements, pages 55-60)

was not used to fund sewer system construction projects paid by the refunded warrants but was used to aid the execution of fixed payer interest rate swap transactions, auction rate warrant transactions, and payment of substantial professional fees and other corrupt and illegal payments and transactions which benefitted private entities in violation the State of Alabama constitution Sec. 94(a).

9. Section 94(a) provides that the legislature may not authorize Jefferson County pursuant to Ala code 11-28-4 to use public ratepayer money in aid of or lending of credit to individuals or corporations as follows:

> 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 warrants or otherwise[EA].

10. The September 22, 2010 order in CIVIL ACTION NUMBER: CV-2009-02318 appointing a receiver (the "Order") to raise sewer rates to enforce the repayment of the refunding warrants issued under a State Law (Code of Alabama @ 11-28-4) which violates the positive prohibition of Article 94 of the State of Alabama Constitution is malum prohibitum, and invalid because the Sixth, Ninth and Tenth indentures authorizing such appointment, sewer rate increases and warrant repayments were wrongfully approved under an unconstitutional statute purporting to allow refunding warrants to be issued "in aid of" private entities in violation of aforesaid Article 94(a),

11. To be sure, such Order constituted a gross abuse of discretion because instead of benefitting Jefferson County sewer ratepayers it purports to enforce facially unconstitutional Sixth, Ninth and Tenth Supplemental Indentures which increased by $372 million, plus auction rate and other exorbitant interest payments and fees, the amount owed by Jefferson county ratepayers and resulted in a loss of $366 million plus interest and fees by Jefferson county sewer ratepayers to aid issuance of swap refunding warrants in violation of the plain meaning of Article 94(a) of the Alabama Constitution and, accordingly, void ab initio.

12. Moreover, the enforcement of the Order will create a debt of said Jefferson County in violation of sections 222, 225 and 226, Art. XII, of the Constitution

of 1901 because (a) inasmuch as the Supplemental Sixth, Ninth and Tenth Indentures purporting to authorize payments on swap refunding warrants and interest rate swaps connected therewith are void from their inception there is no other general law or statutory authority allowing enforcement of principal and interest, and swap agreement payments in connection with the swap/refundings and (b) the obligations created under the swap agreements for which the swap refinancings were issued violates Code of Alabama @I1-8-10 because there is no designated fund from which "termination values" under said swap agreements may be paid.

13. The Order is void ab initio and invalid because it purports to enforce an indenture authorizing refunding warrants issued under Code @ 11-28-4 which is unconstitutional under Article 45 of the Alabama Constitution since the heading of 11-28-4 "refunding warrants" does not suggest deviation from all of the prior legislation and subsequent legislation on this subject where a refunding principal cannot exceed refundable principal plus costs and present value benefit is required in a refunding (*see, e.g.*, Ala. code @ 11-47-222; @ 16-16B-8; @ 9-14A-16; @ 2-3A-55;@ 11-61A-17; @ 16-18B-13; @ 11-101A-12; @ 22-21-321; @ 22-3A-14; @ 2-5-35; @ 4-3-19; @ 37-13-15; @ 11-94-14; @ 4-3-56; @ 11-56-16; @ 41-10-44.10; @11-28-4 @ 11-11A-3; @ 11-81-4; @ 11-81-4; @ 41-10-627; @ 16-13-72; etc,).

14. The Order was procured in violation of Alabama Rules of Civil Procedure 60(b) because the swap/refunding warrants' 'Indenture on which the Order was based is void under the State of Alabama Constitution.

15. Such Order purports to authorize such receiver under this unlawful Indenture to administer and operate the System with power to increase rates and collect revenues sufficient to provide for the payment swap/refunding warrants which will subject Intervenors, and the class of ratepayers they represent, to confiscatory rate increases which if not paid will result grievous injury resulting from foreclosure and sale of their homes, and commercial properties connected to the sewer system (*see*, Exhibit F showing census tracts of Jefferson county ratepayers where more than 20% of ratepayers are below the federal poverty level), and, accordingly, the Intervenors are so situated that the continued enforcement of the Order will impair or impede their ability to protect against an unlawful and confiscatory rate increase, unless the Intervenors' interest is adequately represented by existing parties.

THIS MOTION TO INTERVENE is respectfully submitted for the court's consideration pursuant to Alabama rules of court @24(a)(2) and is based upon the Answer in Intervention and Counterclaim for Declaratory Relief, Rescission and Restitution attached hereto. The intervention of the Intervenors in this cause will not unduly prejudice the rights of the original parties to this action or cause any undue delay in these proceedings. Any delay in these proceedings would be greatly outweighed by the enormous prejudice that would be inflicted upon the ratepayers of the Jefferson County Sewer System should these proceedings be allowed to move forward without the Intervenors' participation.

WHEREFORE, the Intervenors, on their behalf and for the collective benefit of all ratepayers of the

Jefferson County Sewer System, pursuant to Rule 24 of the Alabama Rules of Civil Procedure moves for intervention as of right, or in the alternative, for permissive intervention in the above styled matter for the purpose of representing their individual rights and, in the alternative, their individual rights together with the rights of all ratepayers of Jefferson County Sewer System in the proposed rate proceedings. The intervenors have substantial interests relating to the property and transactions that are the subject of this action and submit that as ratepayers they are so situated that the disposition of this action may, as a practical matter, impair or impede ratepayers' ability to protect those interests unless this Court grants the intervention. Additionally, the Intervenors submit that there are common questions of law and fact that are involved in the instant case and their claims are evidenced in the attached Answer in Intervention Counterclaim for Declaratory Relief, Rescission and Restitution attached hereto.

The Intervenors respectfully requests that this Honorable Court grant the Motion to Intervene, allow the Intervenors to participate in the discovery in this case; be supplied with the discovery that has heretofore been exchanged and conducted by the parties; and order further that the Applicant be allowed to participate in the trial of this matter.

Respectfully submitted on this 24th day of June, 2011.

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Attorneys for Intervenors

APPENDIX L
CLASS ACTION COMPLAINT —RELEVANT EXCERPTS (SEPTEMBER 6, 2012)

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

In Re: JEFFERSON COUNTY, ALABAMA,

Debtor.

Case No. 11-05736-TBB-9

ANDREW BENNETT, JEFFERSON COUNTY TAX ASSESSOR, BESSEMER DIVISION, an Elected Official of Debtor; RODERICK V. ROYAL, CITY COUNCIL PRESIDENT, an Elected Official of the City of Birmingham; STEVEN W. HOYT, CITY COUNCIL, SPEAKER PRO TEMPORE, an Elected Official of the City of Birmingham; MARY MOORE, 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,

Plaintiffs.

v.

JEFFERSON COUNTY, ALABAMA,

Nominal Defendants.

and

THE BANK OF NEW YORK MELLON, as Indenture Trustee, BANK OF AMERICA, N.A., BANK OF NOVA SCOTIA, SOCIETE GÉNÉRALE, NEW YORK BRANCH, THE BANK OF NEW YORK MELLON, STATE STREET BANK AND TRUST COMPANY, LLOYDS TSB BANK PLC, JP MORGAN SECURITIES, INC, JPMORGAN CHASE BANK, N.A., SYNCORA GUARANTEE INC., ASSURED GUARANTY MUNICIPAL CORPORATION, FINANCIAL GUARANTY INSURANCE COMPANY AND HASKELL SLAUGHTER, LAW FIRM,

Defendants.

Adversary No. 12-000___

Claim of Unconstitutionality with Notice to the Attorney General Pursuant to Alabama Code § 6-6-227.

Class Action Complaint for Damages, Declaratory Judgment, and Preliminary and Permanent Injunctive Relief

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 (the "Ratepayer-Plaintiffs" or "Plaintiffs") who are creditors of Jefferson County, Alabama (the "County", "Debtor", or "Debtor-County") are part of a putative class of approximately 127,000 residential and 13,000 industrial, similarly situated property owners, ratepayers and taxpayers who pay taxes and sewer user fees to, and whose real properties are subject to assessments and foreclosure for non-payment by, the Debtor-County or Indenture Trustee for their use of a sewer system built and maintained by the Debtor-County. The named representative Ratepayer Plaintiffs and similarly situated putative class members are collectively referred to as "Ratepayer-Class Plaintiffs" or "Class Members". Ratepayer-Plaintiffs, on their behalf and as representatives of a putative class of persons similarly situated, with respect to whom Ratepayer Plaintiffs shall seek class certification, hereby bring this Complaint for Damages, Declaratory Judgment as well as Preliminary and Permanent Injunctive Relief, and allege as follows:

Introduction

1. Following an announcement in November 2011 that a Receiver appointed by the Indenture Trustee was proposing an increase in sewer fees by a compound

25% for three consecutive years or approximately 100% after three years, Ratepayer-Plaintiffs filed a motion to intervene in the State Court action appointing the Receiver. This motion to intervene alleged that the Series 2002C, 2003B and 2003C sewer refunding warrants with associated interest rate swaps which the SEC Cease and Desist Order[1] found to have been procured by criminal conduct,[2] fraud and corruption, were also void and unenforceable because, *inter alia*: (i) they were not authorized under their own enabling indenture; (ii) were void and unenforceable under the Alabama constitution because they were issued without funds being on hand to repay them; and (iii) they were issued not for public benefit or to raise new money for consent decree (*i.e.* capital) projects, but only for the purpose of creating unjust profits and fees for swap counterparties, issuance participants and non-participant tortfeasors who were paid for making no meaningful contribution except agreeing to not compete; sundry bond underwriters; bond counsel and other professionals who received exorbitant fees for closing the illegal transactions; and for payoffs to County officials and employees as bribes.

2. Ratepayer-Plaintiff's motion to intervene was pre-empted by a motion to intervene by the State Attorney General who claimed the statutory right to represent ratepayers and taxpayers. The Attorney

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[1] Attached as Exhibit E hereto. JP Morgan Securities, Inc. ("JPMS") neither admitted nor denied the findings but the Order was based on an Offer of Settlement by JPMS.

[2] Another analysis of the corrupt and criminal antecedents to the Series 2002C, 2003B and 2003C swap warrant deals which are the gravamen of this complaint is found in *U.S. v Langford* (11 Cir 2012) 647 F.3d 1309.

General failed to prosecute any legal claims in intervention choosing instead to use his office to seek resolution by settlement. When the settlement effort failed, the Attorney General withdrew and Ratepayer-Plaintiffs prepared a motion for reconsideration of their motion to intervene. Shortly thereafter, prior to filing of Plaintiffs' motion for reconsideration, because the Attorney General's withdrawal from representation of ratepayers and taxpayers which deprived Ratepayer-Plaintiffs of their right for a hearing of their intervention claims on the merits, the Debtor–County filed the instant action for protection under Chapter 9 staying all actions in the State Court without any adjudication on the merits.

