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Attorney for Andrew Bennett, Jefferson County Tax Assessor, an elected official of Debtor, et al.

**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
	§
	§
	§

**REQUEST FOR
ALLOWANCE OF ADMINISTRATIVE CLAIM**

NO HEARING WILL BE CONDUCTED WITH REGARD TO THE SUBJECT MATTER HEREOF UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE UNDERSIGNED COUNSEL WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE HEREOF, UNLESS THE COURT EXTENDS OR SHORTENS THE TIME FOR FILING SUCH A RESPONSE.

IF A RESPONSE IS TIMELY FILED AND SERVED, A HEARING WILL BE HELD WITH NOTICE ONLY TO THE RESPONDING PARTY, UNLESS THE COURT DETERMINES THAT A HEARING IS NOT REQUIRED AND THAT THE COURT'S DECISION WOULD NOT BE SIGNIFICANTLY AIDED BY ORAL ARGUMENT. IF NO RESPONSE IS TIMELY FILED AND SERVED, THE RELIEF REQUESTED HEREIN MAY BE DEEMED UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING SUCH RELIEF.

TO THE HONORABLE JUDGE BENNETT OF SAID COURT:

COMES NOW, Andrew Bennett, et al., sewer rate



in support thereof respectfully show as follows:

I. Jurisdiction and Venue

1. This Court has jurisdiction over this Request pursuant to 28 U.S.C. §§157 and 1334, and 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. Background

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

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 in contravention to the allegations of validity of this lien made by the Sewer Warrant Indenture Trustee.

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.

III. Argument and Authorities

A. 11 U.S.C. § 503(b)(3)(D) – Substantial Contribution

9. The Applicant requests an administrative expense claim under Section 503(b)(3)(D) for the substantial contribution made by Applicant in this case. By seeking this administrative claim, the Applicant is not trying to do indirectly what they cannot do directly. *See In re Qimonda AG*, 425 B.R. 256, 262 (Bankr. E.D. Va. 2010).

10. 11 U.S.C. § 503 provides in pertinent part that—

(b) [a]fter notice and hearing, there *shall* be allowed administrative expenses . . . including—[. . .]

(3) the actual, necessary expenses . . . incurred by—

(D) a creditor . . . in making a substantial contribution in a case under chapter . . . 9 or 11 of this title. See 11 U.S.C. §§ 503(b)(3)(A), (D).

11. Of particular note, a creditor is only entitled to an administrative expense claim on account of a substantial contribution in a case under chapter 9 or 11. *See 11 U.S.C. § 503(b)(3)(D)*. In a case that converts between chapters 7 and 9 or 11, a creditor that makes a substantial contribution is entitled to an administrative expense only for the period that the case is in chapter 9 or 11 *Lebrun v. Meacham Fin. Inc.*, 27 F.3d 937, 944 (3rd Cir. 1994).

However, “[e]xpenses incurred prior to the [case being filed in chapter 9 or 11] may be eligible for administrative expense treatment under section 503(b)(3)(D) if incurred in efforts that directly benefitted the estate. 4 Collier on Bankruptcy ¶ 503.10[5] (16th ed.), *citing Lebrun*, 27 F.3d at 944; *In re Lister*, 846 F.2d 55, 57 (10th Cir. 1988).

12. Whether a particular creditor has made a substantial contribution in a bankruptcy case is a question of fact. *Pierson & Gayle v. Creel & Atwood*, 785 F.2d 1249 (5th Cir. 1986). The principal factor in determining whether a substantial contribution has been made is the extent of benefit to the estate. *In re Cellular 101, Inc.*, 377 F.3d 1092, 1096 (9th Cir. 2004). However, the existence of a motive of self-interest underlying a creditor's actions should not, by itself, be grounds for finding no substantial contribution has occurred. *In re Oxford Homes, Inc.*, 204 B.R. 264, 268 ann. (Bankr. D. Me. 1997). Particularly in the Eleventh and Fifth Circuits, “[§] 503(b)(3)(D) does not require a “self-deprecating, altruistic intent” as a prerequisite to recovery . See *In re Celotex Corp.*, 227 F.3d 1336 (11th Cir. 2000); *In re DP Partners, Ltd.*, 106 F.3d 667, 673 (5th Cir. 1997).

