

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

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

**OMNIBUS REPLY IN FURTHER SUPPORT OF THE COUNTY’S  
MOTION FOR ENTRY OF ORDER, PURSUANT TO SECTIONS  
105(a), 901(a), AND 1125(b) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULES 2002, 3017, AND 9007, APPROVING (A) THE  
PROPOSED DISCLOSURE STATEMENT AND (B) THE FORM AND MANNER  
OF THE NOTICE OF THE PROPOSED DISCLOSURE STATEMENT HEARING**

Jefferson County, Alabama (the “County”) files this omnibus reply (1) in further support of the County’s *Motion for Entry of Order, Pursuant to Sections 105(a), 901(a), and 1125(b) of the Bankruptcy Code and Bankruptcy Rules 2002, 3017, and 9007, Approving (A) the Proposed Disclosure Statement and (B) the Form and Manner of the Notice of the Proposed Disclosure Statement Hearing* [Docket No. 1818] (the “Disclosure Statement Motion”<sup>1</sup>), which Disclosure Statement Motion, among other things, seeks approval of the proposed *Disclosure Statement Regarding Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated June 30, 2013)*, as subsequently revised on July 29, 2013 [Docket No. 1912] (as it may be further amended, supplemented, or modified from time to time by the County, the “Disclosure Statement”); and (2) in response to the following objections to the Disclosure Statement:

- The letter objection filed by Carl A. Tonitis on July 18, 2013 [Docket No. 1895] (the “Tonitis Objection”);

<sup>1</sup> Capitalized terms used but not otherwise defined in this omnibus reply have the meanings ascribed to such terms by the Disclosure Statement Motion or by the Plan, as applicable.



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- The objection jointly filed by the Water Works Board of the City of Birmingham (“Waterworks Board”) and the City of Bessemer, Alabama (“City”) on July 29, 2013, and supplemented on August 1, 2013 [Docket Nos. 1916 & 1927] (the “Waterworks Board/City Objection”);
- The objection filed by the self-styled “Ratepayer/Creditors” on July 30, 2013 [Docket No. 1921] (the “Ratepayer/Creditors Objection”)<sup>2</sup>; and
- The objection filed by Charles Wilson and certain purportedly similar ratepayers (the “Wilson Ratepayers”) on August 1, 2013 [Docket No. 1929] (the “Wilson Objection”).

## INTRODUCTION

1. The disclosure required under Bankruptcy Code section 1125 is for creditors entitled to vote on a plan. The objectors to the Disclosure Statement include an individual sewer ratepayer,<sup>3</sup> lawyers for two uncertified classes of ratepayers who assert disputed claims that are

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<sup>2</sup> The Ratepayer/Creditors also filed a separate objection to confirmation of the Plan. See Docket No. 1920. Although the Wilson Ratepayers did not file a confirmation objection, many of the issues raised in the Wilson Objection (e.g., feasibility under section 943(b)(7)) are also confirmation issues. The Ratepayer/Creditors and the Wilson Ratepayers advance no argument – and none could be made – that the Plan is inherently and necessarily unconfirmable as a matter of law, and instead assert myriad objections that are largely based on the application of law to disputed facts. The County believes these confirmation objections are based on faulty legal premises, are without factual support, and should be overruled in all respects. The County reserves all its rights to respond to the Ratepayer/Creditors’ and Wilson Ratepayers’ flawed theories and misplaced objections at the appropriate juncture. That juncture is not now, however, since the only issue before the Court is the adequacy of information in the Disclosure Statement, and issues regarding plan confirmation will not be ripe for consideration until November 2013. See, e.g., *In re Am. Capital Equip., LLC*, 688 F.3d 145, 153-54 (3d Cir. 2012) (“Ordinarily, confirmation issues are reserved for the confirmation hearing, and not addressed at the disclosure statement stage.” (citation omitted)); *In re Quigley Co.*, 377 B.R. 110, 119 (Bankr. S.D.N.Y. 2007) (noting that various concerns were “confirmation issues that require an evidentiary hearing,” and thus failed to provide a reason for the court not to approve a disclosure statement); *In re United States Brass Corp.*, 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996) (explaining why courts should proceed “carefully so as not to convert the disclosure statement hearing into a confirmation hearing”); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 172 (Bankr. S.D. Ohio 1988) (“If the creditors oppose their treatment in the plan, but the Disclosure Statement contains adequate information, issues respecting the plan’s confirmability will await the hearing on confirmation.”); *In re Featherworks Corp.*, 45 B.R. 455, 457 (Bankr. E.D.N.Y. 1984) (“[I]t is too early before the hearing on confirmation to conclude that the present plan cannot be confirmed. That determination must await examination of the evidence offered at the hearing on confirmation.”).

<sup>3</sup> Objector Carl A. Tonitis filed an unliquidated claim alleging “within last 6 months County reduced its term insurance benefit by 50% for all employees.” See Proof of Claim No. 59. To the extent this claim presents any valid right of payment against the County (which reserves all rights, claims, and defenses), it will be treated as an unimpaired Employee Compensation Claim as part of the Other Unimpaired Claims in Class 8 of the Plan.

highly convoluted and seek relief that is duplicative of that obtained by the County in the Plan, and local utilities with no claims against the County. None of the objectors are creditors entitled to vote on the Plan, and in any event, none of them raise valid disclosure objections.

2. The County has a large group of creditors with disparate, often conflicting interests. The Court's record is well-developed on the complexity and scale of the County's financial problems when it filed bankruptcy. Disclosure statements for plans of much lesser scope and depth commonly elicit dozens of objections. The fact that no legitimate creditor has objected to the Disclosure Statement demonstrates the merits of the County's Plan (which is not before the Court at this time) and the fact that the Plan embodies settlements and compromises with essentially all of the County's main creditor groups. It also demonstrates that the Disclosure Statement provides sufficient information to the creditors actually entitled to vote on the Plan.

3. Each of the objections relates to the County's refinancing of its sewer debt. Yet, as this Court has noted on several occasions, the County's bankruptcy case is about more than the Sewer System. After the invalidation of the County's occupational tax, and the refusal by the Alabama Legislature to provide any sort of replacement revenue to the General Fund, the current County Commission inherited a fiscal crisis on multiple levels. As described in the Disclosure Statement (and litigated before this Court), the County has balanced its budget by cutting over \$30 million from General Fund expenditures. The County Commission hired the County's first County Manager and fully implemented the law creating the County Manager office. Replacing the dysfunction of prior County governments, the current County Commission, County Manager, and County staff have reduced the County work force, closed satellite courthouses, reduced expenses in essentially every department in the County, and drastically cut services, including in-

patient services at Cooper Green Mercy Hospital. County employees have shouldered the burden of discharging the full range of essential County services with decimated staffs.

4. Although few of these actions were popular (and none were easy), with no legislation forthcoming to replace lost General Fund revenues, the County was left on its own to reinvent the government to live within its means. A glance at any newspaper confirms that structural financial problems are not unique to the government of Jefferson County, Alabama. However, the tendency of governments to evade tough fiscal decisions has ended here. By making these hard decisions, the County has fulfilled a basic purpose of debt adjustment under chapter 9 by reducing expenses to match revenues.

5. In addition to cutting operating expenses to meet revenues, the County has reached agreement with a binding majority of the holders of all of its long-term non-sewer debt. These settlements are described in the Disclosure Statement. Without limitation, the Plan provides for the consensual adjustment of the GO Warrants, the School Warrants, the Bessemer Lease Warrants (pertaining to the Bessemer Courthouse), the Board of Education Warrants, and the Multi-Family Warrants. If confirmed, the Plan restructures over \$1.0 billion of non-sewer debt to stretch payments out to fit future revenues, converts risky variable rate debt into fixed rate debt, and implements other concessions that will save the County tens of millions of dollars in lower interest payments and other costs. The County now has a viable financial plan to pay these debts in full.

6. Through the successful prosecution of several appeals before the Alabama Supreme Court, the County has resolved all litigation regarding the occupational tax, which the current County Commission inherited from prior commissions. Without limitation, the County has eliminated a claim against the County arising out of the 2009 occupational tax of over \$100

million. The County also resolved appeals from the original occupational tax litigation that resulted in the County recovering over \$18 million in cash for the General Fund.

7. These settlements represent a remarkably successful use of bankruptcy law and procedure to accomplish the fundamental purposes of chapter 9. No party has raised (or legitimately can raise) any argument or dispute with respect to the adjustments of non-sewer debt proposed in the Plan.

8. The controversy over the County's Plan focuses on the sewer debt because customers, citizens, politicians, the press, and other non-creditor parties who assert an interest, are concerned about the level of sewer rates. The County also is concerned about the level of sewer rates and, consistent with its constitutional obligation to keep rates "reasonable and nondiscriminatory," has litigated and negotiated with the holders of Sewer Debt Claims to reach an Approved Rate Structure. The single best thing the County can do to keep sewer rates low is to reduce the amount of debt carried by the Sewer System. The Plan provides for a reduction of over \$1.2 billion of the Adjusted Sewer Warrant Principal Amount. In addition, the Plan reduces to zero over \$784 million in termination payments due under swaps related to the sewer debt. Further, the Plan ends longstanding and costly litigation before this Court, the Eleventh Circuit Court of Appeals, two Alabama state courts, and two New York state courts between the County and various of its sewer creditors or representatives.

9. As consideration for the elimination of some *two billion dollars* of Sewer Debt Claims, the County has agreed to compromise the Sewer Released Claims arising from fraud and corruption that attended the financing and construction of the Sewer System. In addition, the County has collected over \$75 million in cash from financial institutions that dealt unfairly with the County. The Plan provides for the refinancing of the sewer debt with these concessions. If

successful, the County's proposed refinancing will fix the sewer debt at approximately \$1.835 billion, a reduction of approximately 48% (including amounts due under swaps).

10. A legitimate concern of the public is that sewer rates not pay for fraudulent or criminal conduct. Future sewer rates will not go to pay the parties that dealt unfairly with the County before bankruptcy. Rather, future debt payments will be paid to new creditors that buy new warrants from the County to retire the old debt at a large discount. Moreover, sewer rates pay for more than debt. If the sewer debt is fixed at \$1.835 billion under the Plan, only a portion of every dollar paid by a ratepayer will repay debt. The rest will fund the operation and maintenance of the Sewer System. As a result of new environmental requirements imposed by the federal government, the cost of improving the Sewer System will increase substantially starting in 2019. These environmental obligations arise under the Clean Water Act and will be borne by utilities and ratepayers all over the country. They have nothing to do with past fraud or corruption related to the County's Sewer System.

11. Refinancing the sewer debt pursuant to the Plan is a better settlement for the County and ratepayers than any proposal advanced before bankruptcy. The prior commission tried to reach various agreements to pay the sewer debt in full by using the proceeds of the educational sales tax or new property taxes. The current County Commission engaged in extensive pre-bankruptcy negotiations regarding a potential settlement with the Receiver and sewer creditors. Even if these negotiations had reached a stage where the necessary creditors agreed to be bound, the proposals depended on the passage of new laws by the Alabama Legislature to raise or extend taxes and to authorize other deal points, but this key legislation was not forthcoming and may never have been passed. These proposals also would have involved significantly fewer concessions from the sewer creditors and necessitated larger rate increases

than those contemplated by the Plan. Put simply, the compromises and settlements to be effected under the Plan are materially better than any alternative settlement considered by the County.

12. In addition to reducing the principal to be refinanced by several hundred million dollars, the Plan is not dependent on any new laws, or any new legislation or support from the State of Alabama. Moreover, a binding majority of sewer creditors has committed to vote in favor of the Plan. For the first time since 2008, a realistic, reasonable, and viable financial plan for the Sewer System is in prospect. In contrast, if the Plan is not confirmed and the County loses the protection of chapter 9, the Receiver has promised to raise rates immediately, and repeatedly, by over 25% per year. In addition to trying to repay the existing debt in full, with no concessions from the sewer creditors, the Receiver would have to pay for the same environmental improvements that the County has dealt with in its financing plan. In the course of formulating its financing plan, the County has learned that future capital needs are higher than those assumed by the Receiver in his projections. Accordingly, the threat of alternative sewer rates if the Receiver returns, although uncertain, is certainly greater than it was pre-bankruptcy.

13. These matters and a wealth of other information are discussed in the Disclosure Statement. For the reasons set forth in the Disclosure Statement Motion, the Disclosure Statement meets the standards of Bankruptcy Code section 1125 and is due to be approved. The objections to the Disclosure Statement are due to be overruled in their entirety.

### **RESPONSES TO SPECIFIC OBJECTIONS**

14. The objecting parties largely overlook the bedrock principle that the sole purpose of a disclosure statement is to provide “adequate information” to the holders of claims in impaired classes entitled to vote on a bankruptcy plan. *See* 11 U.S.C. § 1125(b). “The court’s primary concern in the adequacy stage is not whether a plan is feasible or in the best interests of

creditors – it is simply whether creditors have been provided with sufficient information to make an informed decision as to whether they should accept or reject the [Plan].” *In re Keisler*, 2009 Bankr. LEXIS 1814, at \*12 (Bankr. E.D. Tenn. June 29, 2009). The County has detailed why its over 200-page (excluding exhibits), single-spaced Disclosure Statement contains all the elements typically required in a disclosure statement, *see* Disclosure Statement Motion ¶¶ 9-11, and none of the objecting parties challenges (or even addresses) the County’s analysis. Instead, the objecting parties raise irrelevant or misplaced points, which are addressed in turn below.