3. Ratepayer-Plaintiffs on behalf of Class Members timely filed a proof of claim and in this adversary proceeding seek a declaration that the issuance of the Series 2002C, 2003B and 2003C warrants and execution of associated swaps (collectively the "Swap Warrants") are unauthorized and void under their enabling indenture, and unconstitutional and void under the Alabama Constitution, as briefly reviewed above and further set out below. Ratepayer-Plaintiffs and Class Members also seek an injunction against further collection of sewer fees to pay the Swap Warrants which exceed the principal and interest which would have been payable on lawfully issued fixed rate new money warrants which the Swap Warrants refunded, damages against defendants as stated in the causes of action that follow, and for such further relief as is provided for herein.

Overview of the Complaint

4. The Debtor-County issued under a new Trust Indenture dated as of February 1, 1997 (the "1997

Indenture") three refinancing issues designated Series 1997A ($211,040,000-tax-exempt), 1997B ($48,020,000-taxable) and 1997C ($52,880,000-taxable) (the "1997 warrants"). These refinancing issues closed off the liens of all prior sewer warrants allowing all County sewer system revenues to be pledged exclusively under the new 1997 Indenture for the 1997 warrants and additional parity warrants. All of such "Additional Parity Warrants" were required to be issued pursuant to a series of Supplemental Indentures complying with enabling provisions set out in Article X and XV of the 1997 Indenture.

5. Prior to issuance of Additional Parity variable rate warrants, and execution of associated interest rate swaps, the 1997 Indenture, Article X, required certification and bond counsel opinions delivered to the Indenture Trustee that the proposed and existing Additional Parity variable rate Warrants (a) did not exceed 50% of the total warrants outstanding, and (b) were secured by cash surplus and existing or "on hand" sewer revenues from the most recently completed fiscal year or during any period of twelve consecutive months in the eighteen-month period next preceding the date of issuance of the proposed Additional Parity Warrants in an amount equal to 105% of all debt service payable on outstanding warrants during the "current or any succeeding Fiscal Year" when the proposed Additional Parity Warrants would be outstanding.

6. The Alabama Constitution also requires that, prior to issuance, warrants have to be secured by "existing" surplus and revenues which are "on hand" in an amount sufficient to pay debt for succeeding years in order to make the issuance of Additional Parity warrants constitutionally permissible.

7. In complete disregard of both (a) the Article X certification requirements that "on hand" revenues had to be available prior to their issuance and no more than 50% of outstanding warrants could be variable or auction rate swap mode, and (b) the requirement under Alabama constitutional law making warrants lawful only if payable from existing revenue sources and only if used exclusively for public benefit, the County and the Indenture Trustee issued the Swap Warrants with full knowledge that their consultant for 10 years, Paul Krebs, had issued a report dated October 2002[3] which stated the revenues "on hand" were insufficient to amortize the succeeding years aggregate debt service on the Swap Warrants. To make matters worse, they dismissed the consultant and had bond counsel eliminate Article X pre-issuance certification requirements in violation of Article XV. Plaintiffs allege that the law firm of Haskell Slaughter, in violation of its fiduciary duty as bond counsel to a public entity using public money from Ratepayer Class Members, then issued a clean bond opinion to the effect that the issuance of the Swap Warrants in obvious violation of the Indenture pre-issuance requirements and Alabama law requiring existing revenue source for repayment was perfectly legal.

8. From March of 1997 through October of 2002, the Debtor-County issued mostly fixed rate $2.675 billion "new money" warrants, for certain sewer remediation programs mandated by the terms of a consent decree.

9. The Debtor-County, with the help of Defendants, then issued the Series 2002C (October 21, 2002),

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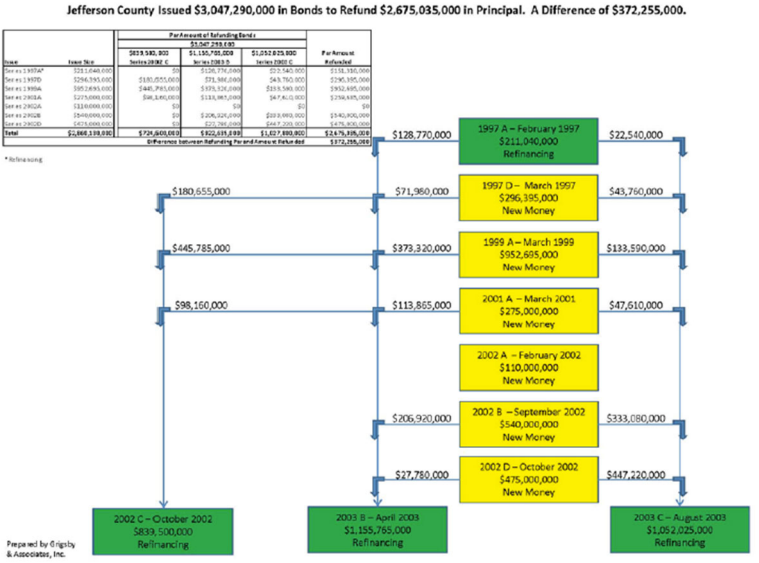
[3] *See* Paul Krebs Report attached as Exhibit G

under the Sixth Supplemental Indenture, Series 2003B (May 1, 2003), under the Ninth Supplemental Indenture and Series 2003C (August 5, 2003) under the Tenth Supplemental Indenture, warrants for the sole purpose of converting the new money, primarily fixed rate warrants issued to fund consent decree capital projects (collectively, the "Refunded Consent Decree Warrants"), into interest rate swaps with underlying variable/auction rate warrants referred to in this complaint as the "Swap Warrants." Although touted as a savings as a pretext to obtain issuance, the Swap warrants increased the principal owed from the Class Members sewer user fees by $372.255 million. The County's auditors reported this over-charge to the Class Members as a loss to the County of $368 million. Although this refinancing loss was almost three times gross annual revenue at the time, County officials and media observers treated it as a non-issue. Even today it is not generally understood that before the issuance of the Swap warrants, the county had completed the issuance of new money warrants for its consent decree projects (*see, generally*, the 2002 Paul Krebs report, infra) and had no business justification, or funding shortfall or other need for issuance of Swap Warrants. The convoluted and hard to follow issuance and refunding of tax-exempt new money warrants which disguised the $372 million increase in principal owed and the lack of business purpose are shown in the following chart:



10. There is no credible evidence that could reasonably support a conclusion that the Swap Warrants were a remotely reasonable financial restructuring despite being presented as an attempt to save money or lower Ratepayer Plaintiffs service fees since (a) the County audit for 2003 shows that $368 million was lost on the issuance of the Swap Warrants, (b) the amount of outstanding principal debt increased from $2.675 billion to almost $3.047 billion, and (c) the Swap Warrants had maximum interest rates as high as 18%. The claim that a 4% swap payment under an ISDA was a separate contract from the up to 18% auction rate Swap Warrants is not credible. Plaintiff's allege that the overwhelming evidence supports the conclusion that the Swap Warrants were issued solely to produce swap profits of approximately $170 million (*see* Chart on page 28 *supra*) based upon increased debt financing costs of $1.6 billion passed along to the Class Members as

higher sewer service fees by means of (a) a lower than market rate LIBOR floating payment going to the County under the swaps to cover the $170 million swap profits and payoffs to facilitators of the Swap warrants, (b) the Class Members assuming all the risk of interest on over $3 billion of the auction rate warrants going up to 12-18% even though the LIBOR payment which was claimed to be a dollar for dollar offset was under 1%, and (c) the Class Members being charged with the capitalization (*i.e.* increase in the principal amount of the debt) of about $370 million of accounting losses on the initial issuance of the Swap Warrants . . .

11. The Ratepayer-Plaintiffs and Class Members allege based on the facts more fully set out below, that an actual dispute and controversy exists with respect to the allegations of constitutionality, validity, and authority, raised herein, and seek a declaratory judgment from this court, that the Swap Warrants are *ultra vires*, invalidly issued and unconstitutional, and hence a nullity and void *ab initio* and consequently must be cancelled. The remedy for such cancellation will obligate the County-Debtor to repay only the amount it would have owed on the Refunded Consent Decree Warrants, shown in yellow in the above chart, before the corruptly procured issuance of the Swap Warrants, plus the amount owed on those warrants not refunded by the Swap Warrants.

12. Ratepayer Plaintiffs' estimate of the total overcharges of $1.6 billion which aggregates the losses on original issuance of (a) Swap Warrants of $368 million, (b) unfair swap profits of $170 million, (c) increased principal, increased interest and penalties, and (c) unnecessary professional, bond insurance, rating agency fees and legal fees caused by the unlawful

issuance of Swap Warrants of $1.062 billion, will be subject to proof at trial.

13. Concomitantly, Ratepayer Plaintiffs and Class Members request a declaratory judgment that cancels Defendant's claimed excess lien on System Net Revenues, collected or to be collected from Ratepayer-Plaintiffs to amortize these Swap Warrants, over and above the amount required to repay the Refunded Consent Decree Warrants if the invalid issuance of *ultra vires* Swap Warrants had not occurred.

14. As more particularly alleged below, the Swap Warrants were the direct outcome of fraud, collusion, civil conspiracy, tortious interference with the 1997 Indenture provisions, unjust enrichment and commercial bribery involving Defendant JP Morgan Securities, Inc. ("JPMS"), Goldman Sachs, William Blount, Commissioner Langford and Commissioner Buckelew and various other former county financial officers and other officials, investment bankers and credit enhancers as laid out in the SEC Cease and Desist Order and the Eleventh Circuit opinion in *U.S. v Langford*, *infra note 2* (collectively the "Swap Fraud Perpetuators"). These illegal activities have resulted in several criminal convictions (including several County Commissioners) and SEC enforcement actions resulting in a fine of $25 million and compensation of $50 million payable by JPMS to the Country-Debtor as well as forfeiture of certain swap termination value or breakage fees claimed by JPMS to amount to over $647 million as against the County-Debtor by JPMS' affiliated bank, JP Morgan Chase N.A.

15. In a managed "swap book" such as the one maintained by JPMS, this $647 million termination value is simply potential "future profits" on the swap

calculated on the present value of the difference between the fixed payment owed by Debtor-County on future swap payments each year, less the LIBOR payment owed to the County, for the remaining term of the Swap Warrants based on the existing yield curve. The fact that JPMS agreed to disgorge $647 million of future profits on Swap Warrants that were void from their inception is irrelevant to Class Members' claims. Future Swap profits cannot be set off against either the damage caused to Class Members from the Debtor-County's conduit role as sewer bill collector for the Indenture Trustee or directly against the Ratepayers Class Plaintiffs' payments required to prevent their real property to be foreclosed in a sewer fee lien sale.

16. The issuance of Swap Warrants for personal gain, corporate greed, unjust enrichment and unfair swap profits of the Swap Fraud Perpetuators violates the public purpose of the Sewer System to benefit and preserve the public health[4] and well-being of the Ratepayer Plaintiffs. Alabama statutes have authorized the county to levy and collect taxes for the exclusive purpose of defraying expenses of constructing, maintaining, and operating the system as for public purposes. The work and operation is done for and on behalf of the public. Supplemental Indentures allowing public sewer fees collections that benefit private not public uses are unconstitutional.

