SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Rehabilitation of FINANCIAL GUARANTY INSURANCE COMPANY.	Index No.: 401265/2012 Doris Ling-Cohan, J. Motion Sequence No. 004

CONDITIONAL OBJECTION OF JEFFERSON COUNTY, ALABAMA TO THE PLAN OF REHABILITATION FOR FINANCIAL GUARANTY INSURANCE COMPANY

Jefferson County, Alabama, a debtor in a Chapter 9 bankruptcy case that has been pending in the Northern District of Alabama since November 2011 ("Jefferson County"), submits this conditional opposition to the proposed Plan ("Plan") of Rehabilitation for Financial Guaranty Insurance Company ("FGIC"). Counsel for Jefferson County is hopeful that counsel will reach agreement with counsel for the Superintendant of Financial Services of the State of New York (the "Superintendent") that will address the concerns that Jefferson County has with the Plan as proposed on September 27, 2012. However, in order to preserve its objections, should agreement not be reached, Jefferson County hereby submits this objection to approval of that Plan.

FACTUAL BACKGROUND

As a result of billions of dollars of debt arising from the construction of a new and expanded sewer system, Jefferson County filed a case under Chapter 9 of the federal Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Alabama (the "Bankruptcy Court") on November 9, 2011. Jefferson County's bankruptcy case is to date the

largest municipal bankruptcy filing in the history of the United States. FGIC was one of several insurers that guaranteed the timely payment of principal and interest on certain warrants issued by Jefferson County to service the sewer debt. FGIC guarantees approximately $1.6 billion worth of the outstanding sewer warrants, which represents approximately 52 percent of the outstanding warrants. Upon Jefferson County's default on the payment of certain of these warrants, FGIC, under certain contractual obligations to warrant holders, acquired approximately $101 million of such warrants prior to Jefferson County's bankruptcy filing. In addition, FGIC has paid approximately $4 million under certain Municipal Bond Debt Service Reserve Funding Policies to cover principal and interest payments to warrant holders. FGIC filed multiple "proofs of claim" in Jefferson County's bankruptcy case on May 25, May 29 and June 4, 2012, asserting both contingent and non-contingent claims in excess of $1.6 billion. FGIC has actively participated in numerous proceedings before the Bankruptcy Court, including filing and joining motions for relief from the automatic stays, joining and participating in pending adversary proceedings, and appealing orders entered by the Bankruptcy Court.

In particular, FGIC was an active and leading participant in various state and federal proceedings prior to the filing of the petition which led to the appointment of a receiver by the Alabama state courts to oversee the Jefferson County sewer system. FGIC also actively supported emergency motions filed by the state court receiver to allow the receiver to continue in place after the filing of Jefferson County's bankruptcy petition. *See generally In re Jefferson County, Alabama*, 474 B.R. 228 (Bankr. N.D. Ala. 2012) (denying motion to allow the receiver to continue control over the Jefferson County sewer system). Subsequent to the denial of the emergency motion, FGIC then moved to allow the state receiver to nonetheless proceed to set the sewer rates for Jefferson County. That motion is still pending before the Bankruptcy Court, and

FGIC just this month, after entry of the Rehabilitation Order in this Court, renewed its motion in the Bankruptcy Court to lift the bankruptcy stays to allow the receiver to set rates. *See* Exhibit A attached hereto. Consistent with its very active involvement in Jefferson County's bankruptcy case and related proceedings, FGIC has advised the Bankruptcy Court that it will "have a role in any plan of adjustment in this case." *See* Exhibit B attached hereto at ¶ 8.

I. The Proposed Plan Arguably Seeks To Interfere With the Exclusive Jurisdiction and the Automatic Stays In Bankruptcy of the Chapter 9 Case Pending In the Northern District of Alabama.