**A. Tonitis Objection**

15. The Tonitis Objection is a *pro se* letter that categorically objects to any increase of sewer rates and suggests that the County or the Court should seek a “review of accountability” of the State of Alabama as “the controlling party” of the County.

16. The Tonitis Objection does not raise any specific objections to any part of the Disclosure Statement, nor does the Tonitis Objection suggest that the Disclosure Statement should not be approved. As such, to the extent that the Tonitis Objection could be deemed an objection to approval of the Disclosure Statement, it should be overruled.

**B. Waterworks Board/City Objection**

17. The Waterworks Board/City Objection is jointly filed by two parties that process sewer bills for the County, both of which demand a litany of detail regarding the terms of the New Sewer Warrants that will be issued in connection with the Plan and related financing. Whatever skepticism the Waterworks Board or the City may have about the County’s anticipated financing transaction is not germane to whether the Disclosure Statement should be approved under Bankruptcy Code section 1125, and the Waterworks Board/City Objection should be overruled in its entirety.



18. *First*, neither the Waterworks Board nor the City holds any Impaired Claims that will be permitted to vote on the Plan. Accordingly, the information demanded by the Waterworks Board/City Objection cannot be for the purpose of helping *either of them* evaluate whether to accept or reject the Plan. Nor is such information for the benefit of the holders of Sewer Debt Claims or other Claims in classes with a treatment that is potentially affected by whether the County can issue the New Sewer Warrants since none of these Creditors have objected to the adequacy of the Disclosure Statement.<sup>4</sup> Because nothing about the Waterworks Board/City Objection will affect the actions of Creditors entitled to vote on the Plan, the Waterworks Board and the City lack standing to pursue their objections and should not be permitted to arbitrarily attempt to impede approval of the Disclosure Statement.<sup>5</sup> After all, “[t]o have standing to invoke a statute you must be one of the persons whom the statute is intended to protect.” *In re James Wilson Assocs.*, 965 F.2d 160, 168 (7th Cir. 1992). Bankruptcy Code section 1125(b) is not intended to protect any interest that the Waterworks Board or the City might have in this bankruptcy case, and thus neither of them should be heard to complain about the adequacy of the Disclosure Statement.

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<sup>4</sup> The Disclosure Statement specifically advises the holders of such Claims that there are risks associated with the County’s ability to issue the New Sewer Warrants. *See, e.g.*, Disclosure Statement § XI.A.5 (“Among these conditions to the Effective Date of the Plan is the successful marketing and sale of the New Sewer Warrants and the generation of sufficient Refinancing Proceeds therefrom to enable the County to fulfill its obligations under the Plan. The ability to market the New Sewer Warrants successfully will depend upon market conditions and other factors that are not within the County’s control, including the interest rates prevailing in the market at the time the New Sewer Warrants are offered, which interest rates may be higher than the interest rates that are assumed to be prevailing in the Amended Financing Plan.”).

<sup>5</sup> *See, e.g., In re Snyder*, 56 B.R. 1007, 1010-11 (N.D. Ind. 1986) (noting that creditors should “have no concern over the adequacy of a statement that does not apply to them” and concluding that party lacked standing to object to approval of a “disclosure statement on the grounds that the statement inadequately informs classes of creditors of which [the objecting party] is not a part”); *In re Middle Plantation of Williamsburg, Inc.*, 47 B.R. 884, 891 (E.D. Va. 1984) (“Holders of impaired claims who have been induced to vote in favor of a plan are the only ones who may raise the issue of the adequacy of the Disclosure Statements.”); *In re Adana Mortg. Bankers, Inc.*, 14 B.R. 29, 30 (Bankr. N.D. Ga. 1981) (explaining that impaired creditors “have standing to object to the Disclosure Statement only as to their Class and may not object to the adequacy of the Disclosure Statement as it may affect another class of creditors who have received a notice and who have filed no objection or made any appearance”).

19. *Second*, the Waterworks Board and the City have confused and conflated (a) the disclosure statement required under the Bankruptcy Code, with (b) the separate offering documents associated with the County's issuance of the New Sewer Warrants. Nowhere is this confusion more evident than in their comparisons between the Disclosure Statement and the lengthy *Official Statement of Louisville and Jefferson County Metropolitan Sewer District Sewer and Drainage System Revenue Bonds, Series 2013* attached to the Waterworks Board/City Objection. That "official statement" was for purposes of giving the investing public information to decide whether to purchase the proposed debt securities described in that document. But the Disclosure Statement is not and need not be an official statement or other disclosure document for the issuance of the New Sewer Warrants. The Bankruptcy Code is clear that the adequacy of a disclosure statement "is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation" that might pertain to an official statement. 11 U.S.C. § 1125(d); *see also, e.g., Pub. Serv. Co. of N.H. v. Consol. Utils. & Commc'ns, Inc.*, 846 F. 2d 803, 808 (1st Cir. 1988) ("Congress clearly intended for the bankruptcy rules to displace the proxy rules, at least with respect to solicitations concerning plans of reorganization."); *In re A. C. Williams Co.*, 25 B.R. 173, 176 (Bankr. N.D. Ohio 1982) ("[T]he fact that this disclosure statement may not meet the requirements for a prospectus under state or federal securities law is irrelevant."). Indeed, the New Sewer Warrants will be issued *to the public*, not to existing Creditors.<sup>6</sup> The existing holders of Sewer Debt Claims entitled to vote on the Plan will be satisfied by being cashed out at Plan effectiveness, at a discount, under the Plan, and the Disclosure Statement offers a hypothetical investor typical of the holders of *those* Claims (*see* 11 U.S.C. § 1125(a)(1)-(2)) receiving such treatment more than sufficient information – indeed, not a single holder of Sewer Warrants has

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<sup>6</sup> One potential exception relates to the possible exercise by the County of the put under the Put Agreement, pursuant to which the Supporting Sewer Warrantholders party thereto will undertake to receive New Sewer Warrants in lieu of certain cash distributions under the Plan, subject to the conditions set forth therein.

objected to the Disclosure Statement – to make an informed judgment about the Plan. The Disclosure Statement leaves no doubt that the successful issuance of the New Sewer Warrants is a condition to the Effective Date and describes the risk that this might not occur. *See* note 4 *supra*.

20. By contrast, the issuance of the New Sewer Warrants to the public will be accompanied by a standard official statement and accompanying municipal advisory feasibility study, which the County and its advisors are currently in the process of preparing and which will include some of the information that the Waterworks Board/City Objection contends is “missing” from the Disclosure Statement. The offering documents for the New Sewer Warrants serve a very different function from the Disclosure Statement. The former documents will assist potential purchasers in deciding whether to buy the New Sewer Warrants. The New Sewer Warrants will be repaid over a long horizon, and hence the decision to buy those warrants will depend on a variety of information that has no bearing on the decision to be made by Creditors whether to accept or reject the Plan.

21. *Third*, the Waterworks Board and the City have not articulated any reason why the County’s financing of the Sewer System is any of their business. Apart from political motivations that should find no purchase before this Court, the only conceivable interest the Waterworks Board and the City have in the County’s financing plan is cross-elasticity. That is, higher sewer rates make higher water rates more difficult for users to accept. The corollary to this objection, of course, is that higher water rates also make higher sewer rates more difficult for users to accept. Through its financing plan, the County is forced to deal with higher water charges by the Waterworks Board and the City. The fact that the County’s Sewer System is inextricably linked to the water that the Waterworks Board and the City sell offers no legitimate

objection to the Disclosure Statement, or to the substance of the County’s financing plan. Whatever ulterior or political motives drove the decision of the Waterworks Board and the City to launch their preemptive attack against the County’s efforts to sell the New Sewer Warrants – and to falsely characterize the County’s financing plan as “risky”<sup>7</sup> – the Waterworks Board and the City have not presented a valid basis to contest the adequacy of the Disclosure Statement.

**C. Ratepayer/Creditors Objection<sup>8</sup>**

22. The Ratepayer/Creditors Objection largely rests on (a) premature confirmation objections, *see* note 2 *supra*; and (b) the assumed standing to assert and the assumed validity of asserted Claims totaling \$1.63 billion, which Claims are now subject to a pending objection, *see* Docket No. 1945. The arguments the Ratepayer/Creditors Objection raises about the Disclosure Statement itself fall short of the mark in several respects.

23. *First*, the Ratepayer/Creditors Objection contends that “[t]he Disclosure Statement does not notify creditors that for the Plan to be confirmed, a necessary finding by the Court will be that the Plan has been proposed in good faith and not by any means forbidden by

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<sup>7</sup> The Waterworks Board’s characterizations of the County’s financing plan are belied by the Waterworks Board’s public disclosure of its own capital structure. The Waterworks Board has imposed a series of material water rate increases on its users, including increases of 13.2% in 2009, 14.27% in 2005 (consisting of a 7.3% increase in January followed by a 6.5% increase in June), 26.60% in 2002, and increases of up to 9.90% every other year since 2002. The Waterworks Board also has multiple levels of monthly charges, including a base charge of \$19.80 that exceeds the sewer base charge contemplated by the County’s financing plan. Further, the Waterworks Board has published anticipated rate increases through 2018, which, if adopted, will result in cumulative total rate increases since 1992 of approximately 400%, aggregate increases comparable to those of the Sewer System over the same period. Despite these significant rate increases and other charges, the Waterworks Board still has unmet or unfunded capital needs and has not projected how it plans to meet future needs. The County’s financing plan, by contrast, fully funds anticipated capital expenditures for the next ten years (including an expected spike in such expenditures starting in 2019 relating to stricter limitations on phosphorus present in treated wastewater), and devotes tens of millions of dollars of additional funding for such purposes in later years.

<sup>8</sup> Early in the morning of August 5, 2013, the Ratepayer/Creditors purported to file a further objection to the Disclosure Statement, along with various exhibits filed as separate docket entries. *See* Docket Nos. 1958-1961. This purported objection is untimely, procedurally improper, and should be stricken from the record. *See Amended Scheduling Order* [Docket No. 1918] (setting deadline of August 1, 2013 for objections based on revised version of Disclosure Statement filed on July 29, 2013); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992) (“Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality.”). In any event, the arguments raised in the untimely objection appear largely repetitive of the arguments raised in the initial objection and provide no cognizable reason to delay approval of the Disclosure Statement.

law or compromises on illegality.” Obj. p. 5. This is simply false. The Disclosure Statement includes a discussion of the need for the Court to find that the Plan complies with all applicable provisions of the Bankruptcy Code, including section 1129(a)(3) (as made applicable by section 901(a)). *See* Disclosure Statement § XIV.D.

24. *Second*, the Ratepayer/Creditors Objection asserts that the “proposed Plan compromise does not go far enough and should be better,” suggesting some “Alternative Financing Plan” could be a superior alternative. Obj. p. 5. Whether the comprehensive settlements and compromises proposed by the Plan meet the standards for approval as fair and equitable is a confirmation issue,<sup>9</sup> and there is no need for the Disclosure Statement to speculate about the compromise value of hypothetical claims raised by the Ratepayer/Creditors that the County believes lack merit.<sup>10</sup> The Ratepayer/Creditors’ “Alternative Financing Plan” is a transparent effort to encroach on the County’s plan exclusivity under Bankruptcy Code section 941, and the Bankruptcy Code is clear that “adequate information need not include such information about any other possible or proposed plan.” *See* 11 U.S.C. § 1125(a)(1). The financing plan and settlements that are relevant are those associated with the Plan and described in the Disclosure Statement, not some theoretical competing plan that could never be filed, and the Ratepayer/Creditors are free to press their objections to confirmation of the Plan through their already-filed confirmation objection.

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<sup>9</sup> *See, e.g., In re Wash. Mut., Inc.*, 442 B.R. 314, 325-45 (Bankr. D. Del. 2011) (evaluating reasonableness of plan-based global settlement after receiving evidence and argument regarding the settlement at confirmation hearing). The Disclosure Statement includes a discussion of the legal standards that must be met in order for the compromises and settlements contained in the Plan to be approved as fair and equitable, as well as an evaluation of why the County believes those standards will be met. *See* Disclosure Statement § V.A.3 (citing numerous authorities).

<sup>10</sup> *See, e.g., Colo. Mountain Express, Inc. v. Aspen Limousine Serv., Inc. (In re Aspen Limousine Serv., Inc.)*, 193 B.R. 325, 335 (D. Colo. 1996) (“It is not necessary to the adequate information standard that a disclosure statement specifically speculate as to future uncertainties such as the consequences of various possible outcomes of pending, let alone hypothetical, litigation.”); *In re CDECO Mar. Constr. Inc.*, 101 B.R. 499, 501 (Bankr. N.D. Ohio 1989) (noting that the “disclosure statement is simply not the place to argue various theories of recovery or to demonstrate results of ‘what if’ kinds of proof”).

