

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>Debtor.</b>	)	<b>CHAPTER 9</b>
	)	
_____	)	

**NOTICE OF FILING CORRECTED AFFIDAVIT OF DWIGHT PERCY**

Jefferson County, Alabama, the debtor in the above-referenced case (the "County"), hereby provides notice of filing the corrected affidavit of Dwight Percy, Exhibit No. C.422. This corrected affidavit, attached hereto as Exhibit A, corrects a typographical error on page 4 regarding the treatment of Class 5-A under the Plan.

Respectfully submitted this 18th day of November, 2013.

/s/ J. Patrick Darby  
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***Counsel for Jefferson County, Alabama***

# EXHIBIT A

**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>	)	

**AFFIDAVIT OF DWIGHT PERCY**

I, Dwight Percy, declare and state:

1. I have 30 years of experience in public and corporate finance. I am now the Managing Partner of my own firm, Percy Consulting LLC.
2. From December 1986 to May 2011, I was an employee of Porter White & Company, Inc (“PWCo”). From early 2007 to July 2008, I was actively engaged with others of that firm as financial adviser to Jefferson County (the “County”). In 2003, while employed by PWCo, I assisted the engineering firm of BE&K in performing an analysis of the County’s Sewer System. I have served as a financial expert to Bradley Arant Boult Cummings on behalf of the County from approximately July 25, 2011 to the present. In that capacity, I have reviewed and analyzed financial and operating reports of the Sewer System, reviewed and analyzed reports of the Receiver, prepared various tax computations and analyses in furtherance of the County’s settlement with the IRS, and reviewed and analyzed the sewer billing and revenue recognition procedures.
3. This affidavit summarizes and explains the provisions of various documents, including the County’s Chapter 9 Plan of Adjustment dated November 6, 2013 [Docket No.

2182] (the “Plan”),<sup>1</sup> as well as certain indentures, agreements, and related documents. While I have endeavored to be as complete as possible in my description of the Plan and these other documents, the actual terms of the documents control and nothing stated herein is intended to vary or alter those terms.

### **OVERVIEW OF THE PLAN**

4. The Plan provides for a substantial reduction and restructuring of the County’s long-term debt, both sewer and non-sewer.

#### ***Sewer Debt***

5. The principal amount of the County’s sewer debt will be reduced by more than \$1.3 billion. This reduction will be accomplished by issuing New Sewer Warrants, the proceeds of which will be used to fully retire the existing Sewer Warrants at less than 57 cents on the dollar.

6. The largest of the sewer debt-related concessions is being made by the JPMorgan Parties, which have agreed to waive various claims on account of interest and fees and indemnity claims and general obligation claims and to accept up to approximately \$945 million less than the Adjusted Sewer Warrant Principal Amount of Sewer Warrants held by the JPMorgan Parties.

7. Other sewer creditors have made material concessions as well, including accepting reduced principal repayment, waivers of claims for default interest, waiver of penalties, waiver of attorneys’ fees, and the dismissal and release of litigation claims related to the Sewer System.

8. The Plan provides that the existing Sewer Warrants are deemed to have been accelerated. Acceleration simplifies the administration of Distributions under the Plan.

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<sup>1</sup> Capitalized terms not otherwise provided herein should be given the meaning ascribed to them in the Plan.

9. Because the New Sewer Warrants are being purchased on the open market, each of the purchasers of the New Sewer Warrants is extending credit to the County in good faith. Similarly, the other indebtedness or extensions of credit incident to the New Sewer Warrants – including the incurrence of any underwriting or other transaction fees to be paid at closing, the provision of the New Sewer Wrap Policy, and the delivery of the Reserve Fund LOC – were negotiated at arm’s-length between sophisticated parties represented by counsel and are thus consistent with what a similarly situated issuer would incur and are appropriate in the context of the entire Plan.

***Non-Sewer Debt***

10. The Plan restructures and repays in full more than \$1 billion of non-sewer debt by, among other things, converting variable-rate debt into fixed-rate debt and amortizing debt service to match revenues.

11. Through the Depfa PSA, the County and Depfa agree to, among other things, a new rate of interest for the Series 2005-B School Warrants, which is lower than the current Standby Rate.

12. Other GO Creditors agreed to valuable concessions in the form of waivers of penalties, waiver of default interest, waiver of fees and expenses, and postpetition interest.

