

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

In re:)	
)	
JEFFERSON COUNTY, ALABAMA,)	Case No. 11-05736-TBB9
a political subdivision of the State of)	
Alabama,)	Chapter 9 Proceeding
)	
Debtor.)	

NOTICE PURSUANT TO BANKRUPTCY RULE 6006: PARTIES RECEIVING THIS
OMNIBUS MOTION SHOULD LOCATE THEIR NAME AND EXECUTORY
CONTRACT AND/OR UNEXPIRED LEASE LISTED ON EXHIBIT A HERETO

**DEBTOR’S FIRST OMNIBUS MOTION TO REJECT
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES
PURSUANT TO 11 U.S.C. §§ 365 AND 901(a) AND BANKRUPTCY RULE 6006**

Jefferson County, Alabama, the debtor in the above-referenced case (the “County”),
moves the Court to approve the rejection of each of the unexpired leases described on Exhibit A
(collectively, the “Agreements”) pursuant to 11 U.S.C. §§ 365 and 901(a) and Rule 6006 of the
Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), as follows:

BACKGROUND

A. Procedural Posture.

1. On November 9, 2011 (the “Filing Date”), the County filed a voluntary petition
for relief under chapter 9 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the
“Bankruptcy Code”).

2. The County is a political subdivision of the State of Alabama.

3. No official committee of unsecured creditors has been appointed in the County’s
chapter 9 case.



B. County's Background.

4. On the Filing Date, the County filed its Memorandum in Support of Eligibility [Docket No. 10] (the "Memorandum"). The Memorandum contains a thorough description of the County, its debt structure and the events leading up to the commencement of the County's chapter 9 case.

SUMMARY OF RELIEF REQUESTED

5. The County seeks authority to reject the Agreements, effective as of the date of this Motion pursuant to Section 365, which is made applicable by Section 901(a) of the Bankruptcy Code. In the County's business judgment, rejection of the Agreements is in the best interests of the County.

JURISDICTION AND NOTICE

6. The County brings its motion (the "Motion") pursuant to Sections 365 and 901(a) of the Bankruptcy Code and Bankruptcy Rule 6006.

7. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334(b). The Motion is a core proceeding under 28 U.S.C. § 157(b)(2).

8. The County will serve a copy of this Motion on all parties on the Master Service List, as that term is defined in the Court's Order Establishing Notice, Service, and Case Management Procedures Pursuant to 11 U.S.C. §§ 102(1)(A) and 105(a) and Bankruptcy Rule 2002(m) [Docket No. 89], and all counterparties to the Agreements. The Motion shall be served by electronic mail or, where an electronic mail address is not known or available, by facsimile or, where a facsimile number is not known or available, by overnight delivery.

BUSINESS JUSTIFICATION FOR REJECTION OF THE AGREEMENTS

9. Section 365(a) of the Bankruptcy Code, as made applicable by Section 901(a) of the Bankruptcy Code, provides that a debtor may assume or reject an executory contract or unexpired lease, subject to the bankruptcy court's approval.

10. Courts review a debtor's decision to assume or reject an executory contract or unexpired lease under the "business judgment" test. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993); *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 42 (2d Cir. 1979). Applying the business judgment standard, courts generally defer to a debtor's decision to reject a contract if the debtor determines that, in the debtor's business judgment, the contract is burdensome and that rejection likely will benefit the debtor. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989); *In re III Enters., Inc.*, 163 B.R. 453, 469 (Bankr. E.D. Pa. 1994); *In re H.M. Bowness, Inc.*, 89 B.R. 238, 241 (Bankr. M.D. Fla. 1988). The Court should accept a debtor's decision to reject an executory contract "except upon a finding of bad faith or gross abuse of [the County's] business discretion." *Lubrizol Enters. Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.)*, 756 F.2d 1043, 1047 (4th Cir. 1985).

11. At various times prior to the Filing Date, the County maintained satellite courthouses at locations on Main Street in Gardendale, on Forestdale Boulevard in Birmingham and on Green Springs Highway in Homewood (collectively, the "Satellite Courthouses"). The County does not own the Satellite Courthouses. Rather, the County leases premises for the Satellite Courthouses pursuant to the Agreements.