25. *Third*, the Ratepayer/Creditors Objection argues that the Disclosure Statement is inadequate insofar as it does not include demographic or economic information about the users of the Sewer System. *See* Obj. pp. 5-7. No explanation is provided regarding how this information possibly bears on anyone's vote to accept or reject the Plan, other than an assertion that such data somehow provides "relevant information on valuation." *Id.* p. 7. The Bankruptcy Code expressly provides, however, that the Court "may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets." 11 U.S.C. § 1125(b). The County does not believe that the information demanded by the Ratepayer/Creditors has any bearing on the solicitation process.

26. *Fourth*, the Ratepayer/Creditors Objection argues that the Disclosure Statement fails to apprise creditors of the risks associated with the pending Bennett Action or the benefits supposedly associated with their alternative plan. Obj. pp. 7-8. As noted above, there is no requirement that the Disclosure Statement include any of this information. *See also In re City of Colo. Springs Spring Creek Gen. Improvement Dist.*, 177 B.R. 684, 689 (Bankr. D. Colo. 1995) (rejecting argument that disclosure statement was inadequate because it did not analyze objections to the plan's provisions, including because "[s]uch objections are legal in nature and while information addressing them might interest lawyers, it is not likely of interest or benefit to the bondholders whose solicitation was sought"). Nevertheless, the Disclosure Statement already includes a discussion of the contentions raised in the Bennett Action. *See* Disclosure Statement § IV.H.2. In addition, counsel for the County has offered to allow counsel for the Ratepayer/Creditors the opportunity to draft a further insert for the Disclosure Statement, not to exceed two single-spaced pages, outlining the Ratepayer/Creditors' contentions in the Bennett Action. Counsel for the Ratepayer/Creditors has accepted the County's offer, but the County has

not received the draft insert as of the filing of this omnibus reply. The opportunity to provide such an insert allows the Ratepayer/Creditors to address any perceived inadequacy in the existing description of their position.

27. *Fifth*, the Ratepayer/Creditors Objection asserts that certain Sewer Warrant Claims are different from other Sewer Warrant Claims and cannot be classified together. *See* Obj. p. 9. As a threshold matter, the Ratepayer/Creditors hold *no* Sewer Warrant Claims and should not be permitted to object (even at the confirmation stage) to a classification system that (a) does not directly affect their interests and (b) is supported by those Creditors who *are* directly affected by it.<sup>11</sup> Regardless, the Disclosure Statement appropriately details the genesis of the different series of Sewer Warrants. *See* Disclosure Statement § III.D.1.a-g.

28. *Sixth*, the Ratepayer/Creditors Objection argues that the Plan fails to classify or provide a treatment for the Ratepayer/Creditors' proof of claim, which allegedly "is the largest single claim in this bankruptcy *and the most important* in terms of the benefit it brings to the creditors who were not the progeny of the bribery and other wrongdoing which procured the Swap/Warrants." Obj. pp. 9-11 (emphasis added). It is gross distortion to contend that this disputed proof of claim, which is subject to a pending objection in its entirety, "has not even been classified." *Id.* p. 11. To the contrary, the Disclosure Statement discussion is clear that the

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<sup>11</sup> *See, e.g., In re Evans Prods. Co.*, 65 B.R. 870, 874 (S.D. Fla. 1986) ("[D]ebtors lack standing to raise the rights of wrongly classified creditors as a means to attack the overall reorganization plan."); *Holywell Corp. v. Bank of N.Y.*, 59 B.R. 340, 349 (S.D. Fla. 1986) (finding that "the issue of whether [certain claims] have been wrongly subordinated (or classified) is one which the debtors/appellants in the instant appeal lack standing to assert because they are not parties actually injured by this classification"); *In re Quigley Co.*, 391 B.R. 695, 706 (Bankr. S.D.N.Y. 2008) (noting that one party cannot "object to the Plan based on how it affects the rights of third parties" and explaining that "[i]ssues relating to classification, treatment, solicitation and voting come immediately to mind" as issues that may be raised only by the affected creditors); *In re A.P.I. Inc.*, 331 B.R. 828, 861 (Bankr. D. Minn. 2005) (concluding that insurers lacked standing to object to plan's classification scheme when they lacked claims in the subject class and "have no stake or claim to the assets to be parceled out to the members of that class, as the plan defines them").



Ratepayer/Creditors' proof of claim is classified in Class 6 (General Unsecured Claims), and in the discussion of that class explains that:

The plaintiffs in the Bennett Action have filed a proof of Claim for \$1,630,000,000. The plaintiffs in the Wilson Action have also filed a proof of claim in an unliquidated amount pursuant to which they assert the same claims asserted in the Wilson Action. The County disputes both of these Claims and believes that each of them is due to be disallowed in its entirety.

Disclosure Statement § IV.I.6. The Disclosure Statement then clearly describes the Plan's treatment of Allowed Class 6 Claims. *See id.* § VII.A.2.t. Indeed, the Ratepayer/Creditors themselves acknowledge that their Claims "appear to be grouped in Class 6, general unsecured claims." Obj. p. 9. This is not where the Plan "appears" to classify the Ratepayer/Creditors' Claims; it is where the Plan *does* classify those Claims. Beyond *ipse dixit* that their Claims "must be given a separate classification and appropriate voting rights as an impaired claim," *id.* p. 10, the Ratepayer/Creditors offer no discussion why their Claims are improperly classified in Class 6, and the County believes such a classification is correct given the nature of the underlying proof of claim and its assertion of generalized rights to payment from the County.

29. In any event, since the Ratepayer/Creditors' Claims are subject to a pending objection and therefore are not allowed Claims, the Ratepayer/Creditors have no right to vote on the Plan unless and until the Court resolves the pending objection in their favor or grants a properly presented and justified request for temporary allowance. *See* 11 U.S.C. § 1126(a); Fed. R. Bankr. P. 3018(a); *In re Clements*, 2013 Bankr. LEXIS 798, at \*3 (Bankr. E.D.N.C. Mar. 4, 2013) ("Together, sections 1126(a) and 502(a) prohibit a claimant from voting on the plan of reorganization if the debtor has objected to that party's claim."). Even if the Ratepayer/Creditors can prove an entitlement to have some claim against the County allowed or temporarily allowed, which the County does not believe is warranted, the Disclosure Statement provides all the information the Ratepayer/Creditors need to evaluate how to vote on the Plan. *Cf. In re Broad*



*Assoc. Ltd. P'ship*, 1989 Bankr. LEXIS 2248, at \*6 (Bankr. D. Conn. Dec. 29, 1989) (“[I]t is parenthetically observed that the purpose of Pacific’s objection to the adequacy of the amended disclosure statement is obscure, since Pacific has already decided to reject the amended plan, as evidenced by its December 6 objection, and therefore has no need for a disclosure statement to guide its decision.”).

#### **D. Wilson Objection**

30. The Wilson Objection overlaps in many respects with the Waterworks Board/City Objection and the Ratepayer/Creditors Objection insofar as it also includes inapposite complaints about the risks associated with the New Sewer Warrants, raises issues that have no bearing on how the Wilson Ratepayers might vote on the Plan, and sets forth arguments about confirmation issues (such as the feasibility of the Plan or the reasonableness of the proposed global settlement) rather than about disclosure issues. In each of these respects, the Wilson Objection fails for the reasons already discussed above. The remaining portions of the Wilson Objection similarly fail to demonstrate the inadequacy of the Disclosure Statement.

31. *First*, the Wilson Ratepayers argue that the Disclosure Statement does not adequately disclose the status of their litigation. *See* Obj. pp. 3-6. This concern overlooks the multiple, lengthy discussions of the status of that litigation and all rulings to date, both prepetition and postpetition. *See* Disclosure Statement §§ III.E.1 & IV.H.1. Although these two portions of the Disclosure Statement (one of which the Wilson Objection simply ignores) adequately describe the Wilson Ratepayers’ litigation theories, counsel for the County has offered to allow counsel for the Wilson Ratepayers the opportunity to draft a further insert for the Disclosure Statement, not to exceed two single-spaced pages, outlining the Wilson Ratepayers’ contentions in the Wilson Action. Counsel for the Wilson Ratepayers has accepted the County’s offer, but the County has not received the draft insert as of the filing of this omnibus reply. The

opportunity to provide such an insert allows the Wilson Ratepayers to address any perceived inadequacy in the existing description of their position.

32. *Second*, the Disclosure Statement appropriately describes the County's position regarding the Wilson Ratepayers' litigation – i.e., that both of the counts purportedly asserted by an uncertified and inappropriate putative class will be resolved or mooted by the Plan.<sup>12</sup> With respect to their Count I, the Wilson Ratepayers themselves recognize that their theories involve amounts allegedly “due to be returned to Jefferson County for the benefit of the Rate Payers.” Obj. p. 4 (emphasis in original). The massive reduction of the Sewer Debt Claims under the Plan (pursuant to concessions made by many of the very parties that are the subject of the Wilson complaint) is a recovery “for the benefit of the Rate Payers,” and the County believes this substantial debt reduction (along with the other consideration provided by the settling parties) justifies the releases provided under the Plan. *See, e.g., In re Winn-Dixie Stores*, 356 B.R. 239, 259-60 (Bankr. M.D. Fla. 2006). As even the Wilson Ratepayers recognize, this comprehensive resolution will address the alleged wrongdoing that is at the heart of both their action and the County's pending litigation, *see* Obj. pp. 2-3, and will thereby eliminate the prospect that the Wilson Ratepayers could pursue duplicative relief. *See generally, e.g.,* March 7, 2013 Hr'g Tr.

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<sup>12</sup> More specifically, the Disclosure Statement explains how:

The County maintains that the claims asserted in the Wilson Action and the Wilson Adversary Proceeding, to the extent they have any validity at all, are claims that rightfully belong to and can be brought and settled only by the County. The claims asserted in the Wilson Action and the Wilson Adversary Proceeding effectively seek to either have monies returned to the County or obtain declarations concerning the County's liabilities or lack thereof. The County – and not the plaintiffs in the Wilson Action and the Wilson Adversary Proceeding – has standing to pursue these claims. The County contends that the settlements, compromises, and validations contained in the Plan, including the validation and allowance of the Sewer Debt Claims, the amount of the New Sewer Warrants issued, and the validation of the Approved Rate Structure, will render the Wilson Adversary Proceeding and the remaining count in the Wilson Action pending in the State Court moot or otherwise resolved as of the Effective Date, and the County intends to have the Wilson Adversary Proceeding and the remaining count of the Wilson Action pending in the State Court dismissed in connection with confirmation of the Plan.

Disclosure Statement § IV.H.1.

[Docket No. 1687] at 15:20–19:24 (colloquy regarding relief sought by the Wilson Ratepayers, which ultimately “is to undo or set aside that portion of this debt that is made up of personal kickbacks, frauds and payouts,” so that the debt reflects “the true cost of the sewer system”). If the Wilson Ratepayers disagree with the reasonableness of the County’s proposed comprehensive resolution of all sewer-debt-related issues under the Plan, then they can pursue that objection in the context of confirmation.

33. With respect to their Count II, confirmation of the Plan will require an examination by this Court regarding whether the Approved Rate Structure (which will increase the existing sewer rates), as the “provision made to pay or secure payment of” the New Sewer Warrants, is valid. *See* 11 U.S.C. § 944(b)(3)(B). The Court’s determination that the Approved Rate Structure is valid will, *a fortiori*, mean that the sewer rates, both before and after giving effect to the increases to be implemented under the Approved Rate Structure, are valid. Once again, if the Wilson Ratepayers disagree with these conclusions or believe the Approved Rate Structure is invalid, then they can pursue an objection to confirmation, but the Disclosure Statement provides more than ample disclosure of the County’s position.<sup>13</sup>

34. *Third*, the Wilson Objection asserts that “no reader can gain insight as to what [the sewer] rates ultimately will be,” *Obj.* p. 6. This contention simply ignores the 8-page document attached as Exhibit C to the Plan (i.e., the Approved Rate Structure),<sup>14</sup> which provides painstaking detail both about what specific rates and charges will be and about the exact methodology that will be used to adjust those rates. The Wilson Objection further contends that

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<sup>13</sup> Even if the Wilson Ratepayers were correct that their purported claims cannot directly be resolved by the County pursuant to the Plan (they are not), case law in this circuit clearly establishes that a bankruptcy court has jurisdiction and authority to approve a settlement resolving disputes between third parties. *See, e.g., Munford v. Munford, Inc. (In re Munford, Inc.)*, 97 F.3d 449, 452-54 (11th Cir. 1996). The ability to effect a comprehensive, plan-based settlement is even stronger in chapter 9 cases since Congress did not incorporate Bankruptcy Code section 524(e) into chapter 9. *See, e.g., In re Connector 2000 Ass’n*, 447 B.R. 752, 767 & n.2 (Bankr. D.S.C. 2011).