13. The Plan also reflects the terms of the Bessemer Stipulation, which restructures the County’s lease of the Bessemer Courthouse in a manner favorable to the County and that provides significant liquidity relief to the County. On December 20, 2012, the Court approved this settlement pursuant to Bankruptcy Rule 9019 [Docket No. 1537].

**SUMMARY OF THE PLAN’S CLASSIFICATION OF CLAIMS**

14. Section 2.1 of the Plan classifies claims as follows:

<b>Class</b>	<b>Description</b>	<b>Treatment</b>
None	Administrative Claims	Unimpaired – Deemed to Accept
1-A	Sewer Warrant Claims	Impaired
1-B	Bank Warrant Claims and Primary Standby Sewer Warrant Claims	Impaired
1-C	Sewer Warrant Insurers Claims	Impaired
1-D	Other Specified Sewer Claims	Impaired
1-E	Sewer Swap Agreement Claims	Impaired – Deemed to Reject
1-F	Other Standby Sewer Warrant Claims	Impaired – Deemed to Reject
2-A	Series 2004-A School Claims	Impaired
2-B	Series 2005-A School Claims	Impaired
2-C	Series 2005-B School Claims and Standby School Warrant Claims	Impaired
2-D	School Policy – General Claims	Impaired
2-E	School Surety Reimbursement Claims	Impaired
3-A	Board of Education Lease Claims	Unimpaired – Deemed to Accept
3-B	Board of Education Lease Policy Claims	Unimpaired – Deemed to Accept
4	Other Secured Claims, including Secured Tax Claims	Unimpaired – Deemed to Accept
5-A	Series 2001-B GO Claims and Standby GO Warrant Claims	Impaired
5-B	Series 2003-A GO Claims	Unimpaired – Deemed to Accept
5-C	Series 2004-A GO Claims	Unimpaired – Deemed to Accept
5-D	GO Policy Claims	Impaired
5-E	GO Swap Agreement Claims	Impaired

<b>Class</b>	<b>Description</b>	<b>Treatment</b>
6	General Unsecured Claims	Impaired
7	Bessemer Lease Claims	Impaired
8	Other Unimpaired Claims	Unimpaired – Deemed to Accept
9	Subordinated Claims	Impaired – Deemed to Reject

15. The Plan primarily classifies claims first by the broad nature of the claim or class of claims – that is, whether a claim arises from the County’s Sewer System (Class 1), School Warrants (Class 2), Board of Education Leases (Class 3), the County’s general obligation warrants and related insurance or swaps (Class 5), or the Bessemer courthouse lease (Class 7). Within certain of these general categories, the Plan further divides claims based on certain characteristics such as, for example, the series of particular warrants. Other categories are not further subdivided, but rather consist of all claims with specific characteristics, such as general unsecured status (Class 6) or subordinated status (Class 9). Accordingly, there are important reasons for separate classification of the various Classes of Claims created under the Plan, the classifications were not done for any improper purpose, and no Creditors have been unfairly discriminated against by virtue of the classification.

**DISCUSSION OF PARTICULAR CLASSES  
OF CLAIMS DEEMED TO REJECT THE PLAN**

16. The Sewer Swap Agreement Claims (Class 1-E) are secured by liens that are subordinate to the liens securing the Sewer Warrant Claims and certain other Claims under the Sewer Warrant Indenture. The Sewer Warrant Claims are receiving substantially less than a full recovery under the Plan and the value for purposes of the Plan of the collateral securing those Claims is not more than the amount of the Claims. The liens securing the Sewer Swap

Agreement Claims arise under (a) the LBSF Swap Agreement; (b) the ISDA Master Agreement dated as of October 18, 2002, as amended; (c) or the ISDA Master Agreement dated as of May 1, 2004.

17. The Other Standby Sewer Warrant Claims (Class 1-F) are secured by liens that are subordinate to the liens securing the Sewer Warrant Claims, the Primary Standby Sewer Warrant Claims, and certain other Claims under the Sewer Warrant Indenture. The Sewer Warrant Claims and the Primary Standby Sewer Warrant Claims are receiving substantially less than a full recovery under the Plan and the value for purposes of the Plan of the collateral securing those Claims is not more than the amount of the Claims. The liens securing the Other Standby Sewer Warrant Claims arise under (a) that certain *Standby Warrant Purchase Agreement* dated as of February 1, 2002, among the County, the Sewer Warrant Trustee, and JPMorgan Chase Bank, N.A.; (b) those certain *Standby Warrant Purchase Agreements* dated as of October 1, 2002, among the County, the Sewer Warrant Trustee, JPMorgan Chase Bank, N.A. (as liquidity agent), and each of JPMorgan Chase Bank, N.A., Bank of America, N.A., Scotia Bank, Société Générale, New York Branch, and Regions Bank; and (c) those certain *Standby Warrant Purchase Agreements* dated as of May 1, 2003, among the County, the Sewer Warrant Trustee, JPMorgan Chase Bank, N.A. (as liquidity agent), and each of Société Générale, New York Branch, BNY, State Street, and Lloyds TSB Bank plc. Furthermore, the holders of the Class 1-F Claims – i.e., JPMorgan, the Sewer Liquidity Banks, and certain of the Supporting Sewer Warrantholders – are parties to Sewer Plan Support Agreements and such holders support the Plan, including with respect to the treatment of the Class 1-F Claims.