12. The Satellite Courthouses are for the convenience of the citizens of the County and are not mandated by Alabama law. Due to the County's loss of revenues from the

invalidation of the County's occupational tax, the County drastically reduced expenditures in the fiscal year 2011 Budget and fiscal year 2012 Budget, in accordance with the balanced budget requirement of Alabama law. Absent action by the Alabama legislature to replace lost revenue, further reductions will be necessary. As part of the County's reductions in expenditures, the County closed the Satellite Courthouses before the Filing Date. The County does not currently operate the Satellite Courthouses.

13. In light of the budgetary constraints facing the County and the lack of any value in the Agreements, rejecting the Agreements is a reasonable and appropriate measure.

14. Moreover, damage claims arising from the County's rejection of the Agreements, if any, shall be capped pursuant to Section 502(b)(6) of the Bankruptcy Code. The County reserves all rights, claims and defenses.

15. In the exercise of its business judgment, the County has determined the Agreements are burdensome to the County and that rejection of the Agreements will benefit the County. The County therefore seeks approval to reject the Agreements, effective as of the date of this Motion.

16. The County reserves the right to seek to reject by subsequent motion executory contracts and unexpired leases other than the Agreements.

CONCLUSION

17. Based on the foregoing, the rejection of the Agreements under Sections 365(a) and 901(a) of the Bankruptcy Code is a sound exercise of business judgment and is in the best interest of the County and its creditors. Accordingly, the County respectfully submits that the Court should approve the rejection of the Agreements under Sections 365(a) and 901(a) of the Bankruptcy Code.

18. The County files this Motion without prejudice to or waiver of its rights pursuant to Section 904 of the Bankruptcy Code, and nothing herein is intended as or shall be deemed to constitute the County's consent pursuant Section 904 of the Bankruptcy Code to this Court's interference with (a) any of the political or governmental powers of the County, (b) any of the property or revenues of the County, or (c) the County's use or enjoyment of any income-producing property.

WHEREFORE, PREMISES CONSIDERED, the County respectfully requests the Court, pursuant to Section 365(a) and 901(a) of the Bankruptcy Code and Bankruptcy Rule 6006 to enter an order in substantially the same form of the proposed order attached hereto:

- A. Authorizing the rejection of the Agreements and deeming the Agreements rejected effective as of the date of the filing of the Motion; and
- B. Providing such other, further or different relief as may be just and proper.

Respectfully submitted this the 30th day of November, 2011.

By: /s/ Patrick Darby
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**ATTORNEYS FOR JEFFERSON COUNTY,
ALABAMA**

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2011, a copy of the foregoing was served upon all parties identified on the attached service list by the means specified therein.

/s/ Patrick Darby
OF COUNSEL

MASTER SERVICE LIST

VIA E-MAIL:

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JPMorgan Chase Bank Attn: Michael Mak 60 Wall Street New York, NY 10260	Internal Revenue Service Centralized Insolvency Operation 600 Arch Street Philadelphia, PA 19106
The Depository Trust Company, on behalf of the holders of the Jefferson County, Alabama, General Obligation Capital Improvement Warrants, Series 2003-A and 2004-A 55 Water Street New York, NY 10041	Bayerische Landesbank 560 Lexington Avenue 18 th Floor New York, NY 10022 Attn: Francis X. Doyle Second Vice President
Shoe Station, Inc. Attn: Michael T. Cronin, Esq. Johnson Pope Bokor Ruppel & Burns, LLP 911 Chestnut Street Clearwater, FL 33576	National Public Finance Guarantee Corp. (f/k/a MBIA Insurance Corp.), as insurer of the General Obligation Capital Improvement and Refunding Warrants, 2003-A and Series 2004-A Attn: Daniel McManus, General Counsel 113 King Street Armonk, NY 10504

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<p>AMCAD 15867 North Mountain Road Broadway, VA 22815</p>	<p>Laboratory Corporation of America 430 South Spring Street Burlington, NC 27215 Attention: Legal Department</p>
<p>John Plott Company Inc. 2804 Rice Mine Road NE Tuscaloosa, AL 35406</p>	<p>John A. Vos Esq., Interested Party c/o John A. Vos, Esq. 1430 Lincoln Avenue San Rafael, CA 94901</p>
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COUNTERPARTIES TO THE AGREEMENTS