<sup>14</sup> As the Plan is an exhibit to the Disclosure Statement, the exhibits to the Plan – including the Approved Rate Structure – are also part of the Disclosure Statement.

the Disclosure Statement “does not disclose or explain any methodology to determine the reasonableness of the rates that are called for as a result of this Plan.” *Id.* Yet the determination of reasonableness is a legal question regarding the proper interpretation of Amendment 73, and it is not necessary for the Disclosure Statement to provide an exegesis on questions of law. *See City of Colo. Springs Spring Creek Gen. Improvement Dist.*, 177 B.R. at 689.

35. *Fourth*, the Wilson Objection states that there is “no disclosure” regarding criminal charges and SEC fines paid prior to the filing of the County’s bankruptcy petition. *See* Obj. p. 7. This completely ignores the lengthy discussion provided by the Disclosure Statement of these issues. *See, e.g.*, Disclosure Statement §§ III.B.3 (discussing corruption associated with the construction and financing of the Sewer System and how “twenty individuals and organizations were found guilty for their corrupt practices”); III.E.9 (lengthy discussion of SEC action against JPMorgan and resulting settlement); III.E.6 (discussing County’s lawsuit against JPMorgan and others “asserting claims for fraud, suppression, unjust enrichment, and conspiracy”). The sordid history of the Sewer System and its financing is no secret, and the Disclosure Statement provides ample discussion of the criminal and other proceedings associated with that history.

36. *Fifth*, the Wilson Objection is rife with other errors that simply ignore what the Disclosure Statement actually says. The Wilson Ratepayers assert that “no dollar amount is identified for such purported concessions” by the holders of Sewer Debt Claims, Obj. p. 8, but the second full page of the Disclosure Statement specifically quantifies those amounts as “more than \$1.3 billion of Sewer Debt Claim concessions (the largest of which will be made by the JPMorgan Parties), which concessions will substantially reduce the amount of the County’s Sewer System-related indebtedness (approximately \$3.2 billion of principal and interest as of the

County's chapter 9 filing) to approximately \$1.9 billion.” Likewise, the Wilson Ratepayers assert that the Disclosure Statement “fails to disclose the identity of the various warrant holders and how much each warrant holder is to receive from the contemplated Plan.” Obj. p. 9. As an initial matter, this ignores the fact that the County cannot even know “the identity” of all of its warrant holders since those securities are publicly held through the DTC system. It also ignores the fact that the Disclosure Statement specifically identifies the parties that are Sewer Plan Support Parties and attaches as exhibits each of the Plan Support Agreements, including the signature pages thereto. The Disclosure Statement is also clear about what recoveries Creditors will receive under the Plan. For example, there is no mystery made of the fact that the JPMorgan Parties will receive “Cash in the amount of approximately 31% (approximately \$375 million) of the Adjusted Sewer Warrant Principal Amount of Sewer Warrants held by the JPMorgan Parties (approximately \$1.218 billion) plus a Distribution of Cash on account of any applicable Reinstated Sewer Warrant Interest Payments in accordance with Section 4.6(a) of the Plan.” Disclosure Statement § VII.C.9.c. Much of the information the Wilson Ratepayers complain is lacking is already in the Disclosure Statement and appears to have simply been overlooked or ignored in the preparation of the Wilson Objection.

37. *Sixth*, the Wilson Objection similarly asserts that the Disclosure Statement “fails to disclose any recent financial data from the County,” Obj. p. 8, but this assertion completely disregards Exhibits 4, 10, and 11 to the Disclosure Statement. The Disclosure Statement includes the current budget, as well as detailed financial projections (with explanatory notes) with respect to both the General Fund and the Education Tax, which are “financial data” that extend far “beyond” 2011. *Cf.* Obj. p. 8. The fact that the only *audited financial statements* are for the year ended September 30, 2011 (i.e., Exhibit 2 to the Disclosure Statement) is a function

of the fact that audits for further years have yet to be completed. Bankruptcy Code section 1125(b) merely requires “adequate” information under the circumstances “in light of the debtors books, records, nature and history.” *In re Werth*, 29 B.R. 220, 223 (Bankr. D. Colo. 1983); *see also, e.g., In re Price Funeral Home, Inc.*, 2008 Bankr. LEXIS 3462, at \*5 (Bankr. E.D.N.C. Dec. 12, 2008) (noting that “a disclosure statement need not be perfect and may be approved if the information is reasonable in the circumstances”). The County reserves all rights, but expects audited 2012 financial statements will be available on the County’s website before the County’s current proposed Ballot Deadline. Nevertheless, there is no need for the County to expedite or manufacture audited financials or other financial documents solely for purposes of preparing an adequate disclosure statement. *See, e.g., In re Dow Corning Corp.*, 227 B.R. 111, 119-20 (Bankr. E.D. Mich. 1998). The Disclosure Statement includes all of the updated financial data that is reasonably available and required under the circumstances.

38. *Seventh*, the Wilson Objection contends that the Disclosure Statement “fails to disclose the applicable law and methodology for validating any rate structure and or [*sic*] warrant.” Obj. p. 9. Once again, this is incorrect. The Disclosure Statement specifically references the provisions of the Bankruptcy Code that allow (and in fact require) this Court to validate the New Sewer Warrants and the Approved Rate Structure. *See, e.g.,* Disclosure Statement §§ VII.E (describing validations to be effected under the Plan and citing Bankruptcy Code sections 944(a), 944(b)(3), 105(a), and 1123(b)(6) as the applicable legal authority). Indeed, both the Disclosure Statement and the Plan include language setting forth precise findings that will be included in the Confirmation Order. *See* Disclosure Statement § VII.E.1; Plan § 5.10. The Wilson Ratepayers make no constructive suggestion about what else *could* be

included in the Disclosure Statement, and cite absolutely no authority demonstrating that anything further *must* be included.

39. *Eighth*, the Wilson Objection complains that there is no mention of the amount contemplated for the Sewer Warrant Trustee's residual fee. *See* Obj. p. 9. As a general matter, the amount of the fee will have absolutely no bearing on any recovery to be received by the Wilson Ratepayers, which means they lack standing to complain about this issue. In addition, the amount of the fee is not presently knowable and will not even be estimated until "on or before the seventh (7th) calendar day after the Confirmation Date," *see* Plan § 1.1(264). To the extent the estimated amount is excessive, the Plan includes a specific mechanism allowing the County to challenge the amount on an expedited basis. *See* Plan § 5.14. There is simply no further disclosure that could now be made about this topic.

40. *Ninth*, the Wilson Objection includes various conspiratorial statements about the County not identifying certain "independent authorities" or other unspecified "professionals." *See, e.g.*, Obj. pp. 10 & 12. It is unclear exactly what the Wilson Ratepayers are describing, but they cite no authority to support their generalized suggestions that some further disclosure is necessary or warranted.

41. In sum, the shotgun blast of objections contained in the Wilson Objection is based on a misreading of what is already in the Disclosure Statement and a misunderstanding of what Bankruptcy Code section 1125 requires. Ultimately, nothing in the Wilson Objection or in any of the other objections demonstrates that the Disclosure Statement contains inadequate information and cannot be approved in substantially the form filed on July 29, 2013.

## CONCLUSION

42. Based on the foregoing, the County respectfully submits that the Disclosure Statement Motion should be granted, that all objections thereto should be overruled in their entirety, and that the Disclosure Statement should be approved.

43. The County files this omnibus reply without prejudice to or waiver of its rights pursuant to Bankruptcy Code section 904, and nothing herein is intended as or shall be deemed to constitute the County's consent 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.

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**WHEREFORE**, the County respectfully requests that the Court enter an order substantially in the form of the Proposed Order attached hereto as **Annex A**,<sup>15</sup> granting the Disclosure Statement Motion and such other and further relief as is appropriate under the circumstances.

Dated this the 5th day of August, 2013.

/s/ J. Patrick Darby

**BRADLEY ARANT BOULT CUMMINGS LLP**

J. Patrick Darby

Jay R. Bender

Jennifer H. Henderson

One Federal Place

1819 Fifth Avenue North

Birmingham, Alabama 35203

Telephone: (205) 521-8000

Facsimile: (205) 521-8500

Email: pdarby@babco.com, jbender@babco.com,  
jhenderson@babco.com

*-and-*

**KLEE, TUCHIN, BOGDANOFF & STERN LLP**

Kenneth N. Klee (*pro hac vice*)

Lee R. Bogdanoff (*pro hac vice*)

David M. Stern (*pro hac vice*)

Robert J. Pfister (*pro hac vice*)

Whitman L. Holt (*pro hac vice*)

1999 Avenue of the Stars, Thirty-Ninth Floor

Los Angeles, California 90067

Telephone: (310) 407-4000

Facsimile: (310) 407-9090

Email: kklee@ktbslaw.com, lbogdanoff@ktbslaw.com,  
dstern@ktbslaw.com, rpfister@ktbslaw.com,  
wholt@ktbslaw.com

***Counsel for Jefferson County, Alabama***

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<sup>15</sup> The proposed form of order has been updated from the form of order included with the County's initial Disclosure Statement Motion to reflect the revision of the Disclosure Statement on July 29, 2013, and to specifically reference the objections that have been filed.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2013, copies of the foregoing omnibus reply and the annex thereto were served upon all parties identified on the attached service lists by the means specified therein.

/s/ J. Patrick Darby \_\_\_\_\_  
OF COUNSEL

**MASTER SERVICE LIST**

**VIA E-MAIL:**

Jefferson County, Alabama c/o Patrick Darby c/o Jay Bender Bradley Arant Boulton Cummings LLP 1819 Fifth Avenue North Birmingham, AL 35203 <a href="mailto:pdarby@babc.com">pdarby@babc.com</a> <a href="mailto:jbender@babc.com">jbender@babc.com</a>	Jefferson County Special Counsel J.F. "Foster" Clark, Esq. Balch & Bingham, LLP 1901 6th Avenue North 2600 AmSouth Harbert Plaza Birmingham, AL 35203-4644 <a href="mailto:fclark@balch.com">fclark@balch.com</a>
Jefferson County, Alabama c/o Kenneth Klee c/o Lee Bogdanoff c/o Robert J. Pfister c/o Whitman L. Holt c/o Samuel M. Kidder Klee, Tuchin, Bogdanoff & Stern, LLP 1999 Avenue of the Stars, Thirty-Ninth Floor Los Angeles, CA 90067-5061 <a href="mailto:kklee@ktbslaw.com">kklee@ktbslaw.com</a> <a href="mailto:lbogdanoff@ktbslaw.com">lbogdanoff@ktbslaw.com</a> <a href="mailto:rpfister@ktbslaw.com">rpfister@ktbslaw.com</a> <a href="mailto:skidder@ktbslaw.com">skidder@ktbslaw.com</a>	Jefferson County Special Counsel J. Hobson Presley, Jr. Balch & Bingham LLP 1901 Sixth Avenue North Suite 1500 Birmingham, Alabama 35203-4642 <a href="mailto:hpresley@balch.com">hpresley@balch.com</a>
The Bank of New York Mellon, as Indenture Trustee c/o Gerald F. Mace c/o Michael R. Paslay c/o David E. Lemke, Esq. c/o Ryan K. Cochran, Esq. c/o Paul S. Davidson Waller Lansden Dortch & Davis, LLP 511 Union Street, Suite 2700 Nashville, TN 37219 <a href="mailto:Gerald.Mace@wallerlaw.com">Gerald.Mace@wallerlaw.com</a> <a href="mailto:Mike.Paslay@wallerlaw.com">Mike.Paslay@wallerlaw.com</a> <a href="mailto:David.Lemke@wallerlaw.com">David.Lemke@wallerlaw.com</a> <a href="mailto:Ryan.Cochran@wallerlaw.com">Ryan.Cochran@wallerlaw.com</a> <a href="mailto:Paul.Davidson@wallerlaw.com">Paul.Davidson@wallerlaw.com</a>	Bankruptcy Administrator for the Northern District of Alabama (Birmingham) Office of the Bankruptcy Administrator c/o J. Thomas Corbett, Esq. United States Bankruptcy Court Robert S. Vance Federal Building 1800 5th Ave. North Birmingham AL 35203 <a href="mailto:Thomas_Corbett@alnb.uscourts.gov">Thomas_Corbett@alnb.uscourts.gov</a>