13. Among the factors considered in determining whether a substantial contribution has been made in a particular case are “(1) whether the services were rendered solely to benefit the [individual seeking recovery of expenses] or to benefit all parties in the case; (2) whether the services provided a **direct, significant, and demonstrable benefit** to the estate; and (3) whether the services were duplicative of services rendered by attorneys for the committee, the committees themselves, or the debtor and its attorneys” (emphasis added). *In re Buttes Gas & Oil Co.*, 112 B.R. 191, 194 (Bankr. S.D. Tex. 1989). See also, *In re FF Holdings Corp.*, 34 B.R. 84,87 (D. Del. 2006) (convincing another creditor to withdraw its objection and thereby save the estate in litigating the objection constituted substantial contribution).

14. Applicant argues that if there ever were a textbook example of a creditor's entitlement to a substantial contribution claim, the Applicant respectfully submits that this case is it. But for the Applicant's active involvement in this case, it strains credulity that the Secured Warrant creditors would have reduced the principal obligations of their debt by more than \$1.4 billion. There was no duplication of effort, in that the County pursued the path of negotiation against the back-drop of the adversary while Applicants filed and actually prosecuted

the adversary proceedings that challenged the legality of the swap warrants. For the County to intimate [which to date they have not done in any pleading or argument to Applicant's knowledge] that the same result would have been achieved without the formidable efforts of Applicant would be self-serving, if not nonsensical. Some party had to make the substantial effort at creating the facts and law to support this major principal reduction and the evidence is clear that the County mounted no duplicative effort to match that of Applicant in researching legal issues and formulating pleadings.

15. The Applicant thus has incurred significant expenses and attorneys' fees to (i) lay the foundation for constitutional and legal attacks on the swap warrants, (ii) give the county the ammunition to enter into direct negotiations with the swap warrant issuers to reduce the principal obligations on the unconstitutional and ultra vires warrants (iii) prepare for and prosecute the Adversary that tied the factual and legal elements, all with the common effect to force secured creditor concessions thru negotiations rather than litigation.

16. Accordingly, the Applicant is entitled to an administrative expense claim for the actual and necessary expenses incurred in making a substantial contribution to this Case from the date of filing of the Complaint in intervention through the date of the filing of this Request.

17. By this Request, the Applicant seeks, *inter alia*, an administrative quest based on the direct, significant, demonstrable and substantial contribution made by the Applicant in this case during such time period as set forth herein.

18. The Applicant further claims that he made a substantial contribution to the estate (i) researching and raising material constitution, legal, and equitable arguments and authorities, used and useful to the Debtor in obtaining the extraordinary result of the \$1.4 billion dollar principal reduction in outstanding indebtedness (ii) preserving the availability of claims and causes of action to invalidate the liens on sewer revenues claimed by J. P. Morgan and other warrant holders , and (iii) preparing for and prosecuting the adversary proceeding attacking the fundamental premises of the issuance of the bonds, which 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.

19. As above mentioned, there are many relevant factors that courts consider when determining whether a creditor has made a substantial contribution in the case. The ultimate factor in this consideration is whether the actions of the requesting party actually conferred a benefit to the estate. *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). Also significant in this case is the consideration of the whether the actions of the applicant were duplicative of that of other parties. *See In re Consol. Bancshares, Inc.*, 785 F.2d 1249, 1253; *In re Buttes Gas & Oil Co.*, 112 B.R. 191, 194 (Bankr. S.D. Tex. 1989).

20. Utilizing this precedent, the Applicant can clearly show that its actions were a material direct and proximate cause of the substantial principal reduction achieved in the Plan. There has been no argument to date that without eminent threat of the adversary brought by Applicant, the plan result could likely have been achieved.

21. Applicant through its attorney has committed considerable time to the effort to reduce bonded indebtedness from inception of the case through its closing. Such time and expenses of its attorney are set forth in the Annexed Appendix "A". To accept the premise that the Debtor's actions brought about this favorable result to the Estate is to ignore the time and value of services provided by Debtor's counsel in pressing forth with the adversary complaint in this matter that was stayed by one of the holdings of this Court due to the desired results of material and substantial principal reduction being incorporated within the Plan.

B. *The attorneys' fees incurred by the Applicant which form the basis of this Request are reasonable.*

22. The factors for consideration in making a discretionary award for reasonable attorneys' fees were listed in *Johnson v. Georgia Highway Express, Inc.* 488 F.2d 714, 717-
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19 (5th Cir. 1974). (the “*Johnson* factors”), and are summarized 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. (The factors enunciated in

Johnson has been adopted by four other courts of appeals. See *Boston & Maine Corp.v. Sheehan, Phinney, Bass & Green*, 778 F.2d 890, 896 (1st Cir. 1985); *Harman v. Levin*, 772 F.2d 1151, 1152-53 (4th Cir. 1985); *Mann v. McCombs*, 751 F.2d 286, 287-88 (8th Cir.1984); *Yermakov v. Fitzsimmons*, 718 F. 2d 1465 (9th Cir.1983). In addition, the 11th Cir. has not repudiated the *Johnson Factors*. *Mock V. Bell Helicopter Textron, Inc.* 456 Fed. Appx. 799 (11th Cir. 2006), citing to *ADA v. Neptune Designs, Inc.*, 469 F. 3d 1557 (11th Cir. 2006).