18. Class 9 consists of Subordinated Claims. The holders of Subordinated Claims possess payment or lien rights that are subordinated to other Creditors which are receiving less than full recovery under the Plan, and thus the Subordinated Claims have no value.

### **THE COMMUTATION ELECTION**

19. The Commutation Election is a choice available under the Plan to holders of all Sewer Warrants, but one that is most salient in the context of the Sewer Warrants insured by one of the Sewer Warrant Insurers. As part of the voting process, holders of claims in Class 1-A and Class 1-B had the choice to either retain their insurance and certain other rights (and receive a distribution of 65 cents on the dollar on account of their Claim) or to surrender their insurance and waive certain other rights (in exchange for a higher distribution of 80 cents on the dollar). The Disclosure Statement and other balloting materials disclosed the effects of making or not making the Commutation Election.

20. For holders who did not mark their ballots one way or the other, Section 4.7(a) of the Plan sets out certain default or “deemed” elections. Those deemed elections comport with what rational holders of the respective Sewer Warrants would likely choose to do given the materially larger Distribution from the County under the Plan for holders who make or are deemed to make the Commutation Election and in view of the economic circumstances of each of the Sewer Warrant Insurers (including, for example, the fact that FGIC just recently emerged from a New York state rehabilitation proceeding) and the potential costs and delay attendant to asserting or potentially litigating claims under the applicable Sewer Wrap Policies.

21. By contrast, with respect to warrants insured by Assured Guaranty, holders were deemed not to commute as to shorter maturities and deemed to commute as to longer maturities, reflecting both market risk and the pricing of those warrants in the marketplace.

## **ADDITIONAL POST-SOLICITATION CONCESSIONS**

22. After the County had solicited votes for approval of the Plan, the County obtained further concessions from certain of the County's creditors.

23. These concessions are reflected in the current draft of the Plan and four Plan Support Agreement Supplements.

24. As one of these additional concessions, the JPMorgan Parties agreed to reduce their cash distributions under the Plan by \$100 million and to provide an additional benefit to the County in the form of approximately \$180,000,000 face amount (i.e., 10% of the par amount of the new warrants) 40-year letter(s) of credit for deposit into one or more debt service reserve funds to be established under the New Sewer Warrant Indenture.

25. Other creditors, including the Sewer Warrant Insurers, liquidity banks and the plan support parties, also gave up additional value that benefits the County.

## **NO SCHOOL WARRANT DEFAULTS HAVE OCCURRED ON OR AFTER FEBRUARY 11, 2013**

26. No School Warrant Events of Default (other than those waived in the relevant Plan Support Agreements) have occurred under the School Warrant Indenture or the Standby School Warrant Purchase Agreement during the period between February 11, 2013 and the date of this declaration, and none is anticipated to occur between the date of this declaration and the date on which the Confirmation Hearing begins.

## **CONCLUSION**

27. The Plan reflects a set of interlocking concessions, agreements, releases and compromises. All are mutually dependent and essential to the creditors and the County realizing the benefits for which they have bargained.

FURTHER AFFIANT SAYETH NOT.

**VERIFICATION**

STATE OF ALABAMA            )  
  :  
JEFFERSON COUNTY            )

Before me, a notary public in and for said county in said state, personally appeared Dwight Percy, who, being by me first duly sworn, deposes and says on oath that he has read the foregoing Affidavit and is informed and believes and, upon the basis of such information and belief, avers that the facts alleged therein are true and correct.

  
\_\_\_\_\_  
DWIGHT PERCY

Subscribed and sworn to before me this 18th day of November, 2013.

  
\_\_\_\_\_  
Notary Public  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Nov 20, 2014  
My commission expires ~~THRU~~ THRU NOTARY PUBLIC UNDERWRITERS