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[4] The county of Jefferson, 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, *Jones v. Jefferson County*, 206 Ala. 13, 18 (Ala. 1921)

17. Ratepayer-Plaintiffs therefore seek a preliminary and permanent injunction against future rate increases for Swap Warrant payment obligations which have had no public benefit and would be in excess of the payments which would have been due by the Debtor-County on the Refunded Consent Decree Warrants used to build capital projects.

18. Ratepayer-Plaintiffs are mindful that there is an order in the record of this case making a finding as to the validity and priority of the liens held by some of the Defendants. At the time this order was entered, there was no dispute filed by the Debtor-County or any other party against the validity, priority, or extent of the lien. Plaintiffs' attempt to intervene and secure a just adjudication of this issue was deferred by the instruction of the Court that rather than seek a ruling by way of intervention, Plaintiff bring a separate adversary complaint. This issue has not been adjudicated by a final, non-appealable judgment on the merits, and will not be so adjudicated until there is a hearing on the merits of this complaint. The Ratepayer-Plaintiffs allege that the purported lien on Net Revenues paid on warrants issued under the Sixth, Ninth and Tenth supplemental Indentures is a nullity and *void ab initio*. (*See* Supplemental indentures at Exhibits A, B and C, respectively).

19. On June 4, 2012, the Ratepayer Plaintiffs timely filed a proof of claim which has as one of the bases for payment or treatment of the claim, the invalidity of the Indenture Trustees' lien on the Pledged Revenues. The Proof of Claim stated that certain of the warrants are void from their inception because:

a. the Series 2002-C, 2003-B and 2003-C Swap Warrants violated the pre-issuance requirements of Article X.2 of the 1997 Indenture and the corrupt attempt to delete X.2 failed under the approval requirements of Article XV of the 1997 Indenture; and

b. the issuance of Swap Warrants violates Article 4, Section 94 and other provisions of the Alabama Constitution.

20. The remedy requested in this Complaint is to put the Debtor-County in the position it would have been in if the alleged unlawful issuance of 2002C, 2003B and 2003C Swap Warrants had not occurred. This means the Debtor-County would owe to the Swap Warrant holders only those amounts that would have been owed on the Refunded Consent Decree Warrants.

21. This adversarial proceeding is a core proceeding under 28 U.S.C. Sections 157(b)(2) (B), (D), (E), (K) and (M), and/or related proceeding arising under, in or related to a bankruptcy case under 28 U.S.C. § 1334(b). The cancellation of past and prospective overcharges for sewer services in the amount of One Billion Six Hundred Thirty Million dollars ($1,630, 000,000) (hereinafter "Ratepayer Overcharges") as stated in Annex A of Basis for Claim to the Proof of Claim (which is hereby incorporated by reference herein as if fully stated herein) seeks to: (i) invalidate a portion of a claim and lien against the estate and thereby enhance the County-Debtors estate; (ii) prevent direct injury and losses to the Ratepayer-Plaintiffs since these unlawful Ratepayer Overcharges have been and will continue to be paid by them; (iii) such other and further relief as to which Plaintiff may show themselves to be entitled.

The Parties

22. Plaintiffs-Ratepayers are elected County, City of Birmingham and State of Alabama officials and other taxpayers, property owners or renters involuntarily connected to the County Sewer System who are subject to taxes, Ratepayer Overcharges, and assessments on, and foreclosure and taking of, their property ownership interest for payments charged for their use of the Sewer System. They are also part of a class of approximately 140,000 similarly situated persons described in the "Class Definitions and Class Allegations" section of the complaint, below.

23. Defendant Jefferson County ("Debtor-County") is a county of the State of Alabama acting in its public and governmental capacity. As an instrumentality of the State of Alabama without home rule, the County has only such power as granted it by the State. County governments in Alabama have no general authority to act. The Debtor-County is named as a nominal defendant inasmuch as its role is to act as a mere conduit, for payments due from the Ratepayer-Plaintiffs and Class Members on the Swap Warrants to the Defendants., Making a . . .

[. . .]

. . . financing costs, a duty to exercise good faith and engage in fair dealings with Ratepayers-Plaintiffs under the terms of the Uniform Commercial Code. It was abundantly clear to them that Ratepayer-Plaintiffs had an obligation to financially support the sewer system with their monthly user fees. Ratepayer-Plaintiffs have no right to voluntarily disconnect from the sewer system if they believe a portion of their payment is for illegal profits and wrongful

unjust enrichment. Accordingly, Ratepayer-Plaintiffs have a direct monetary interest in assuring debt obligations are in compliance with the restrictions against excessive risky debt in the enabling indenture and constitutional provisions against excessive debt.

151. Specifically, Ratepayer-Plaintiffs submit that as financial, investment banking, and legal professionals, each Defendant owed Ratepayer Plaintiffs a duty of good faith, fair dealing, and honesty under the terms of the Uniform Commercial Code.

152. Plaintiffs submit that each of the Defendants breached this duty of good faith and fair dealing by virtue of acts or omissions referred to above.

153. As a result of these breaches of the covenant of good faith and fair dealing, Plaintiffs have suffered damages.

WHEREFORE, Ratepayer Plaintiffs demand judgment for breach of the duty of good faith and fair dealing, jointly and severally, against Defendants, together with such other and further relief as the Court deems just and proper.

Prayer for Relief

WHEREFORE, for the reasons set forth above, Ratepayer-Plaintiffs respectfully request:

1. That this Honorable Court certify the named Ratepayer-Plaintiffs as representatives of the Ratepayer Class;

2. That this Honorable Court enter proposed findings of fact and conclusions of law recommending that the District Court enter a Declaratory Judgment in the Debtor-County's and Ratepayer Plaintiffs' favor

as beneficiaries of the County Sewer System favor declaring:

a. That the issuance of Series 2002C, 2003B and 2003C warrants under the Sixth, Ninth and Tenth Supplemental Indentures is *ultra vires* in violation of the terms of Article X and Article XV of the 1997 Indenture and is therefore void from their inception;

b. That the lien on Net Revenues representing these unlawfully issued warrants is null and void *ab initio*;

c. That only that portion representing principal and interest due on the Refunded Consent Decree Warrants is due and payable from Ratepayer Plaintiffs monthly sewer fees;

d. That the creation of a synthetic fixed rate warrant structure comprised of an auction or variable rate warrant with interest rates as high as 18% coupled with a fixed payor swap requiring the payment of a termination value without their being money on hand or existing revenue to make payment thereon was an unlawful debt under the provisions of the Alabama Constitution;

e. That the Series 2002C, 2003B AND 2003C swap warrants violate the Alabama Constitution as follows:

    i. The swap component of the "synthetic fixed rate" Swap Warrants violates Section 224 of the Alabama constitution.

ii. That the auction rate Swap Warrants in excess of the 50% restriction on variable rate warrants and the swap payments and the swap termination payments payable not from revenues on hand, required to be certified under Article 10.2 to be 105% of all future debt service, and thus the Swap Warrants [comprised of auction rate warrants and floating to fixed rate swaps] are in violation of the constitution.

iii. That the Swap Warrants issued, not for project costs, but to allow the Swap fraud Perpetuators to engage in lucrative swaps, and which were not payable from revenues on hand, are constitutionally improper.

iv. The Swap Warrants were not executed to benefit the County but only for the pecuniary benefit of the Swap Fraud Perpetuators in violation of both Sec. 224 and Article 94(a) and constituted a gift of public funds since no consideration inured to the benefit of the County or the Plaintiff-Ratepayers.

v. That the issuance of Swap Warrants violates Article 4, Section 94 of the Alabama Constitution.

vi. That the issuance of the Swap Warrants violates Article 45 of the Alabama constitution.

f. That the unconstitutionality of the synthetic fixed rate warrants structure nullified and

rendered unenforceable *ab initio* any lien on Net Revenue claimed by Plaintiffs to support the Swap Warrants;

3. That this Court enter proposed findings of fact and conclusions of law recommending that the District Court return the Debtor-County and Ratepayer-Plaintiffs to the status quo existing prior to the issuance of the Swap warrants granting to Ratepayer-Plaintiffs and their privies a preliminary and permanent Injunction limiting the lien under the 1997 Indenture only on those Net Revenues that would have been payable under the Refunded Consent Decree Warrants, as refunded by the Swap Warrants plus Warrants issued under Supplemental Indentures other than the null and void Sixth, Ninth and Tenth Supplemental Indentures;

4. That this Court enter a judgment against JPMS in favor of Ratepayer-Plaintiffs as a class in an amount to be determined at trial based upon excess taxes and assessments paid by Ratepayer-Plaintiffs to Debtor-County to meet increased debt service of the Swap Warrants.

5. That this court grant judgment according to proof on the Third, Fourth, Fifth, Sixth, Seventh and Eight Causes of Action

6. That this Court award to Ratepayer-Plaintiffs as a class reasonable attorneys' fees as well as the costs and expenses of this action;

7. That this Court enter a judgment granting the Ratepayer-Plaintiffs such other and further relief as this Court deems just and appropriate.

Respectfully submitted on this 6th day of September 2012.

Law Office of Calvin B. Grigsby

/s/ Calvin B. Grigsby
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APPENDIX M
BANKRUPTCY COURT DOCKET
(JULY 13, 2012)

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA (BIRMINGHAM)
Adversary Proceeding#: 12-00120-CRJ

Jefferson County, Alabama
Assigned to: Clifton R. Jessup Jr.
Lead BK Chapter: 9
Lead BK Case: 11-05736
Date Filed: 07/13/12
Demand: None

Nature[s] of Suit: 21 Validity, priority or extent of lien or other interest in property

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08/15/2012 1 (522 pgs; 15 docs)

Order Granting Severance from AP Number 12-00016; Adversary case 12-00120. 21 (Validity, priority or extent of lien or other interest in property)) Complaint by The Bank of New York Mellon, as Indenture Trustee, Bank of America N.A., The Bank of Nova Scotia, Societe Generale, New York Branch, The Bank of New York Mellon, State Street Bank and Trust Company, JPMorgan Chase Bank, N.A., Syncora Guarantee, Inc., Guaranty Municipal Corp. against Jefferson County, Alabama. Receipt Number 0, Fee Amount $293 (Attachments: #1 Motion for Class Action Certification) (khm) Additional attachment(s) added on 8/21/2012 (khm). Modified on 9/12/2012 (khm). (Entered: 08/15/2012)

09/06/2012 2 (555 pgs; 11 docs)
Complaint filed by Ratepayer-Plaintiffs against Defendants Jefferson County, Alabama, The Bank of New York Mellon, as Indenture Trustee etc., al. Receipt Number 0, Fee Amount $293 (Attachments: # 1 Exhibit A (Part 1) # 2 Exhibit A (Part 2) # 3 Exhibit B # 4 Exhibit C (Part 1) # 5 Exhibit C (Part 2) # 6 Exhibit C (Part 3) # 7 Exhibit D # 8 Exhibit E # 9 Exhibit F # 10 Exhibit G) (khm) (Entered: 09/07/2012)