23. Based upon the services described in this Request, Law offices of Calvin B. Grigsby (the “Grigsby Firm”) respectfully represents that it has fully satisfied the standards prescribed by the *Johnson* factors as more fully set forth below.

24. *Time and Labor Required.* During the Grigsby Firm’s representation of the Applicant, a total of **867** hours was expended by four attorneys and a paralegal 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.”

Calvin Grigsby	\$400
David Sullivan	\$375
Rajan Pillai	\$350
Chris Clark	\$300
Paralegal Jerry Liang	\$150

25. 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. Often, the resolution of such questions required prompt and definitive action by Grigsby Firm within abbreviated time periods. Some of the issues Grigsby Firm addressed include:

- a. Tracing of bribe payments to the actual increases in swap payments derived from Ratepayers as “synthetic fixed rates”;
- b. Showing how bribe payments increased financing soft costs and interest payments for the private interest of JPMorgan, Bill Blount and other sewer warrant participants;
- c. The choice by Senior Warrant holders of the present Plan to enhance the public perception of bribe payer insiders like JPMorgan versus a possible determination the bribes made the swap void *ab initio*;
- d. showing that the Plan has over \$5 billion of back end loaded interest to repay only \$1.8 billion in principal; and showing that the *step up* from \$140 million in annual sewer collections today to over \$600 million a year in 40 years in just the opposite of the *step down* in median income in the service area per U.S. census reports. This extreme divergence in cost vs. ability to pay within the service area arguably makes the Plan infeasible. The threat of this attack forced compromise.

26. Skill Required Performing Services. The Grigsby Firm believes that practitioners unfamiliar with bankruptcy law, public finance, municipal indentures 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. Moreover, after the Firm survived the second series of motions to dismiss its claims for invalidity of the Sewer warrants, over 1/3 of the Sewer warrant holders sold out at deep discounts that paved the way to a settlement with JPMorgan, who wanted to avoid more negative Public Relations, and hedge funds who could make a mark-up on recent purchases.

27. 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 by material debt reduction to the estate 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).

28. 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.

29. 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 this 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.

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

31. 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 9 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.

32. 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.

33. "Undesirability" of the Case. Representation of the Applicant in this case has not been undesirable. However, the arduous task imposed against limited resources of the Applicant would have made this a difficult choice for most law firms to undertake the representation.

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

35. 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

36. Applicant understands that mere allegations are not evidence. However, Applicant has a sound belief there is no party to this case that would present persuasive evidence to dispute that but for the strident efforts of Applicant, the County could yet have achieved the material outcome which was a direct and proximate result of the adversary proceeding settled in the plan. The sell out by original warrant holders to hedge funds at deep discounts because of the threat of an *ultra vires* ruling is but one example of the direct contribution of the Grigsby firm to the settlement. (See, e.g. Exhibit A).

WHEREFORE, Applicant hereby submits this request to Debtor and to the Court that its 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 be granted.

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 the 6th day of December, 2013

/s/ Calvin B. Grigsby

Calvin B. Grigsby

EXHIBIT A TO 11 USC 503 MOTION

-----Original Message-----

From: Ann Acker [mailto:acker@chapman.com]
Sent: Tuesday, October 30, 2012 2:39 PM
To: Jerry Liang
Subject: Re: Jefferson County

Jerry, have you and Calvin had the opportunity to consider this request?
On Oct 8, 2012, at 5:06 PM, Jerry Liang wrote:

> Ann, I passed your message on to Calvin last week. I'll let you know
> what I hear back from him. -Jerry

>

> -----Original Message-----

> From: Ann Acker [mailto:acker@chapman.com]
> Sent: Monday, October 08, 2012 3:02 PM
> To: Jerry Liang
> Subject: Jefferson County

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>> To: Jerry Liang

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>> From: Ann Acker

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>> Date: October 8, 2012

>>

>> Re: **Complaint** Jefferson County Adversary Case No. 12-00120

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>> As I mentioned in my recent voicemail message to you, Lloyds TSB Bank
>> plc, a Defendant in the above-referenced Adversary, has sold and
>> transferred its claims in the Jefferson County bankruptcy.
>> Notice of the transfer of claims has been filed in the case-in-
>> chief.