<p>The Bank of New York Mellon, as Indenture Trustee  c/o Bridget M. Schessler  The Bank of New York Mellon Trust Company, N.A.  525 William Penn Place, 7<sup>th</sup> Floor  Pittsburgh, PA 15259  <a href="mailto:bridget.schessler@bnymellon.com">bridget.schessler@bnymellon.com</a></p>	<p>The Bank of New York Mellon, as Indenture Trustee  c/o Larry Childs, Esq.  c/o Brian J. Malcom, Esq.  c/o Heath A. Fite, Esq.  Waller Lansden Dortch &amp; Davis, LLP  Regions Harbert Plaza  1901 Sixth Avenue North, Suite 1400  Birmingham, AL 35203  <a href="mailto:Larry.Childs@wallerlaw.com">Larry.Childs@wallerlaw.com</a>  <a href="mailto:Brian.Malcom@wallerlaw.com">Brian.Malcom@wallerlaw.com</a>  <a href="mailto:Heath.Fite@wallerlaw.com">Heath.Fite@wallerlaw.com</a></p>
<p>The Bank of New York Mellon  c/o Debra L. Felder  Orrick, Herrington, &amp; Sutcliffe LLP  Columbia Center  1152 15<sup>th</sup> Street, N.W.  Washington, D.C. 20005-1706  <a href="mailto:dfelder@orrick.com">dfelder@orrick.com</a></p>	<p>JPMorgan Chase Bank, as Liquidity Agent  c/o Steve Fuhrman  Simpson Thacher &amp; Bartlett LLP  425 Lexington Avenue  New York, New York 10017  <a href="mailto:sfuhrman@stblaw.com">sfuhrman@stblaw.com</a></p>
<p>U.S. Bank, National Association, as Paying Agent  2204 Lakeshore Drive Suite 302  Mail Code: EX-AL-WWPH  Homewood, AL 35209  <a href="mailto:felicia.cannon@usbank.com">felicia.cannon@usbank.com</a></p>	<p>The Bank of New York Mellon  c/o Thomas C. Mitchell  Orrick, Herrington &amp; Sutcliffe LLP  The Orrick Building  405 Howard Street  San Francisco, CA 94105-2669  <a href="mailto:tcmitchell@orrick.com">tcmitchell@orrick.com</a></p>
<p>Bank of America, N.A.  c/o David L. Eades  c/o Daniel G. Clodfelter  c/o David S. Walls  Moore &amp; Van Allen, PLLC  100 North Tryon Street, Suite 4700  Charlotte, NC 28202-4003  <a href="mailto:davideades@mvalaw.com">davideades@mvalaw.com</a>  <a href="mailto:danclofelter@mvalaw.com">danclofelter@mvalaw.com</a>  <a href="mailto:davidwalls@mvalaw.com">davidwalls@mvalaw.com</a></p>	<p>The Bank of New York Mellon  Sirote &amp; Permut, P.C.  c/o Stephen B. Porterfield  c/o Donald Wright  2311 Highland Avenue South  Birmingham, AL 35205  <a href="mailto:sporterfield@sirote.com">sporterfield@sirote.com</a>  <a href="mailto:dwright@sirote.com">dwright@sirote.com</a></p>

<p>Blue Ridge Investments, LLC  Affiliate of Bank of America, N.A.  c/o David L Eades  c/o Daniel G. Clodfelter  c/o David S. Walls  Moore &amp; Van Allen, PLLC  100 North Tryon Street, Suite 4700  Charlotte, NC 28202-4003  <a href="mailto:davideades@mvalaw.com">davideades@mvalaw.com</a>  <a href="mailto:danclodfelter@mvalaw.com">danclodfelter@mvalaw.com</a>  <a href="mailto:davidwalls@mvalaw.com">davidwalls@mvalaw.com</a></p>	<p>Blue Ridge Investments, LLC  Affiliate of Bank of America, N.A.  c/o Cathleen Curran Moore  Burr &amp; Forman LLP  420 North 20<sup>th</sup> Street, Suite 3400  Birmingham, AL 35203  <a href="mailto:cmoore@burr.com">cmoore@burr.com</a></p>
<p>Bank of America, N.A.  c/o Joe A. Joseph  c/o Clifton C. Mosteller  c/o Cathleen Curran Moore  Burr &amp; Forman LLP  420 North 20<sup>th</sup> Street, Suite 3400  Birmingham, AL 35203  <a href="mailto:jjoseph@burr.com">jjoseph@burr.com</a>  <a href="mailto:cmostell@burr.com">cmostell@burr.com</a>  <a href="mailto:cmoore@burr.com">cmoore@burr.com</a></p>	<p>JPMorgan Chase Bank  c/o Steve M. Fuhrman, Esq.  c/o Ian Dattner  c/o Mary Beth Forshaw  c/o Elisha David Graff  c/o Thomas C. Rice  c/o William T. Russell, Jr.  Simpson Thacher &amp; Bartlett LLP  425 Lexington Avenue  New York, NY 10017  <a href="mailto:sfuhrman@stblaw.com">sfuhrman@stblaw.com</a>  <a href="mailto:idattner@stblaw.com">idattner@stblaw.com</a>  <a href="mailto:mforshaw@stblaw.com">mforshaw@stblaw.com</a>  <a href="mailto:egraff@stblaw.com">egraff@stblaw.com</a>  <a href="mailto:trice@stblaw.com">trice@stblaw.com</a>  <a href="mailto:wrussell@stblaw.com">wrussell@stblaw.com</a></p>
<p>State Street Bank and Trust Company  c/o William W. Kannel  c/o Adrienne K. Walker  Mintz, Levin, Cohn, Ferris, Glovsky and  Popeo, P.C.  One Financial Center  Boston, MA 02111  <a href="mailto:wkannel@mintz.com">wkannel@mintz.com</a>  <a href="mailto:awalker@mintz.com">awalker@mintz.com</a></p>	<p>Regions Bank  c/o Jayna Partain Lamar  c/o J. Leland Murphree  Maynard Cooper &amp; Gale, P.C.  AmSouth/Harbert Plaza, Suite 2400  1901 6th Avenue North  Birmingham, AL 35203-2618  <a href="mailto:jlamar@maynardcooper.com">jlamar@maynardcooper.com</a>  <a href="mailto:lmurphree@maynardcooper.com">lmurphree@maynardcooper.com</a></p>
<p>State Street Bank and Trust Company  Sirote &amp; Permut, P.C.  c/o Stephen B. Porterfield  c/o Donald Wright  2311 Highland Avenue South  Birmingham, AL 35205  <a href="mailto:sporterfield@sirote.com">sporterfield@sirote.com</a>  <a href="mailto:dwright@sirote.com">dwright@sirote.com</a></p>	<p>Regions Bank, as Trustee  c/o Brian P. Hall  Smith, Gambrell &amp; Russell, LLP  Promenade II, Suite 3100  1230 Peachtree Street, N.E.  Atlanta, Georgia 30309-3592  <a href="mailto:bhall@sgrlaw.com">bhall@sgrlaw.com</a></p>

<p>Societe Generale  c/o Mark J. Fiekers  c/o Joyce T. Gorman  Ashurst LLP  1875 K Street N.W., Suite 750  Washington, DC 20006  <a href="mailto:mark.fiekers@ashurst.com">mark.fiekers@ashurst.com</a>  <a href="mailto:joyce.gorman@ashurst.com">joyce.gorman@ashurst.com</a></p>	<p>Financial Guaranty Insurance Company  c/o William H. Patrick, III  c/o Tristan E. Manthey  c/o Cherie Dessauer Nobles  Heller, Draper, Patrick &amp; Horn, L.L.C.  650 Poydras Street, Suite 2500  New Orleans, Louisiana 70130-6103  <a href="mailto:wpatrick@hellerdraper.com">wpatrick@hellerdraper.com</a>  <a href="mailto:tmanthey@hellerdraper.com">tmanthey@hellerdraper.com</a>  <a href="mailto:cnobles@hellerdraper.com">cnobles@hellerdraper.com</a></p>
<p>Financial Guaranty Insurance Company  c/o Robert K. Spotswood  c/o Michael T. Sansbury  c/o Emily J. Tidmore  c/o Grace L. Kipp  Spotswood Sansom &amp; Sansbury LLC  One Federal Place  1819 Fifth Avenue North  Suite 1050  Birmingham, Alabama 35203  <a href="mailto:rks@spotswoodllc.com">rks@spotswoodllc.com</a>  <a href="mailto:msansbury@spotswoodllc.com">msansbury@spotswoodllc.com</a>  <a href="mailto:etidmore@spotswoodllc.com">etidmore@spotswoodllc.com</a>  <a href="mailto:gkipp@spotswoodllc.com">gkipp@spotswoodllc.com</a></p>	<p>Financial Guaranty Insurance Company  c/o H. Slayton Dabney, Jr.  Dabney, PLLC  303 Grande Court  Richmond, Virginia 23229  <a href="mailto:sdabney@dabneypllc.com">sdabney@dabneypllc.com</a></p>
<p>Assured Guaranty Municipal Corp.  c/o Winston &amp; Strawn LLP  Lawrence A. Larose, Esq.  Samuel S. Kohn, Esq.  Sarah L. Trum, Esq.  George Mastoris  Carrie V. Hardman  200 Park Avenue  New York, New York 10166-4193  <a href="mailto:llarose@winston.com">llarose@winston.com</a>  <a href="mailto:skohn@winston.com">skohn@winston.com</a>  <a href="mailto:strum@winston.com">strum@winston.com</a>  <a href="mailto:gmastoris@winston.com">gmastoris@winston.com</a>  <a href="mailto:chardman@winston.com">chardman@winston.com</a></p>	<p>Receiver for County's Sewer System  John S. Young, Jr. LLC, as Receiver  c/o Baker, Donelson, Bearman, Caldwell &amp;  Berkowitz, P.C.  Timothy M. Lupinacci, Esq.  W. Patton Hahn, Esq.  Daniel J. Ferretti, Esq.  Bill D. Bensinger, Esq.  1600 Wells Fargo Tower  Birmingham, AL 35203  <a href="mailto:tlupinacci@bakerdonelson.com">tlupinacci@bakerdonelson.com</a>  <a href="mailto:phahn@bakerdonelson.com">phahn@bakerdonelson.com</a>  <a href="mailto:dferretti@bakerdonelson.com">dferretti@bakerdonelson.com</a>  <a href="mailto:bbensinger@bakerdonelson.com">bbensinger@bakerdonelson.com</a></p>

<p>Assured Guaranty Municipal Corp.  c/o Mark P. Williams  Norman, Wood, Kendrick &amp; Turner  Financial Center – Suite 1600  505 20<sup>th</sup> Street North  Birmingham, AL 35203  <a href="mailto:mpwilliams@nwkt.com">mpwilliams@nwkt.com</a></p>	<p>Receiver for County’s Sewer System  John S. Young, Jr. LLC, as Receiver  c/o Baker, Donelson, Bearman, Caldwell &amp;  Berkowitz, P.C.  Joe A. Conner  1800 Republic Centre  633 Chestnut Street  Chattanooga, TN 37450  <a href="mailto:jconner@bakerdonelson.com">jconner@bakerdonelson.com</a></p>
<p>Syncora Guarantee, Inc.  c/o Quinn Emanuel Urquhart &amp; Sullivan, LLP  c/o Jonathan E. Pickhardt  c/o Jake M. Shields  c/o Susheel Kirpalani  c/o Daniel Holzman  c/o Eric Kay  c/o Robert S. Loigman  c/o Xochitl Strohbeh  51 Madison Avenue, 22<sup>nd</sup> Floor  New York, NY 10010  <a href="mailto:jonpickhardt@quinnemanuel.com">jonpickhardt@quinnemanuel.com</a>  <a href="mailto:jakeshields@quinnemanuel.com">jakeshields@quinnemanuel.com</a>  <a href="mailto:susheelkirpalani@quinnemanuel.com">susheelkirpalani@quinnemanuel.com</a>  <a href="mailto:danielholzman@quinnemanuel.com">danielholzman@quinnemanuel.com</a>  <a href="mailto:erickay@quinnemanuel.com">erickay@quinnemanuel.com</a>  <a href="mailto:robertloigman@quinnemanuel.com">robertloigman@quinnemanuel.com</a>  <a href="mailto:xochitlstrohbeh@quinnemanuel.com">xochitlstrohbeh@quinnemanuel.com</a></p>	<p>Jefferson County Personnel Board  c/o Lee R. Benton  c/o Jamie A. Wilson  Benton &amp; Centeno, LLP  2019 3<sup>rd</sup> Avenue North  Birmingham, AL 35203  <a href="mailto:lbenton@bcattys.com">lbenton@bcattys.com</a>  <a href="mailto:jwilson@bcattys.com">jwilson@bcattys.com</a></p>
<p>Bayern LB  c/o Edward A. Smith  Venable  Rockefeller Center  1270 Avenue of the Americas  Twenty-fifth Floor  New York, NY 10020  <a href="mailto:EASmith@Venable.com">EASmith@Venable.com</a></p>	<p>Bayern LB  c/o Joseph Campagna  Vice President  560 Lexington Avenue  New York, New York 10022  <a href="mailto:jcampagna@bayernlbny.com">jcampagna@bayernlbny.com</a></p>
<p>Societe Generale  c/o Christopher Blackwell  c/o Dan Schulman  Ashurst LLP  Times Square Tower  7 Times Square  New York, NY 10036  <a href="mailto:Christopher.Blackwell@ashurst.com">Christopher.Blackwell@ashurst.com</a>  <a href="mailto:Dan.Schulman@ashurst.com">Dan.Schulman@ashurst.com</a></p>	<p>Ambac Assurance Corporation  c/o Charles L. Denaburg  Najjar Denaburg, P.C.  2125 Morris Avenue  Birmingham, AL 35203  <a href="mailto:cdenaburg@najjar.com">cdenaburg@najjar.com</a></p>