09/13/2012 3
* * *Notice did not mail out properly * * * Notice of Status Conference Status hearing to be held on 10/22/2012 at 10:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (khm) Modified on 9/13/2012 (khm). (Entered: 09/13/2012)

09/13/2012 4 (3 pgs; 2 docs)
Amended Notice of Status Conference (as to mailing out properly only) Status hearing to be held on 10/22/2012 at 10:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (khm) (Entered: 09/13/2012)

09/15/2012 5 (4 pgs)
BNC Certificate of Notice (related document(s)4) (RE: related document(s)4 Notice of Status Conference). Notice Date 09/15/2012. (Admin.) (Entered: 09/16/2012)

09/18/2012 6 (3 pgs; 2 docs)
Summons Issued Assured Guaranty Municipal Corp. Date Issued 9/18/2012, Answer Due

10/18/2012; Bank of America N.A. Date Issued 9/18/2012, Answer Due 10/18/2012; Bank of Nova Scotia Date Issued 9/18/2012, Answer Due 10/18/2012; Financial Guaranty Insurance Company Date Issued 9/18/2012, Answer Due 10/18/2012; Haskell Slaughter, Law Firm Date Issued 9/18/2012, Answer Due 10/18/2012; JP Morgan Chase Bank, N.A. Date Issued 9/18/2012, Answer Due 10/18/2012; JP Morgan Securities Inc. Date Issued 9/18/2012, Answer Due 10/18/2012; Jefferson County, Alabama Date Issued 9/18/2012, Answer Due 10/18/2012; Lloyds TSB Bank PLC Date Issued 9/18/2012, Answer Due 10/18/2012; Societe Generale, New York Branch Date Issued 9/18/2012, Answer Due 10/18/2012; State Street Bank and Trust Company Date Issued 9/18/2012, Answer Due 10/18/2012; Syncora Guarantee Inc. Date Issued 9/18/2012, Answer Due 10/18/2012; The Bank of New York Mellon Date Issued 9/18/2012, Answer Due 10/18/2012; The Bank of New York Mellon, as Indenture Trustee Date Issued 9/18/2012, Answer Due 10/18/2012 (khm) (Entered: 09/19/2012)

09/21/2012 7 (5 pgs)

BNC Certificate of Notice (related document(s)6) (RE: related document(s)6 Summons Issued). Notice Date 09/21/2012. (Admin.) (Entered: 09/22/2012)

09/29/2012 8 (624 pgs; 13 docs)

Amended Complaint by Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H.

Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill against all defendants. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C PART-1 # 4 Exhibit C-PART 2 # 5 Exhibit D # 6 Exhibit E-PART 1 # 7 Exhibit E-PART 2 # 8 Exhibit E-PART 3 # 9 Exhibit F # 10 Exhibit G # 11 Exhibit H # 12 Exhibit I) (Sullivan, David) (Entered: 09/29/2012)

09/29/2012 9 (624 pgs; 13 docs)

* * * Duplicate Entry * * * Amended Complaint by Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill against all defendants. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C-PART 1 # 4 Exhibit C-PART 2 # 5 Exhibit D # 6 Exhibit E-PART 1 # 7 Exhibit E-PART 2 # 8 Exhibit E-PART 3 # 9 Exhibit F # 10 Exhibit G # 11 Exhibit H # 12 Exhibit I) (Sullivan, David) Modified on 12/6/2012 (khm) to notate this is a duplicate of #8. (Entered: 09/29/2012)

10/02/2012 10 (14 pgs)

Certificate of Service (RE: related document(s)9 Amended Complaint by Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal,

David Russell, Reginald Threadgill against all defendants. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C-PART 1 # 4 Exhibit C-PART 2 # 5 Exhibit D # 6 Exhibit E-PART 1 # 7 Exhibit E-PART 2 # 8 Exhibit E-PART 3 # 9 Exhibit F # 10 Exhibit G # 11 Exhibit H # 12 Exhibit I) filed by Plaintiff Andrew Bennett, Plaintiff Roderick V. Royal, Plaintiff Steven W. Hoyt, Plaintiff Mary Moore, Plaintiff John W. Rogers, Plaintiff William R. Muhammad, Plaintiff Carlyn R. Culpepper, Plaintiff Freddie H. Jones, II, Plaintiff Sharon Owens, Plaintiff Reginald Threadgill, Plaintiff Rickey Davis, Jr., Plaintiff Angelina Blackmon, Plaintiff Sharon Rice, Plaintiff David Russell). (Sullivan, David) (Entered: 10/02/2012)

10/10/2012 11 (12 pgs)

Stipulation By The Bank of New York Mellon, as Indenture Trustee and Bank of America, N.A.; Bank of Nova Scotia; Societe Generale, New York Branch; The Bank of New York Mellon; State Street Bank and Trust Company; Lloyds TSB Bank PLC; JPMorgan Securities LLC (f/k/a J. P. Morgan Securities Inc.); JPMorgan Chase Bank, N.A.; Syncora Guarantee Inc.; and Assured Guaranty Municipal Corporation. Filed by Defendant The Bank of New York Mellon, as Indenture Trustee. (Childs, Larry) (Entered: 10/10/2012)

10/19/2012 12 (6 pgs)

Notice of Hearing-Notice of Agreement as to Date to Respond to Amended Complaint and to Reschedule Status Conference. Filed by Defend-

ant The Bank of New York Mellon, as Indenture Trustee. Hearing to be held on 12/6/2012 at 09:00 AM 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham (Childs, Larry) (Entered: 10/19/2012)

10/22/2012 13 (4 pgs; 2 docs)
Notice and Order Signed on 10/22/2012 continuing (RE: related document(s)2 Complaint). Hearing scheduled 12/6/2012 at 09:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (klt) (Entered: 10/22/2012)

10/24/2012 14 (5 pgs)
BNC Certificate of Notice (related document(s)13) (RE: related document(s)13 Notice and Order). Notice Date 10/24/2012. (Admin.) (Entered: 10/25/2012)

11/16/2012 15 (28 pgs)
Motion to Dismiss Party (Haskell Slaughter Young & Rediker, LLC) Filed by Defendant Haskell Slaughter, Law Firm (Oldshue, Jerry) (Entered: 11/16/2012)

11/19/2012 16 (15 pgs)
Motion to Dismiss/Withdraw Document (related document(s) 8 Amended Complaint, 9 Amended Complaint) Filed by Defendants Assured Guaranty Municipal Corp., Bank of America N.A., Bank of Nova Scotia, JP Morgan Chase Bank, N.A., JP Morgan Securties Inc., Lloyds TSB Bank PLC, Societe Generale, New York Branch, State Street Bank and Trust Company, Syncora Guarantee Inc., The Bank of New York Mellon,

The Bank of New York Mellon, as Indenture Trustee (Childs, Larry) (Entered: 11/19/2012)

11/19/2012 17 (24 pgs; 2 docs)
Motion for More Definite Statement "Nominal Defendant" Jefferson County, Alabama's Motion for More Definite Statement Filed by Defendant Jefferson County, Alabama (Attachments: # 1 Exhibit A) (Darby) (Entered: 11/19/2012)

11/19/2012 18 (18 pgs)
Motion to Strike "Nominal Defendant" Jefferson County's Motion to Strike Ratepayers' Class Claims (related documents 9 Amended Complaint) Filed by Defendant Jefferson County, Alabama (Darby) (Entered: 11/19/2012)

11/19/2012 19 (11 pgs)
Joinder by Bank of America, N.A., in Motion to Dismiss and Memorandum of Law Submitted by The Bank of New York Mellon, as Indenture Trustee Filed by Defendant Bank of America N.A. (Joseph, Joe) (Entered: 11/19/2012)

11/19/2012 20 (161 pgs; 11 docs)
Memorandum of Law in Support of Their Motion to Dismiss Plaintiff's Amended Class Action Complaint for Damages, Declaratory Judgment, and Preliminary and Permanent Injunctive Relief. Filed by Defendants Assured Guaranty Municipal Corp., Bank of America N.A., Bank of Nova Scotia, JP Morgan Chase Bank, N.A., JP Morgan Securties Inc., Lloyds TSB Bank PLC, Societe Generale, New York Branch, State Street Bank and Trust Company, Synocora Guarantee

Inc., The Bank of New York Mellon, The Bank of New York Mellon, as Indenture Trustee (RE: related document(s)16 Motion to Dismiss/Withdraw Document (related document(s) 8 Amended Complaint, 9 Amended Complaint)). (Attachments: # 1 Exhibit A-Part 1-Answer in Intervention and Counterclaim for Declaratory Judgment # 2 Exhibit A-Part 2-Answer in Intervention and Counterclaim for Declaratory Judgment # 3 Exhibit B-Motion to Intervene # 4 Exhibit C-Part 1-Receivership Order # 5 Exhibit C-Part 2-Receivership Order # 6 Exhibit D-Trustee's Objection # 7 Exhibit E-Part 1-Motion to Intervene and Answer in Intervention # 8 Exhibit E-Part 2-Motion to Intervene and Answer in Intervention # 9 Exhibit F-Trustee's Response # 10 Exhibit G-Intervention Order) (Childs, Larry) (Entered: 11/19/2012)

11/19/2012 21 (51 pgs; 5 docs)
Motion to Dismiss/Withdraw Document (related document(s) 8 Amended Complaint, 9 Amended Complaint) Filed by Defendant Financial Guaranty Insurance Company (Attachments: # 1 Exhibit 1-Rehabilitation Order # 2 Exhibit 2-Affirmation # 3 Exhibit 3-Show Cause Order # 4 Exhibit 4-Insurance Policies) (Dabney, H.) (Entered: 11/19/2012)

12/06/2012 22 (4 pgs; 2 docs)
Order, the Plaintiff's oral Motion to Dismiss Counts 4 through 9 of the amended Complaint is Granted. Counts 4 through 9 of the Amended Complaint in AP 12-00120 are hereby dismissed with prejudice. This Adversary Proceeding will proceed according to the following schedule; Plaintiffs'

Response(s) to the Motions must be filed no later than January 18, 2013; any replies to Plaintiffs' Response(s) must be filed no later than February 13,2013; The Motions are set for hearing on February 20, 2013 at 9:00 a.m. If necessary, the hearing will continue on February 21, 2013. Signed on 12/6/2012 (RE: related document(s)16 Motion to Dismiss/Withdraw Document filed by Defendant Bank of America N.A., Defendant JP Morgan Chase Bank, N.A., Defendant Assured Guaranty Municipal Corp., Defendant State Street Bank and Trust Company, Defendant JP Morgan Securties Inc., Defendant The Bank of New York Mellon, as Indenture Trustee, Defendant Societe Generale, New York Branch, Defendant The Bank of New York Mellon, Defendant Bank of Nova Scotia, Defendant Lloyds TSB Bank PLC, Defendant Synocora Guarantee Inc., 17 Motion for More Definite Statement filed by Defendant Jefferson County, Alabama, 18 Motion to Strike filed by Defendant Jefferson County, Alabama, 19 Joinder filed by Defendant Bank of America N.A., 21 Motion to Dismiss/Withdraw Document filed by Defendant Financial Guaranty Insurance Company). (khm) (Entered: 12/06/2012)