>> Accordingly, we request that the Plaintiffs agree to voluntarily
>> dismiss Lloyds from the Adversary Proceeding as Lloyds no longer has
>> an interest in the matter. If this is agreeable to you, please let
>> me know and we can prepare a simple dismissal for your review.

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> Ann Acker
> Partner
> Chapman and Cutler LLP
> 111 W. Monroe Street
> Chicago, IL 60603
> 312-845-3710
> acker@chapman.com

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APPENDIX A TO 503 MOTION

DATES	WORK DONE	ATTORNEYS	HOURS
3/1-4/10/12	Client consultations; outline Proof of Claim	Grigsby Sullivan	45 10
4/10-6/4/12	Review of Bankruptcy case filings; Prep and filing of proof of claim	C. Clark Grigsby R. Pillai Liang	10 50 10 14
5/25-6/4/12	Prep. And filing Motion for Class Certification of Proofs of claim	C. Clark Grigsby Liang	10 20 6
6/4-7/10/12	Review of AP-16 Filings; Prep and Filing Complaint in Intervention AP-16	Liang C. Clark Grigsby R. Pillai	10 5 30 7
7/11-7/24/12	Prep and filing Reply to Indenture Trustee Objection to Class Proof of claim	Grigsby Liang R. Pillai Sullivan	20 4 5 4
8/1-8/6/12	Prep and Filing Reply to County Objection to Class proof of claim	Grigsby R. Pillai Liang Sullivan	12 3 4 4
8/6-8/8/12	Prep and Attend 8/8 hearing	Grigsby Sullivan	12 6
8/16-9/6/12	Preparation and filing complaint AP- 120	Grigsby Pillai Clark Sullivan Liang	38 12 4 10 8
9/12-9/29/12	Prep and filing amended complaint AP- 120	Grigsby Pillai	20 10

		Clark	4
		Sullivan	4
		Liang	6
10/20-11/19/2012	Review and Research Motions to Dismiss, Motion to Strike , Motion For more definitive Statement; Prep for Hearing	Grigsby Pillai Sullivan Liang	48 12 6 8
12/10-1/20/2012	Research and Prep of objection to Order Granting Motion to Strike; Order granting Motion for More Definitive Statement	Grigsby Pillai Sullivan Liang	22 10 8 10
12/20-1/20/13	Research and prep of opp To Motions to dismiss	Grigsby Pillai Sullivan Liang	32 10 4 8
2/3-2/13/13	Prep and Research re Motion To amend or Alter	Grigsby Pillai Liang	8 4 2
2/19-2/20/13	Prep and Attendance Hearing On Various Motions	Grigsby Sullivan	12 2
3/1-4/4/13	Prep and Research re amended Complaint	Grigsby Pillai Liang	42 14 12
4/20-5/31/13	Brief in Opposition to County Motion To dismiss	Grigsby Pillai Liang	26 8 7
4/20-5/31/13	Brief in Opposition to Indenture Trustee Motion To dismiss	Grigsby Pillai Liang	26 8 7
6/9-6/18/13	Motion for Reconsideration of Stay	Grigsby	6
7/5-7/30/13	Prep and research and Reply to Chapter 9 Plan of Adjustment	Grigsby	30
7/5-7/30/13	Prep and research and Objection to Disclosure Statement	Grigsby	18

7/31/13	Motion to expedite Hearing	Grigsby	1
8/2-8/5/13	Objection to Amended disclosure	Grigsby	2
8/22-8/26/13	Prep and Response to Opposition To Proof of Claim	Grigsby	4
9/30-10/10/13	Opposition to confirmation amended Plan	Grigsby	16
10/14-10/15	Amended Response to Debtor Objection to Proof of claim	Grigsby	4
10/15-10/17	Reply to Objection to Proofs Of claim	Grigsby	7
10/17-10-18	Prep and Attendance Hearing on Plan confirmation	Grigsby	18
11/1-11/5	Motion to amend or alter Order disallowing claim	Grigsby	4
11/15-11/19	Reply to Opposition to Motion To amend or alter	Grigsby	6
12/1/13	Notice of appeal; leave to appeal	Grigsby	2

Grigsby 569	\$227,600
Liang 102	15,300
Pillai 105	36,750
Sullivan 58	21,750
Clark 33	9,900
Total	\$311,300