VIA U.S. MAIL:

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Beers Properties, LLC c/o Greg Beers Suite 400 2100 Data Park Drive Birmingham, Alabama 35244	

EXHIBIT A

Agreements

Name and Mailing Address of Counterparty to Lease	Description of Lease
B.A.S.L.L.P. c/o All South Properties, Inc. Suite 100 200 Citation Court Birmingham, Alabama 35209	Lease Agreement dated June 20, 1999, by and between B.A.S.L.L.P., as landlord, and Jefferson County, Alabama (License Division), as tenant.
BBA Developments, LLC P.O. Box 1537 Gardendale, Alabama 35071	Lease Agreement dated August 31, 2005, by and between BBA Developments, LLC, as landlord, and Jefferson County Commission, as tenant.
Beers Properties, LLC c/o Greg Beers Suite 400 2100 Data Park Drive Birmingham, Alabama 35244	Amended and Restated Lease Agreement for the Entire Building, undated, but with an effective date of September 1, 2006, by and between Beers Properties, LLC, as landlord, and Jefferson County, Alabama (General Services Division), as tenant.

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

In re:)	
)	
JEFFERSON COUNTY, ALABAMA,)	Case No. 11-05736-TBB9
a political subdivision of the State of)	
Alabama,)	Chapter 9 Proceeding
)	
Debtor.)	

**ORDER APPROVING FIRST OMNIBUS MOTION TO REJECT CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT
TO 11 U.S.C. §§ 365(a) AND 901(a) AND BANKRUPTCY RULE 6006**

THIS MATTER came before the Court on the First Omnibus Motion to Reject Certain Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. §§ 365 and 901(a) (the “Motion”)¹ filed by Jefferson County, Alabama (the “County”). Based on the pleadings of record, the arguments and representations of counsel, all other matters brought before the Court, and for good cause shown, the Court finds, determines and concludes that notice of the relief requested in the Motion was good and sufficient under the particular circumstances; the relief sought in the Motion is in the best interests of the County, its creditors, and all parties in interest; the legal and factual grounds set forth in the Motion establish just cause for the relief granted herein; and the Motion is due to be **GRANTED**.

WHEREFORE, based upon the foregoing findings of fact and conclusions of law, it is hereby

ORDERED, ADJUDGED and DECREED that, pursuant to Sections 365(a) and 901(a) of the Bankruptcy Code, the unexpired leases described on Exhibit A (collectively, the

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Motion.

“Agreements”) are hereby rejected by the County effective as of the date of the filing of the Motion; and

ORDERED, ADJUDGED and DECREED that this Order is without prejudice to the rights of the County pursuant to Section 904 of the Bankruptcy Code, and nothing herein is intended as or shall be deemed to constitute the County’s consent pursuant to Section 904 of the Bankruptcy Code to this Court’s interference with (1) any of the political or governmental powers of the County, (2) any of the property or revenues of the County, or (3) the County’s use or enjoyment of any income-producing property.

DONE AND ORDERED this the _____ day of _____, 2011.

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Agreements

Name and Mailing Address of Counterparty to Lease	Description of Lease
B.A.S.L.L.P. c/o All South Properties, Inc. Suite 100 200 Citation Court Birmingham, Alabama 35209	Lease Agreement dated June 20, 1999, by and between B.A.S.L.L.P., as landlord, and Jefferson County, Alabama (License Division), as tenant.
BBA Developments, LLC P.O. Box 1537 Gardendale, Alabama 35071	Lease Agreement dated August 31, 2005, by and between BBA Developments, LLC, as landlord, and Jefferson County Commission, as tenant.
Beers Properties, LLC c/o Greg Beers Suite 400 2100 Data Park Drive Birmingham, Alabama 35244	Amended and Restated Lease Agreement for the Entire Building, undated, but with an effective date of September 1, 2006, by and between Beers Properties, LLC, as landlord, and Jefferson County, Alabama (General Services Division), as tenant.