12/08/2012 23 (5 pgs)

BNC Certificate of Notice (related document(s)22) (RE: related document(s)22 Order Granting). Notice Date 12/08/2012. (Admin.) (Entered: 12/09 /2012)

01/18/2013 24 (16 pgs)

Objection to (related document(s): 22 Order Granting) OPPOSITION TO NOMINAL DEFEN-

DANTS MOTION TO STRIKE Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (Sullivan, David) (Entered: 01/18/2013)

01/18/2013 25 (10 pgs)

Objection to (related document(s): 22 Order Granting) OPPOSITION TO NOMINAL DEFENDANTS MOTION FOR A MORE DEFINITIVE STATEMENT Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (Sullivan, David) (Entered: 01/18/2013)

01/18/2013 26 (1183 pgs; 8 docs)

Objection to (related document(s): 22 Order Granting) CLASS PLAINTIFFS BRIEF IN OPPOSITION TO DEFENDANTS MOTION TO DISMISS PLAINTIFFS AMENDED CLASS ACTION COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill

(Attachments: # 1 Appendix # 2 Exhibit Part 1 # 3 Exhibit Part 2 # 4 Exhibit Part 3 # 5 Exhibit Part 4 # 6 Exhibit Part 5 # 7 Exhibit Part 6) (Sullivan, David) (Entered: 01/18/2013)

01/20/2013 27 (3 pgs)

Notice of Withdrawal of a Document Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (RE: related document(s)24 Objection to (related document(s): 22 Order Granting) OPPOSITION TO NOMINAL DEFENDANTS MOTION TO STRIKE Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill filed by Plaintiff Andrew Bennett, Plaintiff Roderick V. Royal, Plaintiff Steven W. Hoyt, Plaintiff Mary Moore, Plaintiff John W. Rogers, Plaintiff William R. Muhammad, Plaintiff Carlyn R. Culpepper, Plaintiff Freddie H. Jones, II, Plaintiff Sharon Owens, Plaintiff Reginald Threadgill, Plaintiff Rickey Davis, Jr., Plaintiff Angelina Blackmon, Plaintiff Sharon Rice, Plaintiff David Russell, 25 Objection to (related document(s): 22 Order Granting) OPPOSITION TO NOMINAL DEFENDANTS MOTION FOR A MORE DEFINITIVE STATEMENT Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper,

Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill filed by Plaintiff Andrew Bennett, Plaintiff Roderick V. Royal, Plaintiff Steven W. Hoyt, Plaintiff Mary Moore, Plaintiff John W. Rogers, Plaintiff William R. Muhammad, Plaintiff Carlyn R. Culpepper, Plaintiff Freddie H. Jones, II, Plaintiff Sharon Owens, Plaintiff Reginald Threadgill, Plaintiff Rickey Davis, Jr., Plaintiff Angelina Blackmon, Plaintiff Sharon Rice, Plaintiff David Russell, 26 Objection to (related document(s): 22 Order Granting) CLASS PLAINTIFFS BRIEF IN OPPOSITION TO DEFENDANTS MOTION TO DISMISS PLAINTIFFS AMENDED CLASS ACTION COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (Attachments: # 1 Appendix # 2 Exhibit Part 1 # 3 Exhibit Part 2 # 4 Exhibit Part 3 # 5 Exhibit Part 4 # 6 Exhibit Part 5 # 7 Exhibit Part 6) filed by Plaintiff Andrew Bennett, Plaintiff Roderick V. Royal, Plaintiff Steven W. Hoyt, Plaintiff Mary Moore, Plaintiff John W. Rogers, Plaintiff William R. Muhammad, Plaintiff Carlyn R. Culpepper, Plaintiff Freddie H. Jones, II, Plaintiff Sharon Owens, Plaintiff Reginald Threadgill, Plaintiff Rickey

Davis, Jr., Plaintiff Angelina Blackmon, Plaintiff Sharon Rice, Plaintiff David Russell). (Sullivan, David) (Entered: 01/20/2013)

01/20/2013 28 (17 pgs)

Objection to (related document(s): 18 Motion to Strike) CORRECTED OPPOSITION TO NOMINAL DEFENDANTS MOTION TO STRIKE Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (Sullivan, David) Modified on 1/22/2013 to correct related docket entry number (klt). (Entered: 01/20/2013)

01/20/2013 29 (10 pgs)

Objection to (related document(s): 17 Motion for More Definite Statement) CORRECTED OPPOSITION TO NOMINAL DEFENDANTS MOTION FOR A MORE DEFINITIVE STATEMENT Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (Sullivan, David) Modified on 1/22/2013 to correct related docket entry number (klt). (Entered: 01/20/2013)

01/20/2013 30 (1189 pgs; 8 docs)

Objection to (related document(s): 16 Motion to Dismiss Plaintiffs' Amended Class Action Complaint) CORRECTED CLASS PLAINTIFFS

BRIEF IN OPPOSITION TO DEFENDANTS MOTION TO DISMISS PLAINTIFFS AMENDED CLASS ACTION COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT, AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (Attachments: # 1 Appendix # 2 Exhibit Part 1 # 3 Exhibit Part 2 # 4 Exhibit Part 3 # 5 Exhibit Part 4 # 6 Exhibit Part 5 # 7 Exhibit Part 6) (Sullivan, David) Modified on 1/22/2013 to correct related docket entry number (klt). (Entered: 01/20/2013)

01/22/2013 31 (4 pgs; 2 docs)

Notice of Hearing on (RE: related document(s)15 Motion to Dismiss Haskell Slaughter Young & Rediker, LLC as Defendant 16 Motion to Dismiss Plaintiffs Amended Class Action Complaint for Damages, Declaratory Judgment, and Preliminary and Injunctive Relief filed by The Bank of New York Mellon, as Indenture Trustee, 17 Motion for More Definite Statement filed by Nominal Defendant Jefferson County, Alabama, 18 Motion to Strike Ratepayers Class Claims filed by Nominal Defendant Jefferson County, Alabama, 19 Joinder by Bank of America, N.A., in Motion to Dismiss and Memorandum of Law submitted by The Bank of New York Mellon, as Indenture Trustee, 20 Memorandum of Law in Support of Motion to Dismiss Plaintiffs Amended

Class Action Complaint for Damages, Declaratory Judgment, and Preliminary and Permanent Injunctive Relief filed by Motion to Dismiss Amended Complaint filed by The Bank of New York Mellon, as Indenture Trustee, 21 21 Motion to Dismiss Amended Complaint filed by Financial Guaranty Insurance Company, 28 Plaintiffs Corrected Opposition to Nominal Defendants Motion to Strike, 29 Plaintiffs Corrected Opposition to Nominal Defendants Motion for More Definite Statement) Hearing scheduled 2/20/2013 at 09:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (klt) (Entered: 01/22/2013)

01/24/2013 32 (5 pgs)

BNC Certificate of Notice (related document(s)31) (RE: related document(s)31 Notice of Hearing). Notice Date 01/24/2013. (Admin.) (Entered: 01/25/2013)

02/13/2013 33 (11 pgs)

Reply to (Re Item: 29) "Nominal Defendant" Jefferson County's Reply in Support of Its Motion for a More Definite Statement Filed by Defendant Jefferson County, Alabama (Darby) (Entered: 02/13/2013)

02/13/2013 34 (11 pgs)

Reply to (Re Item: 28) "Nominal Defendant" Jefferson County's Reply in Support of Its Motion to Strike Ratepayers' Class Claims Filed by Defendant Jefferson County, Alabama (Darby) (Entered: 02/13/2013)

02/13/2013 35 (11 pgs; 2 docs)
Reply to (Re Item: 30) Defendant Financial Guaranty Insurance Company's Reply in Support of its Motion to Dismiss Amended Complaint Filed by Defendant Financial Guaranty Insurance Company (Attachments: # 1 Exhibit 1-Modification Order) (Dabney, H.) (Entered: 02/13/2013)

02/13/2013 36 (44 pgs)
Reply to (Re Item: 16) Defendants' Reply in Further Support of Motion to Dismiss Plaintiffs' Amended Class Action Complaint for Damages, Declaratory Judgment, and Preliminary and Permanent Injunctive Relief. Filed by Defendants Assured Guaranty Municipal Corp., Bank of America N.A., Bank of Nova Scotia, JP Morgan Chase Bank, N.A., JP Morgan Securties Inc., Lloyds TSB Bank PLC, Societe Generale, New York Branch, State Street Bank and Trust Company, Synocora Guarantee Inc., The Bank of New York Mellon, The Bank of New York Mellon, as Indenture Trustee (Childs, Larry) (Entered: 02/13/2013)

02/14/2013 37 (10 pgs)
Joint Motion to Amend and/or Alter (related documents 31 Notice of Hearing) NOTICE OF HEARING DATED JANUARY 22, 2013 Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (Sullivan, David) (Entered: 02/14/2013)

02/15/2013 38 (13 pgs)

Statement-Notice Filed by Defendants Assured Guaranty Municipal Corp., Bank of America N.A., Bank of Nova Scotia, Financial Guaranty Insurance Company, JP Morgan Chase Bank, N.A., JP Morgan Securties Inc., Lloyds TSB Bank PLC, Societe Generale, New York Branch, State Street Bank and Trust Company, Synocora Guarantee Inc., The Bank of New York Mellon, The Bank of New York Mellon, as Indenture Trustee (RE: related document(s)37 Joint Motion to Amend and/or Alter (related documents 31 Notice of Hearing) NOTICE OF HEARING DATED JANUARY 22, 2013). (Childs, Larry) (Entered: 02/15/2013)

02/19/2013 39 (10 pgs)

Motion to Amend and/or Alter (related documents 37 Motion to Amend and/or Alter) Joint CORRECTED MOTION TO CORRECT MISTAKES IN NOTICE OF HEARING DATED FEBRUARY 19, 2013 Filed by Plaintiffs Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill (Sullivan, David) (Entered: 02/19/2013)

02/19/2013 40 (3 pgs; 2 docs)

Notice of Hearing on (RE: related document(s)39 Motion to Amend and/or Alter filed by Plaintiff Andrew Bennett, Plaintiff Roderick V. Royal, Plaintiff Steven W. Hoyt, Plaintiff Mary Moore, Plaintiff John W. Rogers, Plaintiff William R.

