

**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>	)	

**JEFFERSON COUNTY’S OBJECTION TO PROOF OF CLAIM NUMBER 1099  
FILED BY LINDA MCMILLAN**

Jefferson County, Alabama (the “County”), pursuant to 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3007, objects to Claim Number 1099 (the “Disputed Claim”),<sup>1</sup> filed by Linda McMillan (the “Claimant”), as follows:

**BACKGROUND**

**A. Case Background.**

1. On November 9, 2011, the County filed a voluntary petition for relief under chapter 9 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).
2. On March 4, 2012, the Court entered the order for relief in the County’s case [Docket No. 778], confirming the County’s eligibility to be a debtor under chapter 9 of the Bankruptcy Code.
3. By order dated November 22, 2013 [Docket No. 2248] (the “Confirmation Order”), the Court confirmed the *Chapter 9 Plan of Adjustment of Jefferson County, Alabama (Dated November 6, 2013)* [Docket No. 2182] (the “Plan”).<sup>2</sup>

<sup>1</sup> The Disputed Claim is numbered as set forth in the claims register maintained by Kurtzman Carson Consultants LLC, the County’s duly-appointed claims agent.

<sup>2</sup> Unless otherwise defined, all capitalized terms have the meanings provided in the Plan or Confirmation Order.



4. The Effective Date of the Plan occurred on December 3, 2013. *See* Docket No. 2274

**B. The Claims Process in the County's Case.**

5. On April 6, 2012, the Court entered its *Order (i) Setting Bar Dates and Procedures for Filing Proofs of Claim; (ii) Setting the Bar Date and Procedures for Filing Requests for Allowance of Section 503(b)(9) Claims; and (iii) Approving Form and Manner of Serving and Publishing the Notice of Bar Dates and the Entry of the Order for Relief* [Docket No. 889] (the "Bar Date Order").

6. Among other things, the Bar Date Order set June 4, 2012 as the deadline for filing proofs of claim. Moreover, the Court approved the County's proposed Proof of Claim Form and Bar Date Notice (as those terms are defined in the Bar Date Order).

7. The County duly served the Bar Date Notice and Proof of Claim Form. The County also published notice of the General Bar Date in *The Birmingham News* and *The Bond Buyer*. *See* Docket No. 1057.

**C. Background Regarding the Claimant's Purported Claim Against the County.**

8. On or about September 20, 2011, the Claimant sent a Notice of Claim for Personal Injury and Breach of Contract (the "Notice of Claim") to the Commission, the County, and Cooper Green Mercy Hospital ("Cooper Green").

9. In the Notice of Claim, the Claimant alleged she received medical treatment at Cooper Green beginning on or about September 20, 2010 related to a fractured elbow and other injuries. Among other things, the Claimant alleged that the County's servants, agents, or employees improperly treated the Claimant's fractured elbow.

10. After consideration, the Notice of Claim was denied by the Commission.

11. The Claimant filed the Disputed Claim on June 4, 2012 in the amount of \$1,000,000.00. The Claimant describes the “Basis for Claim” as “personal injury/medical malpractice.”

12. On September 20, 2012, the Claimant filed a Complaint against the Commission, among others, thereby initiating the proceeding styled *McMillan v. Park Place Apartments Phase II, et al.*, Circuit Court of Jefferson County, Alabama, CV-2012-903012 (the “Proceeding”).

13. On December 5, 2012, the Claimant filed a *Motion for Relief from Stay* [Docket No. 1463].

14. On December 20, 2012, the Court entered its *Order Regarding Motion for Relief from Stay* [Docket No. 1538] (the “Order”).

15. Pursuant to the Order, the automatic stays imposed by 11 U.S.C. §§ 362 and 922 were modified solely to allow the Claimant to liquidate and collect any claim or judgment in the Proceeding solely against non-debtor third parties, including Darwin Select Insurance Company.

16. The Disputed Claim arose before the Effective Date of the Plan and is therefore discharged and subject to the Permanent Injunction. *See* Plan § 6.2. To the extent allowed, the Disputed Claim is treated under the Plan as a Class 6 “General Unsecured Claim” and is only entitled to a Pro Rata Distribution from the General Unsecured Claims Pool. *See* Plan § 2.3(t).

### **JURISDICTION AND NOTICE**

17. The County brings the instant objection (the “Objection”) pursuant to 11 U.S.C. § 502 and Federal Rule of Bankruptcy Procedure 3007.

18. The Court has jurisdiction over the Objection pursuant to 28 U.S.C. §§ 157 and 1334. The Objection is a noncore proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(B) and (O).

Venue of the County's case and the Objection is proper before the Court under 28 U.S.C. §§ 1408 and 1409.

19. The County will serve a copy of this Objection on the Claimant and all parties on the Master Service List, as that term is defined in the Court's *Order Establishing Notice, Service, and Case Management Procedures Pursuant to 11 U.S.C. §§ 102(1)(A) and 105(a) and Bankruptcy Rule 2002(m)* [Docket No. 89].

**OBJECTION TO CLAIM, DENIAL OF LIABILITY, AND RESERVATION OF RIGHTS**

20. Without limitation or waiver of any other basis for objection or disallowance, the County is not liable to the Claimant under applicable law with respect to the Disputed Claim.

Among other things:

- a) The Claimant's damages, if any, were directly and proximately the result of an independent intervening cause;
- b) No action or inaction on the part of the County or its agents, servants, officers, officials, or employees was the proximate cause of the Claimant's damages, if any;
- c) All relevant health care providers exercised such reasonable care, skill, and diligence as other similarly situated health care providers in the same general line of practice ordinarily have and exercise in a like case;
- d) Alabama Code §§ 11-93-1, *et seq.*, is a cap and limitation on the recovery of any damages award, if any, against the County, *see* Ala. Code § 11-93-2 ("The recovery of damages under any judgment against a governmental entity shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence."); and

e) The County is exempt and immune from the assessment of punitive damages in accordance with Alabama Code § 6-11-26.

21. The County denies the allegations on which the Disputed Claim is based, denies liability to the Claimant for the Disputed Claim, and demands strict proof thereof. The County reserves all rights, claims, and defenses with respect to the Disputed Claim and all other proofs of claim filed in its case.

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

**WHEREFORE**, the County respectfully requests the Court to enter an order disallowing the Disputed Claim in its entirety, expunging the Disputed Claim from the County's claims register, and granting such other, further, and different relief as may be just and proper.

Respectfully submitted this 23rd day of May, 2014.

/s/ Patrick Darby

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