

CALVIN B. GRIGSBY
State Bar #53655
LAW OFFICE OF CALVIN B. GRIGSBY
2406 SADDLEBACK DRIVE
DANVILLE, CALIFORNIA 94526
415-393-4800 (O)
415-860-6446 (M)
415-676-2445 (FAX)

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

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

**RESPONSE TO OBJECTION OF JEFFERSON COUNTY ALABAMA REQUEST FOR
ALLOWANCE OF ADMINISTRATIVE CLAIM [DOCKET NO. 2286**

TO THE HONORABLE JUDGE BENNETT OF SAID COURT:

COMES NOW, Andrew Bennett, et al., sewer-rate payers, (collectively, “Applicant”) to submit this Objection to Jefferson County, Alabama (the “County”) objection to the Allowance of Administrative Claims (the “Request”), and in support thereof respectfully show as follows:

I. JURISDICTION

1. This Court has jurisdiction over this Request pursuant to 28 U.S.C. §§157 and 1334, 11 U.S.C §503(b)(3)–(4). This matter constitutes a core proceeding pursuant to 28 U.S.C §157(b)(2)(A).

II. PROCEDURAL BACKGROUND

2. A voluntary bankruptcy petition was filed by Debtor on November 9, 2011, under Chapter 9 of the United States Bankruptcy Code.

RESPONSE TO OBJECTION



3. On February 3, 2012, the Sewer Warrant Indenture Trustee filed an adversary complaint claiming a lien on sewer fees collected from Ratepayers less system, less operating expenses and defined operating expenses not to include legal expenses in the bankruptcy or capital expenditures.

4. On June 13, 2012 Applicant filed on behalf of his clients a complaint in intervention in adversary proceeding AP 16 challenging the constitutionality and legality of certain swap warrants issued by the Debtor and the lien on Ratepayer fees securing such swap warrants.

5. On August 15, 2012, the court moved the Complaint in Intervention to a separate AP proceeding [“AP 120”] pursuant to Order Severing Complaint in Intervention and Motion for Class Certification;

6. On June 7, 2013, AP 120 was stayed pending consideration of a plan of reorganization that would consolidate certain benefits in bond principal reductions to account for the adversary and other claims that could or may be brought by the Ratepayers.

7. On June 30, 2013, the county agreed to a Plan of Adjustment with Sewer Creditors that was conditioned on a Plan confirmation that released all of Ratepayer claims challenging the validity of the lien on sewer revenues.

8. On November 22, 2013, the Court entered an Order confirming the Plan of the County that resulted in over \$1.4 billion in principal reductions materially duplicating the exact relief sought by AP 120. This duplication was included in the court’s findings as one of the significant bases for barring Ratepayers claims.

9. As result of the findings of the Bankruptcy Court in confirming the Plan, the Applicant submitted a request for an administrative expense claim under Section 503(b)(3)(D) of the Bankruptcy Code in light of the substantial contribution made in this case.

RESPONSE TO OBJECTION

10. The County subsequently filed its objection to the Request and presented the following arguments in support of its objections. First, the County argued that 503(b)(3)(D) applies only to creditors. Second the County argues that the Applicant did not provide a substantial contribution to the County's debt adjustment process, and hence, did not provide a substantial contribution to the confirmation of the Plan. Third, the County does not deny that until the Applicant filed its complaint in intervention in AP 16 showing that the lien on net revenues was subject to constitutional impairment, there was no movement by bond insurers, who were also suing the County and the Sewer Warrant Holders claiming illegality of the Sewer warrants, the County and the major sewer warrant holders toward a settlement agreement. Finally, the County makes a blanket argument that the Applicant did not provide adequate information to support the allowance of any administrative claim.

III. ARGUMENT AND AUTHORITIES

11. Contrary to the County's assertions, the Court should not dismiss the Request on its face based upon the requisite threshold of section 503(b)(3)(D). While Applicant maintains that it indeed retains status as a creditor, the issue of whether Applicant is a creditor is a legal determination reviewed *de novo* and currently under appeal and has not reached a final determination on same. Thus, on its face, the Applicant meets the threshold standard of a creditor under 503(b)(3)(D). Regardless, Applicant can merely purchase a claim to subsist its creditor status.

12. Secondly, Applicant vehemently disagrees with the County's assessment that Applicant provided a substantial contribution to the estate. As noted in the Request, the Applicant's efforts to pursue the facts and the law to support the major principal reduction against the claims of the Secured Warrant creditors resulted in reduced principal obligations of the County's debt by more

than \$1.4 billion. For the County to suggest that there was no substantial contribution made by the efforts of the Applicant is incredulous, and to intimate that the result would have been achieved through negotiation and absent the formidable effort of Applicant defies all logic.

13. Finally, the Request clearly provides the requisite information needed to support a claim of administrative expenses. Again, the factors for consideration in making a discretionary award for reasonable attorneys' fees listed in *Johnson v. Georgia Highway Express, Inc.* (the "Johnson factors"). These factors are as follows: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill required to perform the legal services; (4) the preclusion of other employment by the attorneys due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amounts involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson v. Georgia Highway Express, Inc.* 488 F.2d 714, 717-19 (5th Cir. 1974).

14. The Applicant directs the Court to those provisions in the Request which identifies how the Applicant meets each element of the Johnson factors. A brief summary of how the Johnson factors are met is reiterated here.