<p>Jeffrey Weissman, D.D.S.  Jeffrey Weissman, D.D.S., P.C.  Keith Shannon  Individually and as Class Representatives  c/o Wilson F. Green  Fleenor &amp; Green, LLP  204 Marina Drive, Ste. 200  Tuscaloosa, AL 35406  <a href="mailto:wgreen@fleenorgreen.com">wgreen@fleenorgreen.com</a></p>	<p>Ambac Assurance Corporation  c/o Miles W. Hughes  c/o William P. Smith  c/o Robert A. Dall'Asta  c/o Greg Kopacz  McDermott Will &amp; Emery LLP  227 West Monroe Street  Chicago, Illinois 60606  <a href="mailto:mwhughes@mwe.com">mwhughes@mwe.com</a>  <a href="mailto:wsmith@mwe.com">wsmith@mwe.com</a>  <a href="mailto:rdallasta@mwe.com">rdallasta@mwe.com</a>  <a href="mailto:gkopacz@mwe.com">gkopacz@mwe.com</a></p>
<p>Jeffrey Weissman, D.D.S.  Jeffrey Weissman, D.D.S., P.C.  Keith Shannon  Individually and as Class Representatives  c/o Brian R. Walding  WALDING, LLC  505 20<sup>th</sup> Street North, Suite 620  Birmingham, AL 35203  <a href="mailto:bwalding@waldinglaw.com">bwalding@waldinglaw.com</a></p>	<p>Ambac Assurance Corporation  c/o Gregory Andrew Kopacz  McDermott Will &amp; Emery LLP  340 Madison Avenue  New York, New York 10173-1922  <a href="mailto:gkopacz@mwe.com">gkopacz@mwe.com</a></p>
<p>City of Birmingham  c/o Michael M. Fliegel  Assistant City Attorney  Legal Dept.  710 20<sup>th</sup> Street North  Birmingham, AL 35203  <a href="mailto:Mike.Fliegel@ci.birmingham.al.us">Mike.Fliegel@ci.birmingham.al.us</a></p>	<p>J.P. Morgan Securities, Inc.  JPMorgan Chase Bank, N.A.  c/o Clark R. Hammond  Johnston Barton Proctor &amp; Rose, LLP  569 Brookwood Village, Suite 901  Birmingham, AL 35209  <a href="mailto:crh@johnstonbarton.com">crh@johnstonbarton.com</a></p>
<p>Societe Generale  c/o Donald M. Wright  c/o Stephen B. Porterfield  Sirote &amp; Permutt, P.C.  2311 Highland Avenue South  Birmingham, AL 35205  <a href="mailto:dwright@sirote.com">dwright@sirote.com</a>  <a href="mailto:sporterfield@sirote.com">sporterfield@sirote.com</a></p>	<p>JPMorgan Chase Bank, N.A.  c/o Lindan J. Hill  Johnston Barton Proctor &amp; Rose, LLP  569 Brookwood Village, Suite 901  Birmingham, AL 35209  <a href="mailto:lhill@johnstonbarton.com">lhill@johnstonbarton.com</a></p>



<p>National Public Finance Guarantee Corp.  c/o Benjamin S. Goldman  Hand Arendall LLC  1200 Park Place Tower  2001 Park Place North  Birmingham, AL 35203  <a href="mailto:bgoldman@handarendall.com">bgoldman@handarendall.com</a></p>	<p>Anne Elizabeth McGowin, Esq.  Legal Advisor  Office of the Governor  State of Alabama  State Capitol, Room NB-05  600 Dexter Avenue  Montgomery, AL 36130  <a href="mailto:anneelizabeth.mcgowin@finance.alabama.gov">anneelizabeth.mcgowin@finance.alabama.gov</a></p>
<p>National Public Finance Guarantee Corp.  c/o Mark A. Cody  Jones Day  77 West Wacker  Chicago, IL 60601-1676  <a href="mailto:macody@jonesday.com">macody@jonesday.com</a></p>	<p>City of Center Point, Alabama  c/o Robert C. Keller  Russo, White &amp; Keller, P.C.  315 Gadsden Highway, Suite D  Birmingham, AL 35235  <a href="mailto:rjlawoff@bellsouth.net">rjlawoff@bellsouth.net</a></p>
<p>Syncora Guarantee, Inc.  c/o Matthew Scheck  Quinn Emanuel Urquhart &amp; Sullivan, LLP  865 South Figueroa Street, 10<sup>th</sup> Floor  Los Angeles, CA 90017  <a href="mailto:matthewscheck@quinnemanuel.com">matthewscheck@quinnemanuel.com</a></p>	<p>Syncora Guarantee, Inc.  c/o Richard P. Carmody  c/o Henry E. Simpson  c/o Lawrence J. McDuff  c/o Russell J. Rutherford  c/o David K. Bowsher  Adams and Reese LLP  Regions Harbert Plaza  1901 6<sup>th</sup> Avenue North, Suite 3000  Birmingham, AL 35203  <a href="mailto:Richard.Carmody@arlaw.com">Richard.Carmody@arlaw.com</a>  <a href="mailto:Henry.Simpson@arlaw.com">Henry.Simpson@arlaw.com</a>  <a href="mailto:Laurence.McDuff@arlaw.com">Laurence.McDuff@arlaw.com</a>  <a href="mailto:Russell.Rutherford@arlaw.com">Russell.Rutherford@arlaw.com</a>  <a href="mailto:David.Bowsher@arlaw.com">David.Bowsher@arlaw.com</a></p>
<p>U.S. Securities and Exchange Commission  Office of Reorganization  Atlanta Regional Office  950 East Paces Ferry Road, N.E., Suite 900  Atlanta, Georgia 30326-1382  Telephone: 404-842-7600  Facsimile: 404-842-7633  E-mail: <a href="mailto:atlreorg@sec.gov">atlreorg@sec.gov</a></p>	<p>National Public Finance Guarantee Corp.  c/o Amy Edgy Ferber  Jones Day  1420 Peachtree Street, N.E.  Suite 800  Atlanta, GA 30309-3053  <a href="mailto:aeferber@jonesday.com">aeferber@jonesday.com</a></p>

<p>Lloyds TSB Bank PLC  c/o Laura E. Appleby  Chapman and Cutler LLP  330 Madison Ave.  34<sup>th</sup> Floor  New York, NY 10017  <a href="mailto:appleby@chapman.com">appleby@chapman.com</a></p>	<p>National Public Finance Guarantee Corp.  c/o Corinne Ball  Jones Day  222 East 41<sup>st</sup> Street  New York, NY 10017-6702  <a href="mailto:cball@jonesday.com">cball@jonesday.com</a></p>
<p>Lloyds TSB Bank PLC  c/o Ann E. Acker  c/o James E. Spiotto  Chapman and Cutler, LLP  111 W. Monroe St.  Chicago, IL 60603  <a href="mailto:acker@chapman.com">acker@chapman.com</a>  <a href="mailto:spiotto@chapman.com">spiotto@chapman.com</a></p>	<p>The Securities and Exchange Commission  SEC Headquarters  100 F Street, NE  Washington, DC 20549-9040  Attention: Morgan Bradylyons, Senior Counsel  <a href="mailto:bradylyonsm@sec.gov">bradylyonsm@sec.gov</a></p>
<p>Lloyds TSB Bank PLC  c/o Donald M. Wright  c/o Stephen B. Porterfield  Sirote &amp; Permutt, P.C.  2311 Highland Avenue S.  Birmingham, AL 35205  <a href="mailto:dwright@sirote.com">dwright@sirote.com</a>  <a href="mailto:sporterfield@sirote.com">sporterfield@sirote.com</a></p>	<p>The Bank of Nova Scotia  c/o Laura E. Appleby  Chapman and Cutler LLP  330 Madison Ave.  34<sup>th</sup> Floor  New York, NY 10017  <a href="mailto:appleby@chapman.com">appleby@chapman.com</a></p>
<p>Appellant William Casey  Appeal No. 1101361 in Supreme Court of  Alabama  c/o Matthew Weathers  Weathers Law Firm, LLC  P.O. Box 1826  Birmingham, AL 35201  <a href="mailto:mweathersmatt@gmail.com">mweathersmatt@gmail.com</a></p>	<p>The Bank of Nova Scotia  c/o Ann E. Acker  c/o James E. Spiotto  Chapman and Cutler, LLP  111 W. Monroe St.  Chicago, IL 60603  <a href="mailto:acker@chapman.com">acker@chapman.com</a>  <a href="mailto:spiotto@chapman.com">spiotto@chapman.com</a></p>
<p>Appellant William Casey  Appeal No. 1101361 in Supreme Court of  Alabama  c/o Edward Jason Dennis  c/o Samuel B. Hardy, IV  Lynn Tillotson Pinker &amp; Cox, LLP  2100 Ross Avenue, Suite 2700  Dallas, Texas 75201  <a href="mailto:jdennis@lynnllp.com">jdennis@lynnllp.com</a>  <a href="mailto:shardy@lynnllp.com">shardy@lynnllp.com</a></p>	<p>The Bank of Nova Scotia  c/o Donald M. Wright  c/o Stephen B. Porterfield  Sirote &amp; Permutt, P.C.  2311 Highland Avenue S.  Birmingham, AL 35205  <a href="mailto:dwright@sirote.com">dwright@sirote.com</a>  <a href="mailto:sporterfield@sirote.com">sporterfield@sirote.com</a></p>

<p>U.S. Bank National Association, in its capacity as Indenture Trustee  c/o Charles R. Johanson III  Engel, Hairston, &amp; Johanson, P.C.  4<sup>th</sup> Floor, 109 20<sup>th</sup> Street (35203)  P.O. Box 11405  Birmingham, AL 35202  <a href="mailto:rjohanson@ehjlaw.com">rjohanson@ehjlaw.com</a></p>	<p>Appellant Carmella Macon  Appeal No. 1101270 in the Supreme Court of Alabama  c/o Matthew Weathers  Weathers Law Firm, LLC  P.O. Box 1826  Birmingham, AL 35201  <a href="mailto:mweathersmatt@gmail.com">mweathersmatt@gmail.com</a></p>
<p>David Perry, Esq.  Finance Director  Office of the Governor  State of Alabama  Office of the Governor  State Capitol, Room N-104  600 Dexter Avenue  Montgomery, AL 36130  <a href="mailto:david.perry@governor.alabama.gov">david.perry@governor.alabama.gov</a></p>	<p>Appellant Carmella Macon  Appeal No. 1101270 in the Supreme Court of Alabama  c/o Edward Jason Dennis  c/o Samuel B. Hardy, IV  Lynn Tillotson Pinker &amp; Cox, LLP  2100 Ross Avenue, Suite 2700  Dallas, Texas 75201  <a href="mailto:jdennis@lynnllp.com">jdennis@lynnllp.com</a>  <a href="mailto:shardy@lynnllp.com">shardy@lynnllp.com</a></p>
<p>State of Alabama  Department of Finance  c/o Rachel L. Webber  c/o Jerry C. Olshue, Jr.  c/o Kristopher D. Sodergren  c/o Robin E. Pate  Rosen Harwood, P.A.  2200 Jack Warner Parkway, Suite 200  P.O. Box 2727  Tuscaloosa, AL 35403-2727  <a href="mailto:rwebber@rosenharwood.com">rwebber@rosenharwood.com</a>  <a href="mailto:boldshue@rosenharwood.com">boldshue@rosenharwood.com</a>  <a href="mailto:rpate@rosenharwood.com">rpate@rosenharwood.com</a></p>	<p>U.S. Bank National Association, in its capacity as Indenture Trustee  c/o Clark T. Whitmore  c/o Kesha L. Tanabe  Maslon Edleman Borman &amp; Brand,LLP  3300 Wells Fargo Center  90 South Seventh Street  Minneapolis, MN 55402-4140  <a href="mailto:clark.whitmore@maslon.com">clark.whitmore@maslon.com</a>  <a href="mailto:kesha.tanabe@maslon.com">kesha.tanabe@maslon.com</a></p>
<p>Wendell Major  Public Employee of Jefferson County Alabama  3775 Gillespie Road  Dolomite, AL 35061  <a href="mailto:majorpd@charter.net">majorpd@charter.net</a>  <a href="mailto:wwm5007@gmail.com">wwm5007@gmail.com</a></p>	<p>Beckman Coulter, Inc.  c/o Kirk B. Burkley  Bernstein Law Firm, P.C.  Suite 2200 Gulf Tower  Pittsburgh, PA 15219-1900  <a href="mailto:kburkley@bernsteinlaw.com">kburkley@bernsteinlaw.com</a></p>

