

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA**

In re: JEFFERSON COUNTY, ALABAMA, Debtor.)))))	Case No.:: 11-05736-TBB-9 Chapter 9
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RATEPAYERS' MOTION FOR LEAVE TO APPEAL

COME NOW Charles E. Wilson, David Harris, III, Mike Agnesia, individually and on behalf of a putative class of other individuals and entities similarly situated (hereinafter referred to "Rate Payers"), creditors and/or parties in interest in the above styled case, by and through their undersigned counsel, hereby move pursuant to 28 U.S.C. § 158(a)(3) and Fed. R. Bankr. P. 8001(b) for leave to appeal from the following Bankruptcy Court's Orders, as a protective measure to the extent these orders are not considered final under 28 U.S.C. § 158(a)(1):

- 1) Order Sustaining Debtor's Objection to Proof of Claim Filed by Charles E. Wilson (Claim # 370) (Doc. #2197) signed on November 12, 2013, and subsequent Order Denying Motions for New Trial, or to Alter or Amend, or for Relief from a Final Judgment (Doc. #2252) signed on November 26, 2013; and
- 2) Findings of Fact, Conclusions of Law and Order Confirming the Chapter 9 Plan of Adjustment for Jefferson County, Alabama (November 6, 2013) (Doc. # 2248) signed on November 22, 2013.

OVERVIEW

The Ratepayers file this motion for leave to appeal concurrent with their filing of a separate notice of appeal, as a precaution and to the extent that the Orders made the subject of the Rate Payers' Notice of Appeal are found to be non-final. Moreover, this Court's recent Order approving



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the Plan of Adjustment purports to moot Count II of the Rate Payers' State Court Litigation, even though that case was stayed by the court "pending further order" without any hearing or other compliance with the Federal Rules of Civil Procedure and never removed to Bankruptcy Court. Moreover, no final judgment or motion to dismiss has been rendered in the State Court Litigation.

As this Court is aware, the Wilson Rate payers filed a putative class claim in the Circuit Court of Jefferson County, Alabama alleging that the existing (at that time) rate structure for the imposition of sewer rates was unreasonable, discriminatory, confiscatory, and/or otherwise unlawful under Alabama law and Amendment 73 of the Constitution of the State of Alabama. Count I of that case (seeking an equitable declaration that the Swap Warrants were *void ab initio*) was removed to the Bankruptcy Court; however, Count II remained and still remains pending in the Circuit Court of Jefferson County, Alabama, CV-2008-901907. Rate payers assert that this Court does not have jurisdiction to moot and/or enter a bar order in a separately pending state court action that (1) was never removed to Bankruptcy Court, (2) has never been heard on the merits nor has due process been allowed for such claims, (3) never provided an opportunity for hearings on standing or other procedural due process grounds, and (4) ignores established precedent wherein the County must provide some form of compensation or refunding policy if the amounts charged for rates and services was unlawful or violative of Alabama law.

LEGAL DISCUSSION

Review of interlocutory orders is left to the district court's discretion under §158(a)(3). *Head v. Farm Bureau Gen. Ins. Co. of Mich.*, No. 05-72650, 2005 U.S. Dist. LEXIS 33503, 2005 WL 2173568, at *4 (E.D. Mich. Sept. 6, 2005). In deciding whether to exercise discretion to hear an appeal under § 158(a)(3), courts use the same standard as courts of appeals in taking interlocutory

appeals from district courts a standard set forth in 28 U.S.C. § 1292(b). *See* 28 U.S.C. § 158(c)(2) ("An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules."). Under § 1292(b), the statute setting forth the court of appeals' jurisdiction for hearing interlocutory orders, an interlocutory order will be considered appealable if (1) there exists "a controlling question of law as to which there is substantial ground for difference of opinion," and (2) "an immediate appeal from the order may materially advance the ultimate termination of the litigation." § 1292(b); *see Wicheff v. Baumgart (In re Wicheff)*, 215 B.R. 839, 844 (B.A.P. 6th Cir. 1998) (citing *Vitols v. Citizens Banking Co.*, 984 F.2d 168, 170 (6th Cir. 1993)). "Review under § 1292(b) should be sparingly granted and then only in exceptional cases." *Id.*

This is an exceptional case because the Order on confirmation purports to bar Count II of the State Court Litigation where no final judgment has been certified. It is only due to procedural uncertainty resulting from the Bankruptcy Court's entry of the Confirmation Order in the main bankruptcy case that bars further prosecution of the State Court Litigation that the Ratepayers have any need to bring this protective motion. It would only exacerbate the procedural confusion if the Ratepayers had to wait for a final order in the State Court Litigation instead of proceeding with the appeal of the denial of Ratepayers claims and adverse treatment under the Confirmation Order in the main bankruptcy case.

CONCLUSION

For the reasons explained above, the Court should grant this motion for leave to appeal the Orders set forth above thereby allowing the Ratepayers to efficiently appeal all the orders and

Rulings entered against them or having preclusive effect.

DATED this 2th day of December, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM-ECF system and served same in accordance with the attached Master Service List.

/s/Lee R. Benton

Lee R. Benton

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VIA U.S. MAIL:

Shoe Station, Inc. Attn: Michael T. Cronin, Esq. Johnson Pope Bokor Ruppel & Burns, LLP 911 Chestnut Street Clearwater, FL 33576	Teklinks Inc. 201 Summit Parkway Homewood, AL 35209
Morris & Dickson Co LLC 410 Kay Lane Shreveport, LA 71115	Augmentation, Inc. 3415 Independence Drive, Suite 101 Birmingham, AL 35209-8315
AMT Medical Staffing, Inc. 2 20 th Street North Suite 1360 Birmingham, AL 35203	Brice Building Co., LLC 201 Sunbelt Parkway Birmingham, AL 35211
John Plott Company Inc. 2804 Rice Mine Road NE Tuscaloosa, AL 35406	Laboratory Corporation of America 430 South Spring Street Burlington, NC 27215 Attention: Legal Department