Muhammad, Plaintiff Carlyn R. Culpepper, Plaintiff Freddie H. Jones, II, Plaintiff Sharon Owens, Plaintiff Reginald Threadgill, Plaintiff Rickey Davis, Jr., Plaintiff Angelina Blackmon, Plaintiff Sharon Rice, Plaintiff David Russell) Hearing scheduled 2/20/2013 at 09:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (klt) (Entered: 02/19/2013)

02/19/2013 41 (7 pgs; 2 docs)

Order and Notice of Hearing Rescheduled Signed on 2/19/2013 (RE: related document(s)15 Motion to Dismiss Party filed by Defendant Haskell Slaughter, Law Firm, 16 Motion to Dismiss/Withdraw Document filed by Defendant Bank of America N.A., Defendant JP Morgan Chase Bank, N.A., Defendant Assured Guaranty Municipal Corp., Defendant State Street Bank and Trust Company, Defendant JP Morgan Securties Inc., Defendant The Bank of New York Mellon, as Indenture Trustee, Defendant Societe Generale, New York Branch, Defendant The Bank of New York Mellon, Defendant Bank of Nova Scotia, Defendant Lloyds TSB Bank PLC, Defendant Synocora Guarantee Inc., 17 Motion for More Definite Statement filed by Defendant Jefferson County, Alabama, 18 Motion to Strike filed by Defendant Jefferson County, Alabama, 19 Joinder filed by Defendant Bank of America N.A., 20 Memorandum filed by Defendant Bank of America N.A., Defendant JP Morgan Chase Bank, N.A., Defendant Assured Guaranty Municipal Corp., Defendant State Street Bank and Trust Company, Defendant JP Morgan Securties Inc., Defendant The Bank of New York

Mellon, as Indenture Trustee, Defendant Societe Generale, New York Branch, Defendant The Bank of New York Mellon, Defendant Bank of Nova Scotia, Defendant Lloyds TSB Bank PLC, Defendant Synocora Guarantee Inc., 21 Motion to Dismiss/Withdraw Document filed by Defendant Financial Guaranty Insurance Company, 28 Objection filed by Plaintiff Andrew Bennett, Plaintiff Roderick V. Royal, Plaintiff Steven W. Hoyt, Plaintiff Mary Moore, Plaintiff John W. Rogers, Plaintiff William R. Muhammad, Plaintiff Carlyn R. Culpepper, Plaintiff Freddie H. Jones, II, Plaintiff Sharon Owens, Plaintiff Reginald Threadgill, Plaintiff Rickey Davis, Jr., Plaintiff Angelina Blackmon, Plaintiff Sharon Rice, Plaintiff David Russell, 29 Objection filed by Plaintiff Andrew Bennett, Plaintiff Roderick V. Royal, Plaintiff Steven W. Hoyt, Plaintiff Mary Moore, Plaintiff John W. Rogers, Plaintiff William R. Muhammad, Plaintiff Carlyn R. Culpepper, Plaintiff Freddie H. Jones, II, Plaintiff Sharon Owens, Plaintiff Reginald Threadgill, Plaintiff Rickey Davis, Jr., Plaintiff Angelina Blackmon, Plaintiff Sharon Rice, Plaintiff David Russell, 39 Motion to Amend and/or Alter filed by Plaintiff Andrew Bennett, Plaintiff Roderick V. Royal, Plaintiff Steven W. Hoyt, Plaintiff Mary Moore, Plaintiff John W. Rogers, Plaintiff William R. Muhammad, Plaintiff Carlyn R. Culpepper, Plaintiff Freddie H. Jones, II, Plaintiff Sharon Owens, Plaintiff Reginald Threadgill, Plaintiff Rickey Davis, Jr., Plaintiff Angelina Blackmon, Plaintiff Sharon Rice, Plaintiff David Russell). Hearing rescheduled 2/20/2013 at 10:00

AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (sld) (Entered: 02/19/2013)

02/20/2013 42 (4 pgs; 2 docs)

Order Mooting Motions to Dismiss (Related Doc # 16) Motion to Dismiss Plaintiffs Amended Class Action Complaint for Damages, Declaratory Judgment, and Preliminary and Injunctive Relief filed by The Bank of New York Mellon, as Indenture Trustee, (Related Doc # 21) Motion to Dismiss Amended Complaint filed by Financial Guaranty Insurance Company, Order Denying as unnecessary Corrected Motion of Andrew Bennett to Correct Mistakes in Notice of Hearing dated February 19, 2013 (Related Doc # 39) Signed on 2/20/2013. Separate orders to be entered on the following matters: 15 Motion to Dismiss Haskell Slaughter Young & Rediker, LLC as Defendant, 17 Motion for More Definite Statement filed by Nominal Defendant Jefferson County, Alabama, 18 Motion to Strike Ratepayers Class Claims filed by Nominal Defendant Jefferson County, Alabama, 19 Joinder by Bank of America, N.A., in Motion to Dismiss and Memorandum of Law submitted by The Bank of New York Mellon, as Indenture Trustee. (klt) (Entered: 02/20/2013)

02/21/2013 43 (3 pgs; 2 docs)

Order Signed on 2/21/2013 (RE: related document(s)19 Joinder filed by Defendant Bank of America N.A.). Bank of America is dismissed and removed as a party defendant in this adversary proceeding with prejudice and the Clerk of this Court is hereby directed to remove Bank of

America as a party from the style and docket of this adversary proceeding. (klt) (Entered: 02/21/2013)

02/21/2013 44 (4 pgs; 2 docs)
Order Granting Motion to Dismiss Party Haskell Slaughter Young & Rediker, LLC with prejudice (Related Doc # 15) Signed on 2/21/2013. (klt) (Entered: 02/21/2013)

02/21/2013 45 (8 pgs)
BNC Certificate of Notice (related document(s) 41) (RE: related document(s) 41 Notice and Order). Notice Date 02/21/2013. (Admin.) (Entered: 02/22/2013)

02/21/2013 46 (4 pgs)
BNC Certificate of Notice (related document(s) 40) (RE: related document(s)40 Notice of Hearing). Notice Date 02/21/2013. (Admin.) (Entered: 02/22/2013)

02/22/2013 47 (4 pgs; 2 docs)
Order Granting Motion For More Definite Statement filed by "Nominal Defendant" Jefferson County, Alabama. The Plaintiffs are granted leave to replead in accordance with the Court's instructions at the hearing on the Motion on or before April 4, 2013. Except as specifically set forth in this Order, the Plaintiffs shall be granted no leave to further replead absent further order of the Court. (Related Doc # 17) Signed on 2/22/2013. (klt) (Entered: 02/22/2013)

02/22/2013 48 (3 pgs; 2 docs)

Order Granting "Nominal Defendant" Jefferson County's Motion to Strike Ratepayers' Class Claims Signed on 2/22/2013 (RE: related document(s)18 (klt) (Entered: 02/22/2013)

02/22/2013 49 (56 pgs)

Transcript of hearing held on: 02/20/13 You are noticed that a transcript has been filed. Pursuant to the Judicial Conference Policy on Privacy, remote electronic access to this transcript is restricted through 05/23/2013. To review the transcript for redaction purposes, you may purchase a copy from the transcriber, or the transcript may be viewed at the public terminal located in the Bankruptcy Court Clerk's Office. Contact the Court Reporter/Transcriber Tricia Basham, telephone number 901-372-0613/ tricia basham@bellsouth.net. All parties have seven (7) calendar days to file a Notice of Intent to Request Transcript Redaction of any social security numbers, financial account data, names of minor-age children, dates of birth, and home addresses. If the Notice of Intent is filed, the party has 21 calendar days from the date the transcript was filed to file the Transcript Redaction Request indicating the location of the identifiers within the transcript with the Court and to provide the list to the transcriber. The redacted transcript is due 31 days from the date of filing of the transcript. The transcript will be made electronically available to the general public 90 calendar days from the date of filing.. Notice of Intent to Request Redaction Deadline Due By 3/1/2013. Redaction Request Due By

03/15/2013. Redacted Transcript Submission Due By 03/25/2013. Transcript access will be restricted through 05/23/2013. (Basham, Patricia) (Entered: 02/22/2013)

02/22/2013 50 (5 pgs)
BNC Certificate of Notice (related document(s)42) (RE: related document(s) 42 Order on Application to Dismiss/Withdraw Document). Notice Date 02/22/2013. (Admin.) (Entered: 02/23/2013)

02/23/2013 51 (5 pgs)
BNC Certificate of Notice (related document(s) 43) (RE: related document(s) 43 Order (Generic)). Notice Date 02/23/2013. (Admin.) (Entered: 02/24/2013)

02/23/2013 52 (6 pgs)
BNC Certificate of Notice (related document(s) 44) (RE: related document(s)44 Order on Motion to Dismiss Party). Notice Date 02/23/2013. (Admin.) (Entered: 02/24/2013)

02/24/2013 53 (6 pgs)
BNC Certificate of Notice (related document(s)47) (RE: related document(s)47 Order on Motion for More Definite Statement). Notice Date 02/24/2013. (Admin.) (Entered: 02/25/2013)

02/24/2013 54 (5 pgs)
BNC Certificate of Notice (related document(s) 48) (RE: related document(s) 48 Order Granting). Notice Date 02/24/2013. (Admin.) (Entered: 02/25/2013)

02/26/2013 55 (4 pgs; 2 docs)
Amended Order Signed on 2/26/2013 (RE: related document(s)41 Notice and Order). (klt) (Entered: 02/26/2013)

02/28/2013 56 (6 pgs)
BNC Certificate of Notice (related document(s) 55) (RE: related document(s)55 Amended Order). Notice Date 02/28/2013. (Admin.) (Entered: 03/01/2013)

03/11/2013 57 (7 pgs)
Joint Motion to Dismiss Party Joint Motion of Societe Generale, New York Branch and Plaintiffs to Dismiss Societe Generale as a Party Upon Disposition of Interest Filed by Defendant Societe Generale, New York Branch (Porterfield, Stephen) (Entered: 03/11/2013)

03/12/2013 58 (3 pgs; 2 docs)
Notice of Hearing on (RE: related document(s)57 Motion to Dismiss Party filed by Defendant Societe Generale, New York Branch). Hearing scheduled 3/28/2013 at 10:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (klt) (Entered: 03/12/2013)

03/14/2013 59 (5 pgs)
BNC Certificate of Notice (related document(s) 58) (RE: related document(s) 58 Notice of Hearing). Notice Date 03/14/2013. (Admin.) (Entered: 03/15/2013)

03/22/2013 60 (4 pgs; 2 docs)
Order on Motion to Dismiss Party Societe Generale (Related Doc # 57). The motion is

GRANTED subject to objections of the other parties in AP Nos. 12-0016, 12-0067, or 12-0120. Any such objection must be filed by a party no later than 5 p.m. CST on Tuesday, March 26, 2013. The omnibus hearing set for March 28, 2013, at 10 a.m. is cancelled. Signed on 3/22/2013. (klt) (Entered: 03/22/2013)

03/24/2013 61 (6 pgs)

BNC Certificate of Notice (related document(s) 60) (RE: related document(s) 60 Order on Motion to Dismiss Party). Notice Date 03/24/2013. (Admin.) (Entered: 03/25/2013)