15. Time and Labor Required. During the Grigsby Firm's representation of the Applicant, a total of 457.5 hours was expended by two attorneys in the performance of legal services. A list of professionals who worked on this case during the representation with each person's respective hourly rate appears in the table below. As set forth herein, certain tasks were accomplished under short time deadlines. The Grigsby firm has endeavored to keep time records which avoid "clumping."

16. Novelty and Difficulty of Questions Presented. Representing the Applicant required the Grigsby Firm to examine issues and make recommendations to the Applicant regarding various matters implicating their loss of disposable income from corrupt and illegal activity and potential loss of their real property where rates increased beyond a reasonable percentage of their disposable income. The resolution of such questions required prompt and definitive action by Grigsby Firm within abbreviated time periods and resulted in the principle rate reductions to enhance the estate.

17. Skill Required Performing Services. The Grigsby Firm believes that practitioners unfamiliar with bankruptcy law, public finance and municipal indenture provisions, and constitutional law would have been required to spend considerably more hours than Grigsby Firm attorneys to make the case for greater concessions from the sewer warrant holders.

18. Costs to the Firm. The case was financed 100% by the Grigsby Firm. The Grigsby Firm has made its contribution to the case on behalf of securing concessions for the Ratepayers out of its own pocket while the other attorneys have spent most of their litigation time on fighting over how Net Revenues will be allocated between the County, and the County's lawyers and the Indenture Trustee (i.e. the battle of 928(b) vs. provisions in the Indenture).

19. Preclusion of Other Employment Due to Acceptance of the Case. The Grigsby Firm has not specifically declined any representation solely because of its service as counsel for the Applicant in this case. However, the Firm has been forced to shift certain of its human resources and delay working on matters of importance to other clients in order to address the pressing matters relating to this case.

20. Customary Fee. The amount of compensation sought herein has been computed pursuant to customary rates discounted because the client is a class of individuals interested in the

solvency of their communities but without resources to pay legal fees. Detailed time and disbursement records have been maintained for all legal services for which compensation is sought. No previous request for allowance has been made for the fees covered by this Request. The rates charged for Grigsby Firm legal services in this case are equal to or less than the rates charged by other firms of similar size and reputation in the Birmingham and National Bankruptcy legal representation market. Expenses are additional. Through the period covered by s Request, Grigsby Firm expenses were \$29,266. The Grigsby Firm has not previously requested reimbursement from County estate, and has not been reimbursed by the County estate, for any of the out of pocket expenses incurred by the Firm which are covered by this Request.

21. Whether the Fee is Fixed or Contingent. The Grigsby Firm's fee is set according to fixed hourly rates.

22. Time Limitations Imposed by the Client or Other Circumstances. The Grigsby Firm had to gain familiarity with certain issues quickly because the case had been ongoing for nine months before the bar date for filing proof of claim, which commenced our advocacy. Applicant required prompt and definitive action by the Firm within abbreviated time periods. In addition, the best interests of the creditors were served by pushing the case forward in order to minimize expenses. Experience, Reputation, and Ability of Attorneys. In an effort to be cost-effective, the Grigsby Firm sought to utilize attorneys with appropriate levels of skill and ability in performing tasks for the Applicant. Calvin Grigsby performed nearly 85% of the work in this matter. It is Grigsby Firm's belief that his reputation is recognized and respected in the community.

23. Nature and Length of the Professional Relationship with the Client. The Grigsby Firm has represented the Applicant throughout the period covered by this Request.

24. Amount Involved and the Results Obtained. The Invoices set forth the specific individual tasks performed by the Grigsby firm during the period covered by this Request. The preceding paragraphs of this Request summarize the matters undertaken by Grigsby Firm during the representation of the Applicant and the results obtained by such representation.

IV. CONCLUSION

23. Without question, the Applicant is entitled to an administrative expense claim for the actual and necessary expenses incurred in making a substantial contribution to the estate. By the Applicant's efforts alone in: (i) researching and raising material constitution, legal, and equitable arguments and authorities, used and useful to the Debtor, (ii) in obtaining the extraordinary result of the \$1.4 billion dollar principal reduction in outstanding indebtedness (iii) preserving the availability of claims and causes of action against J. P. Morgan and other warrant holders, and (iv) preparing for and prosecuting the adversary proceeding attacking the fundamental premises of the issuance of the bonds, Applicants efforts resulted in the direct, significant and tangible benefit to the estate of in reduction of the amount of secured liability that has to be satisfied. *See In re Cellular 101, Inc.*, 377 F.3d 1092, 1096 (9th Cir.2004) (citing *In re Consol. Bancshares, Inc.*, 785 F.2d 1249, 1253 (5th Cir.1986). *See also In re Consol. Bancshares, Inc.*, 785 F.2d 1249, 1253; *In re Buttes Gas & Oil Co.*, 112 B.R. 191, (Bankr. S.D. Tex. 1989).

WHEREFORE, Applicant requests that the Court grant the Administrative Claim based on the itemized charges and billings in connection with Adversary Proceeding # 12-00120-TBB, and in filing and defending the proof of claim and such other and further relief, both legal and equitable, to which it may be entitled.

LAW OFFICE OF CALVIN B. GRIGSBY

Respectfully submitted,

LAW OFFICE OF CALVIN B. GRIGSBY

/s/ Calvin B. Grigsby
Pro Hac Vice

State Bar No. 53655

Attorneys for Bennett Ratepayer Claimants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served to the U.S. Trustee's office, the Applicant, and all other creditors and parties in interest requesting notice via ECF notification on this 17th day of March, 2014

/s/ Calvin B. Grigsby
Calvin B. Grigsby