

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

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

**OPPOSITION TO MOTION FOR APPROVAL PURSUANT TO  
THE CONFIRMATION ORDER OF COMPROMISES AND  
SETTLEMENTS AND RELATED RELIEF WITH RESPECT TO  
THE CHAPTER 9 PLAN OF ADJUSTMENT FOR JEFFERSON  
COUNTY, ALABAMA**

Comes now Andrew Bennett, Roderick V. Royal, Steven W. Hoyt, Mary Moore, John W. Rogers, , William R. Muhammad, Carlyn R. Culpepper, Freddie H. Jones, II, Sharon Owens, Reginald Threadgill, Rickey Davis, Jr., Angelina Blackmon, Sharon Rice, and David Russell (collectively, the “Ratepayer/Claimants”), in opposition to Jefferson County’s Motion for Approval Pursuant to the confirmation Order of Compromises and Settlements and Related Relief with Respect to the Chapter 9 Plan of Adjustment (the “Motion”), and state as follows:

**BRIEF RELEVANT BACKGROUND**

Ratepayer/claimants timely filed their proof of claim against Debtor for \$1.63 billion. This claim was for class action, equitable relief to enjoin and invalidate \$3.2 billion in unlawful, unconstitutional, unenforceable, and *void ab initio* Series 2002C, 2003B and 2003C Supplementary Indentures authorizing the issuance of warrants to purchase interest rate swaps (referred to as the “Swap Warrants.”). After filing their claim, Ratepayer/claimants noted that



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the Debtor County had stipulated, in adversary proceeding 12-00016-TBB between the Indenture Trustee and various Sewer creditors and the Debtor County, that the lien on Ratepayer/Claimants' sewer charges paid on the Swap Warrants, enforceable by appointment by Indenture Trustee of a private receiver and by foreclosure of an assessment lien on Ratepayer/Claimants real property and drinking water shut offs, was valid and enforceable. Ratepayer/Claimants attempted to intervene in AP-16 with a complaint alleging such lien was not valid and was unenforceable because it violated the 1997 Indenture and their fundamental constitutional rights. Ratepayer/Claimants sought to have the lien on the Swap Warrants declared *void ab initio* because the Swap Warrant proceeds were used to pay bribes and otherwise benefit private persons, purchase illegal swaps and skirt around constitutional provisions protecting Jefferson county citizens against overly burdensome debt. Ratepayer/Claimants prayer for to a full nullification of all amounts to be collected and owed by Ratepayer/Claimants and their purported class on those Swap Warrants over and above the amounts which would have been owed on the fixed rate project warrants which the swap warrants replaced. As a claimant and a creditor and an interested party, Ratepayer/Claimants had an unconditional right to intervene in the adversary proceeding. 11 USCA 1109(b)<sup>1</sup>; See also, *Smart World Techs., LLC v. Juno Online Servs. (In re Smart World Techs., LLC)*, 423 F.3d 166, 180 (2d Cir. N.Y. 2005)

The court ruled against the intervention requiring Ratepayer claimants to bring their claims in a separate adversary proceeding. (AP-16 Doc. 139). After Debtor County and the Indenture Trustee filed Motions to Dismiss the complaints filed in new adversary proceeding 12-

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<sup>1</sup> 11 USCS 1109 (b) is made applicable to this proceeding under 11 USCA 901(a) and provides: "A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter [11 USCS §§ 1101 et seq.]."

00120-TBB the Court ordered the AP-120 stayed. (AP-120, Doc. 95). Ratepayer/Claimants strongly objected to the stay until a confirmation of a plan of adjustment because it was viewed as a way to allow the County to avoid a hearing on the merits of the validity of the lien against Ratepayer revenues as alleged in the amended complaint. (AP-120, Doc. 98). The instant Motion attempts to avoid such a hearing and is therefore un enforceable against Ratepayer/claimants who are not a part of the settlement worked out with a separate class of creditors.

**THE COUNTY'S SETTLEMENT CANNOT AFFECT THE RIGHTS OF  
RATEPAYER/CLAIMANTS TO HAVE A HEARING ON THE MERITS OF THEIR  
COMPLAINT IN AP-120**

The court cannot approve a dismissal of AP 120 (the "Bennett action") by approval of a settlement between the sewer creditors and Debtor. A settlement is a voluntary compromise of rights of only those who are participants to the agreement. *See generally League of United Latin American Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 846 (5th Cir. 1993) (a consent decree cannot infringe upon the rights of non-settling parties), *cert. denied*, 510 U.S. 1071, 127 L. Ed. 2d 74, 114 S. Ct. 878 (1994). In proposing a class of settlements, a trustee has no power to waive or compromise rights belonging to non-participants to the settlement. *See also Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416, 32 L. Ed. 2d 195, 92 S. Ct. 1678 (1972) (a bankruptcy trustee has no ability to assert rights belonging to individual creditors); *TBG, Inc. v. Bendis*, 36 F.3d 916, 925 (10th Cir. 1994) ("the interest in settlement does not justify depriving third parties of their statutory rights").

Bankruptcy rule 9019(b) only allows approval of settlement of compromises within classes. Therefore Rule 9019(b) provides no basis for relief requested to dismiss the Bennett Action.

Respectfully submitted this 13<sup>th</sup> day of November 2013.

Law Office of Calvin B. Grigsby

A handwritten signature in cursive script that reads "Cal B. Grigsby".

/s/Calvin B. Grigsby

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