03/25/2013 62 (6 pgs)

Corporate Parent Disclosure Statement Filed by Defendant The Bank of New York Mellon, as Indenture Trustee. (Cochran, Ryan) (Entered: 03/25/2013)

04/04/2013 63 (34 pgs)

Amended Complaint by Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal, David Russell, Reginald Threadgill against all defendants. (Sullivan, David) (Entered: 04/04/2013)

04/04/2013 64 (44 pgs)

Amended Complaint by Andrew Bennett, Angelina Blackmon, Carlyn R. Culpepper, Rickey Davis, Jr., Steven W. Hoyt, Freddie H. Jones, II, Mary Moore, William R. Muhammad, Sharon Owens, Sharon Rice, John W. Rogers, Roderick V. Royal,

David Russell, Reginald Threadgill against all defendants. (Sullivan, David) (Entered: 04/05 /2013)

04/05/2013 65 (7 pgs)

Joint Motion to Dismiss Party Joint Motion of Lloyds TSB Bank plc and Plaintiffs Motion to Dismiss Lloyds TSB Bank plc as a Party Upon Disposition of Interest Filed by Defendant Lloyds TSB Bank PLC (Porterfield, Stephen) (Entered: 04/05/2013)

04/10/2013 66 (3 pgs; 2 docs)

Order Granting Joint Motion of Lloyds TSB Bank plc and Plaintiffs Motion to Dismiss Lloyds TSB Bank plc as a Party Upon Disposition of Interest subject to objections of the other parties in AP No. 12-00120. Any such objection must be filed by a party no later than 5 p.m. CST on April 17, 2013, must set forth with particularity the basis for the objection, and must be served on all other parties in this adversary proceeding (Related Doc # 65) Signed on 4/10/2013. (klt) (Entered: 04/10/2013)

04/12/2013 67 (5 pgs)

BNC Certificate of Notice (related document(s) 66) (RE: related document(s)66 Order on Motion to Dismiss Party). Notice Date 04/12/2013. (Admin.) (Entered: 04/13/2013)

04/18/2013 68 (24 pgs)

Motion to Dismiss Adversary Proceeding Filed by Defendant Jefferson County, Alabama (Darby) (Entered: 04/18/2013)

04/18/2013 69 (7 pgs)

Motion to Dismiss Adversary Proceeding-Trustee's Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory Judgment and Injunctive Relief. Filed by Defendant The Bank of New York Mellon, as Indenture Trustee (Childs, Larry) (Entered: 04/18/2013)

04/18/2013 70 (504 pgs; 21 docs)

Memorandum of Law in Support Filed by Defendant The Bank of New York Mellon, as Indenture Trustee (RE: related document(s)69 Motion to Dismiss Adversary Proceeding-Trustee's Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory Judgment and Injunctive Relief.). (Attachments: # 1 Exhibit A Pt 1-Answer in Intervention # 2 Exhibit A Pt 2-Answer in Intervention # 3 Exhibit B-Motion to Intervene # 4 Exhibit C Pt 1-Receivership Order # 5 Exhibit C Pt 2-Receivership Order # 6 Exhibit D-Trustee's Objection # 7 Exhibit E Pt 1-State's Motion to Intervene and Answer # 8 Exhibit E Pt 2-State's Motion to Intervene and Answer # 9 Exhibit F-Trustee's Response # 10 Exhibit G-Intervention Order # 11 Exhibit H-Fifth Supplemental Indenture # 12 Exhibit I Pt 1-Ninth Supplemental Indenture # 13 Exhibit I Pt 2-Ninth Supplemental Indenture # 14 Exhibit I Pt 3-Ninth Supplemental Indenture # 15 Exhibit I Pt 4-Ninth Supplemental Indenture # 16 Exhibit J Pt 1-Tenth Supplemental Indenture # 17 Exhibit J Pt 2-Tenth Supplemental Indenture # 18 Exhibit J Pt 3-Tenth Supplemental Indenture # 19 Exhibit K-Consents # 20 Exhibit L-Supple-

mental Indenture Provisions) (Childs, Larry) (Entered: 04/18/2013)

04/19/2013 71 (3 pgs; 2 docs)
Notice of Hearing on (RE: related document(s)68 Motion to Dismiss Adversary Proceeding filed by Defendant Jefferson County, Alabama, 69 Motion to Dismiss Adversary Proceeding filed by Defendant The Bank of New York Mellon, as Indenture Trustee) Hearing scheduled 5/9/2013 at 10:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (klt) (Entered: 04/19/2013)

04/21/2013 72 (5 pgs)
BNC Certificate of Notice (related document(s) 71) (RE: related document(s)71 Notice of Hearing). Notice Date 04/21/2013. (Admin.) (Entered: 04/22/2013)

05/01/2013 73 (1 pgs)
Return Mail-Rajan K. Pillai (RE: related document(s)47 Order, 48 Order) (klt) (Entered: 05/01/2013)

05/01/2013 74 (24 pgs; 5 docs)
Motion to Continue Hearing On (related documents 71 Notice of Hearing) Filed by (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit) (klt) (Entered: 05/01/2013)

05/01/2013 75 (3 pgs; 2 docs)
Return Mail-Ann E. Acker (RE: related document(s)40 Notice of Hearing) (klt) (Entered: 05/01/2013)

05/01/2013 77 (2 pgs)

Notice of Appearance and Request for Notice by Clark R Hammond Filed by Defendant JP Morgan Chase Bank, N.A., (Hammond, Clark) (Entered: 05/01/2013)

05/01/2013 78 (2 pgs)

Motion to Withdraw as Attorney Filed by Defendant JP Morgan Chase Bank, N.A. (Hammond, Clark) (Entered: 05/01/2013)

05/01/2013 79 (3 pgs; 2 docs)

Order Granting Motion To Continue Hearing On (Related Doc # 74) (related documents Motion to Dismiss Adversary Proceeding, Motion to Dismiss Adversary Proceeding-Trustee's Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory Judgment and Injunctive Relief.) Signed on 5/1/2013. Hearing to be held on 6/6/2013 at 10:00 AM 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham for 69 and for 68, (klt) (Entered: 05/01/2013)

05/01/2013 80 (4 pgs; 2 docs)

Order and Notice of Hearing Rescheduling Signed on 5/1/2013 (RE: related document(s)68 Motion to Dismiss Adversary Proceeding filed by Defendant Jefferson County, Alabama, 69 Motion to Dismiss Adversary Proceeding filed by Defendant The Bank of New York Mellon, as Indenture Trustee). Hearing scheduled 6/5/2013 at 10:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (klt) (Entered: 05/01/2013)

05/03/2013 81 (5 pgs)
BNC Certificate of Notice (related document(s) 75) (RE: related document(s)75 Return Mail). Notice Date 05/03/2013. (Admin.) (Entered: 05/04/2013)

05/03/2013 82 (1 pgs)
BNC Certificate of Notice (related document(s) 79) (RE: related document(s)79 Order on Motion to Continue Hearing). Notice Date 05/03/2013. (Admin.) (Entered: 05/04/2013)

05/03/2013 83 (6 pgs)
BNC Certificate of Notice (related document(s) 80) (RE: related document(s)80 Notice and Order). Notice Date 05/03/2013. (Admin.) (Entered: 05/04/2013)

05/08/2013 84 (1 pgs)
Return Mail-Chris Clark (RE: related document(s) 71 Notice of Hearing) (klt) (Entered: 05/08/2013)

05/13/2013 85 (3 pgs; 2 docs)
Return Mail-Scott Davidson (RE: related document(s) 79 Order on Motion to Continue Hearing, 80 Notice and Order) (klt) (Entered: 05/13/2013)

05/15/2013 86 (3 pgs; 2 docs)
Return Mail-Rajan K. Pillai (RE: related document(s) 71 Notice of Hearing) (klt) (Entered: 05/15/2013)

05/15/2013 87 (5 pgs)
BNC Certificate of Notice (related document(s) 85) (RE: related document(s)85 Return Mail). Notice Date 05/15/2013. (Admin.) (Entered: 05/16/2013)

05/17/2013 88 (5 pgs)
BNC Certificate of Notice (related document(s) 86) (RE: related document(s)86 Return Mail). Notice Date 05/17/2013. (Admin.) (Entered: 05/18/2013)

05/31/2013 89 (54 pgs)
Opposition Motion to Dismiss Adversary Proceeding Filed by Plaintiff Andrew Bennett (Grigsby, Calvin) (Entered: 05/31/2013)

05/31/2013 90 (62 pgs)
Brief in Opposition Motion to Dismiss Adversary Proceeding Filed by Plaintiff Andrew Bennett (Grigsby, Calvin) Modified on 6/3/2013 to add text (klt). (Entered: 05/31/2013)

05/31/2013 91 (62 pgs)
Brief Opposition Motion to Amend and/or Alter (related documents 90 Motion to Dismiss Adversary Proceeding) Filed by Plaintiff Andrew Bennett (Grigsby, Calvin) Modified on 6/3/2013 to add text (klt). (Entered: 05/31/2013)

06/03/2013 92 (12 pgs)
Reply to (Re Item: 90, 91) Jefferson County's Reply to Plaintiffs' Brief in Opposition to Jefferson County's Motion to Dismiss Plaintiffs' Second Amended Complaint for a Declaratory Judgment and Injunctive Relief Filed by Defendant Jefferson County, Alabama (Darby) (Entered: 06/03/2013)

06/03/2013 93 (18 pgs)
Brief Trustee's Reply in Further Support of Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory Judgment and In-

junctive Relief Filed by Defendant The Bank of New York Mellon, as Indenture Trustee (RE: related document(s) 69 Motion to Dismiss Adversary Proceeding-Trustee's Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory Judgment and Injunctive Relief. Filed by Defendant The Bank of New York Mellon, as Indenture Trustee filed by Defendant The Bank of New York Mellon, as Indenture Trustee). (Childs, Larry) (Entered: 06/03/2013)

06/06/2013 94 (2 pgs; 2 docs)
Return Mail-Scott Davidson (RE: related document(s)79 Order on Motion to Continue Hearing, 80 Notice and Order) (klt) (Entered: 06/06/2013)

06/07/2013 95 (3 pgs; 2 docs)
Order that the request for a stay is Granted and this Adversary Proceeding is stayed in its entirety pending further order of this Court. Signed on 6/7/2013 (RE: related document(s)92 Reply filed by Defendant Jefferson County, Alabama). (klt) (Entered: 06/07/2013)

06/08/2013 96 (4 pgs)
BNC Certificate of Notice (related document(s) 94) (RE: related document(s)94 Return Mail). Notice Date 06/08/2013. (Admin.) (Entered: 06/09/2013)

06/09/2013 97 (5 pgs)
BNC Certificate of Notice (related document(s) 95) (RE: related document(s)95 Order Granting). Notice Date 06/09/2013. (Admin.) (Entered: 06/10/2013)