<p>Beers Properties, LLC  Creditor  c/o W.L. Longshore, III  Longshore, Buck &amp; Longshore, P.C.  2009 Second Avenue North  Birmingham, AL 35203  <a href="mailto:Billy3@longshorebuck.com">Billy3@longshorebuck.com</a></p>	<p>The Depository Trust &amp; Clearing Corporation  A Party in Interest  c/o Adam T. Berkowitz  c/o Jeffrey Chubak  Proskauer Rose LLP  Eleven Time Square  New York, NY 10036-8299  <a href="mailto:aberkowitz@proskauer.com">aberkowitz@proskauer.com</a>  <a href="mailto:jchubak@proskauer.com">jchubak@proskauer.com</a></p>
<p>Mike Hale, in his official capacity as Sheriff of  Jefferson County, Alabama  c/o Robert R. Riley  c/o Keith Jackson  c/o Jay Murrill  Riley &amp; Jackson, P.C.  1744 Oxmoor Road  Birmingham, AL 35209  <a href="mailto:jay@rileyjacksonlaw.com">jay@rileyjacksonlaw.com</a></p>	<p>City of Birmingham, Alabama  c/o U.W. Clemon  White Arnold &amp; Dowd P.C.  2025 Third Avenue North, Suite 500  Birmingham, AL 35203  <a href="mailto:uwclemon@waadlaw.com">uwclemon@waadlaw.com</a></p>
<p>Gene J. Gonsoulin  A Party in Interest  c/o A. Wilson Webb  Webb Law Firm  4416 Linpark Drive  Birmingham, AL 35222  <a href="mailto:awilsonwebb@gmail.com">awilsonwebb@gmail.com</a></p>	<p>Jefferson County Board of Education  c/o Whit Colvin  Bishop, Colvin, Johnson &amp; Kent, LLC  1910 First Avenue North  Birmingham, AL 35203  <a href="mailto:wcolvin@bishopcolvin.com">wcolvin@bishopcolvin.com</a></p>
<p>David Swanson  Interested Party  c/o Henry J. Walker  Walker Law Firm  2330 Highland Ave.  Birmingham, AL 35205  <a href="mailto:henryjwalker@bellsouth.net">henryjwalker@bellsouth.net</a></p>	<p>All Temps Systems, Inc.  c/o Andre' M. Toffel  Andre' M. Toffel, P.C.  Suite 300  600 North, 20<sup>th</sup> Street  Birmingham, AL 35203  <a href="mailto:atoffel@toffelp.com">atoffel@toffelp.com</a></p>
<p>Bill George  c/o Jon C. Goldfarb  c/o Daniel Arciniegas  c/o L. William Smith  Wiggins, Childs, Quinn &amp; Pantazis, LLC  The Kress Building, 301 19<sup>th</sup> Street North  Birmingham, AL 35203  <a href="mailto:wsmith@wcqp.com">wsmith@wcqp.com</a></p>	<p>Elevator Maintenance and Repair, Inc.  Creditor  c/o Charles N. Parnell, III  Parnell &amp; Crum, P.A.  P.O. Box 2189  Montgomery, AL 36102-2180  <a href="mailto:bkrp@parnellcrum.com">bkrp@parnellcrum.com</a></p>

<p>U.S. Pipe and Foundry Company, LLC  c/o Jeffrey B. McClellan, Esq.  1200 Abernathy Road, NE  Suite 1200  Atlanta, GA 30328  <a href="mailto:jmcclellan@muellerwp.com">jmcclellan@muellerwp.com</a></p>	<p>Wells Fargo Bank, National Association as  Indenture Trustee  c/o Eric A. Schaffer  c/o Luke A. Sizemore  c/o Mike C. Buckley  Reed Smith LLP  225 Fifth Ave., Suite 1200  Pittsburgh, PA 15230-2009  <a href="mailto:eschaffer@reedsmith.com">eschaffer@reedsmith.com</a>  <a href="mailto:lsizemore@reedsmith.com">lsizemore@reedsmith.com</a>  <a href="mailto:mbuckley@reedsmith.com">mbuckley@reedsmith.com</a></p>
<p>City of Midfield, Alabama  c/o David A. Sullivan  1728 3<sup>rd</sup> Avenue North  Suite 400D  Birmingham, AL 35203  <a href="mailto:dasnicole@bellsouth.net">dasnicole@bellsouth.net</a></p>	<p>Fraternal Order of Police Lodge 64  Robert Thompson, Aubrey Finley and William  D. McAnally et al. on behalf of the Employees  of the Jefferson County Sheriff's Office  c/o Raymond P. Fitzpatrick  1929 Third Avenue North  Birmingham, Alabama 35203  <a href="mailto:rpfitzpatrick@fcclawgroup.com">rpfitzpatrick@fcclawgroup.com</a></p>
<p>BBA Development, LLC  c/o Amanda M. Beckett  Burr &amp; Forman LLP  420 North 20<sup>th</sup> Street, Suite 3400  Birmingham, AL 35203  <a href="mailto:abeckett@burr.com">abeckett@burr.com</a></p>	<p>Medical Data Systems Inc.  c/o Bryan G. Hale  Starnes Davis Florie LLP  100 Brookwood Place, 7<sup>th</sup> Floor  Birmingham, AL 35209  <a href="mailto:bgh@starneslaw.com">bgh@starneslaw.com</a></p>
<p>Lara Swindle  c/o Ann C. Robertson  c/o H. Wallace Blizzard  Wiggins, Childs, Quinn &amp; Pantazis, LLC  The Kress Building  301 Nineteenth Street North  Birmingham, AL 35203  <a href="mailto:arobertson@wcqp.com">arobertson@wcqp.com</a>  <a href="mailto:hwb@wcqp.com">hwb@wcqp.com</a></p>	<p>Charlotte Breece  Lillie Starks  On behalf of all similarly situated persons in  Breece, et al v. Jefferson County Tax Collector  c/o Lee Wendell Loder  Loder, P.C.  P.O. Box 13545  Birmingham, AL 35202  <a href="mailto:loderlawfirm@aol.com">loderlawfirm@aol.com</a></p>
<p>John Madison, IV, inmates and others  similarly situated at the Jefferson County Jail  c/o H. Doug Redd  5343 Old Springville Road  Pinson, AL 35126  <a href="mailto:hdougredd@gmail.com">hdougredd@gmail.com</a></p>	<p>B.A.S. L.L.P.  c/o Salem Resha, Jr.  The Resha Firm  1516 20<sup>th</sup> Street South, Suite A  Birmingham, AL 35205  <a href="mailto:sresha@reshafirm.com">sresha@reshafirm.com</a></p>

<p>CSX Transportation, Inc.  A party-in-interest  c/o James H. White, IV  Baker Donelson Bearman Caldwell &amp; Berkowitz, P.C.  420 20<sup>th</sup> Street North  1600 Wells Fargo Tower  Birmingham, AL 35203  <a href="mailto:jwhite@bakerdonelson.com">jwhite@bakerdonelson.com</a></p>	<p>Unisys Corporation  Party in Interest  c/o Dana S. Plon, Esq.  Sirlin Gallogly &amp; Lesser, P.C.  123 South Broad Street, Suite 2100  Philadelphia, PA 19109  <a href="mailto:dplon@sirlinlaw.com">dplon@sirlinlaw.com</a></p>
<p>James Pruitt  Interested Party  c/o Cynthia Forman Wilkinson, Esq.  c/o Larry R. Mann, Esq.  Wilkinson Law Firm, PC  215 N. Richard Arrington, Jr. Blvd., Ste. 811  Birmingham, AL 35203  <a href="mailto:wilkinsonfile@bellsouth.net">wilkinsonfile@bellsouth.net</a></p>	<p>John Mason, IV  c/o Dan C. King, III  Stewart &amp; Stewart, P.C.  1826 3<sup>rd</sup> Avenue North Suite 300  Bessemer, AL 35020  <a href="mailto:dking@stewartandstewart.net">dking@stewartandstewart.net</a></p>
<p>James R. Crane  c/o Steven D. Altmann  c/o Charles L. Denaburg  c/o Marvin E. Franklin  Najjar Denaburg, P.C.  2125 Morris Avenue  Birmingham, AL 35203  <a href="mailto:saltmann@najjar.com">saltmann@najjar.com</a>  <a href="mailto:cdenaburg@najjar.com">cdenaburg@najjar.com</a>  <a href="mailto:mfranklin@najjar.com">mfranklin@najjar.com</a></p>	<p>Owens &amp; Minor, Inc.  c/o Robert S. Westermann, Esq.  c/o Sheila deLa Cruz, Esq.  Hirschler Fleischer, P.C.  P.O. Box 500  Richmond, Virginia 23218-0500  <a href="mailto:rwestermann@hf-law.com">rwestermann@hf-law.com</a>  <a href="mailto:sdelacruz@hf-law.com">sdelacruz@hf-law.com</a></p>
<p>James R. Crane  c/o Sydney Gibbs Ballesteros  Gibbs &amp; Bruns, LLP  1100 Louisiana, Suite 5300  Houston, Texas 77002  <a href="mailto:sballesteros@gibbsbruns.com">sballesteros@gibbsbruns.com</a></p>	<p>Collette Funderburg  Creditor and Interested Party  c/o Michael J. Antonio, Jr.  Greystone Legal Clinic  2516 11<sup>th</sup> Avenue North  Birmingham, AL 35234  <a href="mailto:MANT003@aol.com">MANT003@aol.com</a></p>

<p>W.C. Rice Oil Company, Inc.  c/o James H. White, IV  Baker Donelson Bearman Caldwell  &amp; Berkowitz, P.C.  420 20<sup>th</sup> Street North  1600 Wells Fargo Tower  Birmingham, Alabama 35203  <a href="mailto:jwhite@bakerdonelson.com">jwhite@bakerdonelson.com</a></p>	<p>Universal Hospital Services, Inc.  c/o James E. Bailey, III  Butler, Snow, O'Mara, Stevens &amp; Cannada,  PLLC  6075 Poplar Avenue, Suite 500  Memphis, TN 38119  <a href="mailto:jeb.bailey@butlersnow.com">jeb.bailey@butlersnow.com</a></p>
<p>Delores W. Frost  c/o W.L. Longshore, III  Longshore, Buck &amp; Longshore, P.C.  2009 Second Avenue North  Birmingham, Alabama 3203  <a href="mailto:Billy3@longshorebuck.com">Billy3@longshorebuck.com</a></p>	<p>Lehman Brothers Special Financing, Inc.  c/o James C. Huckaby  c/o Daniel D. Sparks  c/o Bradley R. Hightower  Christian &amp; Small  505 20<sup>th</sup> Street North, Suite 1800  Birmingham, Alabama 35203  <a href="mailto:jch@csattorneys.com">jch@csattorneys.com</a>  <a href="mailto:dds@csattorneys.com">dds@csattorneys.com</a>  <a href="mailto:brh@csattorneys.com">brh@csattorneys.com</a></p>
<p>AMCAD  15867 North Mountain Road  Broadway, VA 22815  <a href="mailto:cdelawder@amcad.com">cdelawder@amcad.com</a></p>	<p>BNSF Railway Company  c/o James H. White, IV  Baker Donelson Bearman Caldwell  &amp; Berkowitz, P.C.  420 20<sup>th</sup> Street North  1600 Wells Fargo Tower  Birmingham, Alabama 35203  <a href="mailto:jwhite@bakerdonelson.com">jwhite@bakerdonelson.com</a></p>
<p>Wells Fargo Bank, National Association,  Indenture Trustee  c/o Russell M. Cunningham, IV  Cunningham Firm, LLC  Landmark Center, Suite 600  2100 First Avenue North  Birmingham, AL 35203  <a href="mailto:Russell@cunninghamfirmllc.com">Russell@cunninghamfirmllc.com</a></p>	<p>Moore Oil Company  Creditor  c/o Brenton K. Morris  Benton &amp; Centeno, LLP  2019 Third Avenue North  Birmingham, Alabama 35203  <a href="mailto:bmorris@bcattys.com">bmorris@bcattys.com</a></p>