06/18/2013 98 (134 pgs; 7 docs)
Motion to Reconsider (related documents 95 Order Granting) stay Filed by Plaintiff Andrew Bennett (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C-1 # 4 Exhibit C-2 # 5 Exhibit E # 6 Exhibit E) (Grigsby, Calvin) (Entered: 06/18/2013)

06/20/2013 99 (21 pgs; 2 docs)
Motion to Expedite Hearing (related documents 98 Motion to Reconsider) Filed by Plaintiff Andrew Bennett (Attachments: # 1 Proposed Order) (Grigsby, Calvin) (Entered: 06/20/2013)

06/20/2013 100 (3 pgs; 2 docs)
Order Granting Motion to Expedite Hearing (Related Doc # 99) Signed on 6/20/2013. Hearing to be held on 6/27/2013 at 10:00 AM 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham for 98 Motion for Reconsideration, (klt) (Entered: 06/20/2013)

06/21/2013 101 (3 pgs; 2 docs)
Return Mail-Scott Davidson (RE: related document(s) 95 Order Granting) (klt) (Entered: 06/21/2013)

06/21/2013 102 (11 pgs)
Objection to (related document(s): 98 Motion to Reconsider (related documents 95 Order Granting) stay filed by Plaintiff Andrew Bennett) Jefferson County's Opposition to Motion for Reconsideration Filed by Defendant Jefferson County, Alabama (Darby) (Entered: 06/21/2013)

06/22/2013 103

Hearing Scheduled (RE: related document(s)102 Objection filed by Defendant Jefferson County, Alabama) Hearing scheduled 6/27/2013 at 10:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (afs) (Entered: 06/22/2013)

06/22/2013 104 (5 pgs)

BNC Certificate of Notice (related document(s) 100) (RE: related document(s) 100 Order on Motion to Expedite Hearing). Notice Date 06/22/2013. (Admin.) (Entered: 06/23/2013)

06/23/2013 105 (5 pgs)

BNC Certificate of Notice (related document(s) 101) (RE: related document(s) 101 Return Mail). Notice Date 06/23/2013. (Admin.) (Entered: 06/24/2013)

06/24/2013 106 (6 pgs)

Objection to (related document(s): 98 Motion to Reconsider (related documents 95 Order Granting) stay filed by Plaintiff Andrew Bennett) Filed by Defendant The Bank of New York Mellon, as Indenture Trustee (Childs, Larry) (Entered: 06/24/2013)

06/25/2013 107

Hearing Scheduled (RE: related document(s)106 Objection filed by Defendant The Bank of New York Mellon, as Indenture Trustee) Hearing scheduled 6/27/2013 at 10:00 AM at 505 20th St N Ctrm 1 (TBB) Financial Ctr Birmingham. (klt) (Entered: 06/25/2013)

07/01/2013 108 (3 pgs; 2 docs)
Order Denying Motion To Reconsider this Courts Order Staying this Adversary Proceeding (Related Doc # 98) Signed on 7/1/2013. (klt) (Entered: 07/01/2013)

07/03/2013 109 (5 pgs)
BNC Certificate of Notice (related document(s) 108) (RE: related document(s)108 Order on Motion To Reconsider). Notice Date 07/03/2013. (Admin.) (Entered: 07/04/2013)

07/16/2013 110 (3 pgs; 2 docs)
Return Mail-Ann E. Acker (RE: related document(s) 101 Return Mail) (klt) (Entered: 07/16/2013)

07/18/2013 111 (5 pgs)
BNC Certificate of Notice (related document(s) 110) (RE: related document(s)110 Return Mail). Notice Date 07/18/2013. (Admin.) (Entered: 07/19/2013)

07/26/2013 112 (3 pgs; 2 docs)
Return Mail-Mark P. Williams (RE: related document(s) 110 Return Mail) (klt) (Entered: 07/26/2013)

07/28/2013 113 (5 pgs)
BNC Certificate of Notice (related document(s) 112) (RE: related document(s) 112 Return Mail). Notice Date 07/28/2013. (Admin.) (Entered: 07/29/2013)

08/07/2013 114 (3 pgs; 2 docs)
Return Mail-Michael Sansbury (RE: related document(s) 112 Return Mail). (klt) (Entered: 08/07/2013)

08/07/2013 115
Return Mail-Carrington Mortgage Services (RE: related document(s)108 Order on Motion To Reconsider). (klt) (Entered: 08/07/2013)

08/07/2013
Corrective Entry-entered in wrong case (RE: related document(s) 115 Return Mail). (klt) (Entered: 08/07/2013)

08/09/2013 116 (5 pgs)
BNC Certificate of Notice (related document(s)114) (RE: related document(s)114 Return Mail). Notice Date 08/09/2013. (Admin.) (Entered: 08/10/2013)

12/03/2013 117 (6 pgs)
Notice of Dismissal of Adversary Proceeding Notice of Dismissal in Accordance with Plan and Confirmation Order Filed by Defendant Jefferson County, Alabama. (Darby) (Entered: 12/03/2013)

12/09/2013 118 (24 pgs)
Notice of Appeal to district Court. Fee Amount $298 Filed by Plaintiff Andrew Bennett (RE: related document(s)48 Order Granting, 95 Order Granting, 108 Order on Motion To Reconsider). Appellant Designation due by 12/23/2013. (Grigsby, Calvin) (Entered: 12/09/2013)

12/09/2013

Receipt of Notice of Appeal(12-00120-TBB) [appeal, ntcapl] (298.00) Filing Fee. Receipt number 15992673. Fee Amount 298.00 (Re: Doc# 118) (U.S. Treasury) (Entered: 12/09/2013)

12/09/2013 119 (11 pgs; 2 docs)

Service of Notice of Appeal by Court Filed by (RE: related document(s)118 Notice of Appeal). (klt) (Entered: 12/09/2013)

12/09/2013 120 (3 pgs; 2 docs)

Notice to Parties Regarding Designations Filed by (RE: related document(s)118 Notice of Appeal). (klt) (Entered: 12/09/2013)

12/11/2013 121 (12 pgs)

BNC Certificate of Notice (RE: related document(s) 119 Service of Notice of Appeal by Court). Notice Date 12/11/2013. (Admin.) (Entered: 12/12/2013)

12/11/2013 122 (4 pgs)

BNC Certificate of Notice (RE: related document(s)120 Notice to Parties Regarding Designations). Notice Date 12/11/2013. (Admin.) (Entered: 12/12/2013)

12/14/2013 123 (42 pgs)

Statement of Issues on Appeal, (Re Item:118) Filed by Plaintiff Andrew Bennett (RE: related document(s)118 Notice of Appeal). (Grigsby, Calvin) (Entered: 12/14/2013)

12/17/2013 124 (3 pgs; 2 docs)
Return Mail-Michael T. Sansbury and Richard Carmody (RE: related document(s)119 Service of Notice of Appeal by Court, 120 Notice to Parties Regarding Designations) (klt) (Entered: 12/17/2013)

12/18/2013 125 (3 pgs; 2 docs)
Return Mail-Spotswood Sansom & Sansbury LLC (RE: related document(s)119 Service of Notice of Appeal by Court, 120 Notice to Parties Regarding Designations) (klt) (Entered: 12/18/2013)

12/19/2013 126 (4 pgs)
BNC Certificate of Notice (RE: related document(s)124 Return Mail). Notice Date 12/19/2013. (Admin.) (Entered: 12/20/2013)

12/20/2013 127 (4 pgs)
BNC Certificate of Notice (RE: related document(s) 125 Return Mail). Notice Date 12/20/2013. (Admin.) (Entered: 12/21/2013)

12/27/2013 128 (3 pgs; 2 docs)
Return Mail-Scott Davidson (RE: related document(s)119 Service of Notice of Appeal by Court, 120 Notice to Parties Regarding Designations) (klt) (Entered: 12/27/2013)

12/29/2013 129 (4 pgs)
BNC Certificate of Notice (RE: related document(s) 128 Return Mail). Notice Date 12/29/2013. (Admin.) (Entered: 12/30/2013)

12/30/2013 130 (179 pgs)
Appellee Designation of Contents for Inclusion in Record of Appeal (Re Item: 118 Notice of Appeal filed by Plaintiff Andrew Bennett) Filed by Defendant Jefferson County, Alabama (RE: related document(s)118 Notice of Appeal). (Darby) (Entered: 12/30/2013)

01/09/2014 131 (39 pgs)
Statement of Issues on Appeal, (Re Item:118) Filed by Plaintiff Andrew Bennett (RE: related document(s)118 Notice of Appeal). (Grigsby, Calvin) (Entered: 01/09/2014)

01/10/2014 132 (21 pgs)
Appellant Designation of Contents For Inclusion in Record On Appeal Filed by Plaintiff Andrew Bennett (RE: related document(s)131 Statement of Issues on Appeal). Transmission of Designation Due by 1/13/2014. (klt) (Entered: 01/10 /2014)

02/06/2014 133 (4 pgs)
Transmittal of Record on Appeal to District Court Case Number 2:14-cv-00214-SLB (RE: related document(s)118 Notice of Appeal, 131 Statement of Issues on Appeal). (klt) Modified on 2/18/2014 to correct District Court case number as to judge reassignment (klt). (Entered: 02/06/ 2014)

02/07/2014 134 (4 pgs)
Return Mail-James Spiotto (RE: related document(s)128 Return Mail) (klt) (Entered: 02/07/ 2014)

02/09/2014 135 (4 pgs)
BNC Certificate of Notice (RE: related document(s) 134 Return Mail). Notice Date 02/09/2014. (Admin.) (Entered: 02/10/2014)

02/10/2015 136 (5 pgs)
Motion to Withdraw as Attorney Motion to Withdraw Filed by Defendant Jefferson County, Alabama (Henderson, Jennifer) (Entered: 02/10/2015)

02/11/2015 137 (3 pgs; 2 docs)
Order Granting Motion To Withdraw As Attorney for Jefferson County, Alabama, filed by Jennifer H. Henderson (Related Doc # 136) Signed on 2/11/2015. (klt) (Entered: 02/11/2015)

02/13/2015 138 (4 pgs)
BNC Certificate of Notice (RE: related document(s) 137 Order on Motion to Withdraw as Attorney). Notice Date 02/13/2015. (Admin.) (Entered: 02/14/2015)

02/25/2015 139 (3 pgs; 2 docs)
Return Mail-Mark P. Williams, Norman, Wood, Kendrick and Turner and Scott Davidson (RE: related document(s)137 Order on Motion to Withdraw as Attorney) (klt) (Entered: 02/25/2015)

02/27/2015 140 (4 pgs)
BNC Certificate of Notice (RE: related document(s)139 Return Mail). Notice Date 02/27/2015. (Admin.) (Entered: 02/28/2015)

07/01/2015 141

The foregoing case is reassigned and transferred from Judge Thomas B Bennett to Judge Clifton R. Jessup, Jr. based on order entered in main case number 11-05736 (thc) (Entered: 07/01/2015)