<p>Innovation Depot, successor-in-interest to  Entrepreneurial Center, Creditor  c/o Russell M. Cunningham, IV  Cunningham Firm, LLC  Landmark Center, Suite 600  2100 First Avenue North  Birmingham, AL 35203  <a href="mailto:Russell@cunninghamfirmllc.com">Russell@cunninghamfirmllc.com</a></p>	<p>First Commercial Bank  As Indenture Trustee  c/o David B. Anderson  c/o Deanna L. Weidner  Anderson Weidner, LLC  505 20<sup>th</sup> Street North  Financial Center, Suite 1450  Birmingham, AL 35203-4635  <a href="mailto:dbanderson@andersonweidner.com">dbanderson@andersonweidner.com</a>  <a href="mailto:dlweidner@andersonweidner.com">dlweidner@andersonweidner.com</a></p>
<p>Andrew Bennett, Roderick Royal, et al.  c/o Calvin B. Grigsby  2406 Saddleback Drive  Danville, CA 94506  <a href="mailto:cgrigsby@grigsbyinc.com">cgrigsby@grigsbyinc.com</a></p>	<p>First Commercial Bank  c/o David A. Wender  Alston &amp; Bird LLP  1201 West Peachtree Street  Atlanta, Georgia 30309  <a href="mailto:david.wender@alston.com">david.wender@alston.com</a></p>
<p>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  c/o Lawrence S. Elbaum  Proskauer Rose LLP  Eleven Times Square  New York, NY 10036-8299  <a href="mailto:lbaum@proskauer.com">lbaum@proskauer.com</a></p>	<p>Jefferson County, Alabama  George Carpinello  Boies, Schiller &amp; Flexner LLP  10 North Pearl Street, 4<sup>th</sup> Floor  Albany, New York 12207  <a href="mailto:gcarpinello@bsfllp.com">gcarpinello@bsfllp.com</a></p>
<p>Bayerische Landesbank  c/o Edward A. Smith  Venable LLP  Rockefeller Center  1270 Avenue of the Americas  New York, NY 10020  <a href="mailto:easmith@Venable.com">easmith@Venable.com</a></p>	<p>AMSOL  c/o John K. Rezac  Taylor English Duma LLP  1600 Parkwood Circle, Suite 400  Atlanta, Georgia 30339  <a href="mailto:jrezac@taylorenghish.com">jrezac@taylorenghish.com</a></p>
<p>Internal Revenue Service  c/o Kenya Bufford  801 Tom Martin Drive  M/S 126  Birmingham, AL 35211  <a href="mailto:Kenya.Bufford@irs.gov">Kenya.Bufford@irs.gov</a></p>	<p>UAB Health System  c/o Kathleen Kauffman  Legal Counsel  500 22<sup>nd</sup> Street South, Suite 408  Birmingham, AL 35233  <a href="mailto:kkauffman@uasystem.ua.edu">kkauffman@uasystem.ua.edu</a></p>



<p>Luther Strange, Esq.  Attorney General  State of Alabama  501 Washington Avenue  Montgomery, AL 36130  <a href="mailto:lstrange@ago.state.al.us">lstrange@ago.state.al.us</a>  <a href="mailto:omartin@ago.state.al.us">omartin@ago.state.al.us</a></p>	<p>Vekesha Hawes  Creditor  c/o Tyrone Townsend  P.O. Box 2105  Birmingham, AL 35201  <a href="mailto:ttowns1@msn.com">ttowns1@msn.com</a></p>
<p>John A. Vos Esq., Interested Party  c/o John A. Vos, Esq.  1430 Lincoln Avenue  San Rafael, CA 94901  <a href="mailto:invalidemailecfonly@gmail.com">invalidemailecfonly@gmail.com</a></p>	<p>Alabama Department of Environmental  Management  c/o Tom Johnston, Esq.  General Counsel  1400 Coliseum Blvd.  Montgomery AL 36110  <a href="mailto:tj@adem.state.al.us">tj@adem.state.al.us</a>  <a href="mailto:daf@adem.state.al.us">daf@adem.state.al.us</a></p>
<p>Environmental Protection Agency  c/o Bill Weinischke  U.S. Department of Justice  Room 6028  Patrick Henry Bldg.  601 D Street, N.W.  Washington, D.C. 20004  <a href="mailto:bill.weinischke@usdoj.gov">bill.weinischke@usdoj.gov</a></p>	<p>University of Alabama Health Services  Foundation, P.C.  Sirote &amp; Permut, P.C.  c/o Stephen B. Porterfield  2311 Highland Avenue South  Birmingham, AL 35205  <a href="mailto:sporterfield@sirote.com">sporterfield@sirote.com</a></p>
<p>Ad Hoc Sewer Warrantholders  c/o Thomas M. Mayer  c/o Gregory A. Horowitz  c/o Elan Daniels  c/o Amy Caton  c/o Jonathan M. Wagner  Kramer Levin Naftalis &amp; Frankel LLP  1177 Avenue of the Americas  New York, New York 10036  <a href="mailto:tmayer@kramerlevin.com">tmayer@kramerlevin.com</a>  <a href="mailto:ghorowitz@kramerlevin.com">ghorowitz@kramerlevin.com</a>  <a href="mailto:edaniels@kramerlevin.com">edaniels@kramerlevin.com</a>  <a href="mailto:acaton@kramerlevin.com">acaton@kramerlevin.com</a>  <a href="mailto:jwagner@kramerlevin.com">jwagner@kramerlevin.com</a></p>	<p>Environmental Protection Agency  c/o William Bush  c/o Brad Ammons  Atlanta Federal Center  61 Forsyth Street, SW  Atlanta, GA 30303-3104  <a href="mailto:Bush.william@epamail.epa.gov">Bush.william@epamail.epa.gov</a>  <a href="mailto:Ammons.brad@epamail.epa.gov">Ammons.brad@epamail.epa.gov</a></p>

<p>National Public Finance Guarantee Corp.  c/o Jennifer S. Morgan  Hand Arendall LLC  30200 RSA Tower  Post Office Box 123  Mobile, AL 36601  <a href="mailto:jmorgan@handarendall.com">jmorgan@handarendall.com</a></p>	<p>Ad Hoc Sewer Warrantholders  c/o Justin G. Williams, Esq.  Tanner Guin &amp; Crowell, LLC  2711 University Boulevard  Tuscaloosa, AL 35401-1465  <a href="mailto:jwilliams@tannerguincrowell.com">jwilliams@tannerguincrowell.com</a></p>
<p>City of Hoover  c/o Leslie M. Klasing  c/o April B. Danielson  Waldrep, Stewart &amp; Kendrick, LLC  2323 Second Avenue North  Birmingham, AL 35203  <a href="mailto:Klasing@wskllc.com">Klasing@wskllc.com</a>  <a href="mailto:adanielson@wskllc.com">adanielson@wskllc.com</a></p>	<p>Depfa Bank PLC  c/o Israel David  c/o Gary L. Kaplan  Fried, Frank, Harris, Shriver &amp; Jacobson LLP  One New York Plaza  New York, NY 10004  <a href="mailto:israel.david@friedfrank.com">israel.david@friedfrank.com</a>  <a href="mailto:gary.kaplan@friedfrank.com">gary.kaplan@friedfrank.com</a></p>
<p>Charles E. Wilson  David Harris, III  Mike Agnesia  c/o Lee R. Benton  c/o Jamie A. Wilson  Benton &amp; Centeno, LLP  2019 Third Avenue North  Birmingham, AL 35203  <a href="mailto:lbenton@bcattys.com">lbenton@bcattys.com</a>  <a href="mailto:jwilson@bcattys.com">jwilson@bcattys.com</a></p>	

**VIA U.S. MAIL:**

<p>Shoe Station, Inc.  Attn: Michael T. Cronin, Esq.  Johnson Pope Bokor Ruppel &amp; Burns, LLP  911 Chestnut Street  Clearwater, FL 33576</p>	<p>Teklinks Inc.  201 Summit Parkway  Homewood, AL 35209</p>
<p>Morris &amp; Dickson Co LLC  410 Kay Lane  Shreveport, LA 71115</p>	<p>Augmentation, Inc.  3415 Independence Drive, Suite 101  Birmingham, AL 35209-8315</p>
<p>AMT Medical Staffing, Inc.  2 20<sup>th</sup> Street North  Suite 1360  Birmingham, AL 35203</p>	<p>Brice Building Co., LLC  201 Sunbelt Parkway  Birmingham, AL 35211</p>

John Plott Company Inc. 2804 Rice Mine Road NE Tuscaloosa, AL 35406	Laboratory Corporation of America 430 South Spring Street Burlington, NC 27215 Attention: Legal Department
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**CARL A. TONITIS**

**VIA U.S. MAIL:**

Carl A. Tonitis 1735 Mountain Laurel Lane Hoover, AL 35244-1129	
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# **Annex A**

(Proposed Form of Order – Revised August 5, 2013)

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<p><b>In re:</b></p> <p><b>JEFFERSON COUNTY, ALABAMA,</b> <b>a political subdivision of the State of</b> <b>Alabama,</b></p> <p style="text-align: center;"><b>Debtor.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Case No. 11-05736-TBB</b></p> <p><b>Chapter 9</b></p>
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**ORDER APPROVING: (A) THE “DISCLOSURE STATEMENT REGARDING CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON COUNTY, ALABAMA (DATED JULY 29, 2013)”; AND (B) RELATED DISCLOSURE STATEMENT PROCEDURES, DEADLINES, AND NOTICES**

THIS MATTER came before the Court on August 6, 2013, upon the *Motion for Entry of Order, Pursuant to Sections 105(a), 901(a), and 1125(b) of the Bankruptcy Code and Bankruptcy Rules 2002, 3017, and 9007, Approving (A) the Proposed Disclosure Statement and (B) the Form and Manner of the Notice of the Proposed Disclosure Statement Hearing* [Docket No. 1818] (the “Disclosure Statement Motion”), which Disclosure Statement Motion seeks approval of (1) the proposed *Disclosure Statement Regarding Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated June 30, 2013)*, as subsequently revised on July 29, 2013 [Docket No. 1912] and including the additional revisions described on the record at the August 6, 2013 hearing (as it may be further amended, supplemented, or modified from time to time by the County, the “Disclosure Statement”) for the *Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated July 29, 2013)* (as it may be amended, supplemented, or modified from time to time by the County pursuant to the terms thereof and Bankruptcy Code section 942, the “Plan”<sup>1</sup>), (2) certain deadlines and procedures relating to replies and objections to the Disclosure

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<sup>1</sup> All capitalized terms used but not otherwise defined in this Order have the meanings ascribed to those terms in the Disclosure Statement Motion or the Plan, as applicable.

Statement, and (3) the form and scope of notice thereof, all as more specifically described in the Disclosure Statement Motion; and the Court having jurisdiction to consider the Disclosure Statement Motion; and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the County having filed on the docket of this chapter 9 case the Plan and related Disclosure Statement; and based on the pleadings of record, the arguments and representations of counsel, for good cause shown, and all other matters brought before the Court; it appearing that no other or further notice is necessary; it appearing that the relief requested in the Disclosure Statement Motion is fair, equitable, and in the best interests of the County, its Creditors, and other parties in interest; after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED and DECREED** that all objections to the Disclosure Statement Motion, including those filed as Docket Nos. 1895, 1916, 1921, 1927, and 1929, are **OVERRULED** in their entirety, and the Disclosure Statement Motion is **GRANTED** as set forth herein; and it is further

**ORDERED, ADJUDGED and DECREED** that the Disclosure Statement contains adequate information within the meaning of section 1125 of the Bankruptcy Code, no other or further information is necessary, the Disclosure Statement is **APPROVED** in its entirety, and the County may accordingly solicit acceptances and rejections of the Plan; and it is further

**ORDERED, ADJUDGED and DECREED** that the Disclosure Statement (including the exhibits thereto) provides holders of Claims and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Articles V and VI of the Plan in satisfaction of the requirements of Bankruptcy Rule 3016(c), the requirements of the due process

clause of the Fifth Amendment to the United States Constitution, and, to the extent applicable, the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution; and it is further

**ORDERED, ADJUDGED and DECREED** that all objections to the Disclosure Statement that have not been withdrawn or resolved previously or at the Disclosure Statement Hearing hereby are OVERRULED; and it is further

**ORDERED, ADJUDGED and DECREED** that the Disclosure Statement Hearing Notice, attached as Annex B to the Disclosure Statement Motion and incorporated by reference herein, filed and served on July 1-2, 2013, constitutes good and sufficient notice of the Disclosure Statement Hearing, the manner in which a copy of the Disclosure Statement (and exhibits thereto, including the Plan) could be obtained, and the time fixed for filing objections or responses thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, comports with due process, and no other or further notice is necessary; and it is further

**ORDERED, ADJUDGED and DECREED** that the Disclosure Statement Objection Procedures set forth in the Disclosure Statement Motion and the Disclosure Statement Hearing Notice for filing objections and responses to the Disclosure Statement are appropriate based on the particular needs of this Case and comply with Bankruptcy Rules 2002 and 3017(a); and it is further

**ORDERED, ADJUDGED and DECREED** that the County is authorized to make non-substantive or immaterial changes to the Disclosure Statement and all related documents (including, without limitation, all exhibits thereto) without further order of the Court, including, without limitation, making ministerial changes to correct typographical and grammatical errors,

and making conforming changes among the Disclosure Statement, the Plan, the Ballots, the Master Ballots, and any other materials in the Solicitation Packages prior to mailing as may be appropriate; and it is further

**ORDERED, ADJUDGED and DECREED** that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

**ORDERED, ADJUDGED and DECREED** that the County is authorized, in its discretion, to take or refrain from taking any action necessary or appropriate to effectuate the terms of and relief granted pursuant to this Order in accordance with the Disclosure Statement Motion and without further order of the Court; and it is further

**ORDERED, ADJUDGED and DECREED** that this Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order; and it is further

**ORDERED, ADJUDGED and DECREED** that this Order is without prejudice to the rights of the County pursuant to Bankruptcy Code section 904, and nothing herein is intended as or shall be deemed to constitute the County's consent 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 August, 2013.

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UNITED STATES BANKRUPTCY JUDGE