The proposed Plan, submitted to this Court on September 27, 2012, provides in Section *7.8, inter alia,* that all persons are prohibited from commencing, continuing, advancing, or otherwise prosecuting any "legal proceeding" on any policy claim in existence as of the commencement of this proceeding; taking any steps to act upon any claimed interest in the property or assets of FGIC; withholding any payments owed to FGIC; or asserting any rights or remedies against FGIC. Further, Section 8.1 of the Plan provides that *this Court* shall have exclusive jurisdiction to consider any claims made against FGIC and to recover all assets and property of FGIC wherever located.

As currently written, the broad language in the Plan, if read literally, could arguably interfere with the Bankruptcy Court's ability to address the massive proofs of claim that FGIC chose to file in Jefferson County's bankruptcy case, and could arguably prevent Jefferson County from classifying or treating those claims in a chapter 9 plan or rehabilitation or from pursuing any adversary proceeding, defense or counterclaim in the Bankruptcy Court against FGIC.[1]

[1] Read literally, these provisions also violate the automatic bankruptcy stay in effect in the County's case. In that regard, the County will be filing a motion before the Bankruptcy Court asking that the Bankruptcy Court enforce the automatic stay with respect to the Superintendent's actions and the provisions of the Plan that could encroach on that court's jurisdiction. The County reserves all rights, claims and defenses with respect to any plan proposed or approved in FGIC's rehabilitation proceeding, including with respect to the scope and interpretation of the Plan and the effects of the Plan vis-à-vis the County's bankruptcy case. The County also reserves all rights to take any action that may be appropriate before the Bankruptcy Court.

It is unclear whether the Superintendent intends for the Plan to alter or impair the rights of a debtor such as Jefferson County in a pending case under the federal Bankruptcy Code. The impact of the Plan on the rights of a debtor in bankruptcy with respect to FGIC's claims against that debtor is never addressed in the "disclosure statement" accompanying the proposed Plan. Nevertheless, the broad and unbounded language in the Plan could conceivably impair a debtor's rights. Yet, FGIC and the Rehabilitator have already submitted to the Bankruptcy Court's jurisdiction by filing claims in that court and are bound by the Bankruptcy Court's jurisdiction to adjudicate those claims.

II. The Bankruptcy Court Has Exclusive Jurisdiction Over Claims Filed By FGIC In That Proceeding and Any Defenses or Counterclaims the Debtor Has Against FGIC.

Section 1334 of Title 28 of the United States Code provides that the federal district courts, and through the district courts, the federal bankruptcy courts, have original, exclusive jurisdiction of all cases filed under the Bankruptcy Code. Moreover, pursuant to 28 U.S.C § 157, the bankruptcy courts have jurisdiction over "core proceedings" which include the allowance or disallowance of claims against the debtor's estate and counterclaims by the debtor against persons filing claims against the estate. *See* 28 U.S.C. § 157(b)(2)(B).

Further, by filing a proof of claim in the bankruptcy proceeding a creditor such as FGIC has rendered those claims "core" bankruptcy proceedings over which the Bankruptcy Court has federal jurisdiction. *See, e.g.*, *Gulf States Exploration Co. v. Manville Forest Products Corp.* (*In re Manville Forest Products Corp.*), 896 F.2d 1384, 1389 (2d Cir. 1990), *citing Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 59, n. 14 (1989). Even a sovereign entity such as a state submits itself to the bankruptcy court's jurisdiction when it files a claim. *See, e.g.*, 11 U.S.C. § 106(b); *Gardner v. State of New Jersey*, 329 U.S. 565, 573-74 (1947). As part of this waiver, the bankruptcy court may adjudicate related counterclaims against the state. *State of Georgia v.*

Burke (In re Burke), 146 F.3d 1313 (11th Cir. 1998) (state waives sovereign immunity by filing claim and debtor may pursue claim for attorneys' fees and costs against the state); *Logan v. Credit General Ins. Co. (In re PRS Ins. Group)*, 331 B.R. 580, 586-87 (Bankr. D. Del. 2005). The bankruptcy court also has jurisdiction with regard to adversary proceedings to set aside preferences or similar transfers, even when the defendant is a state entity. *See, e.g., Cent. Va. Cmty. College v. Katz*, 546 U.S. 356, 359-70 (2006); *Gray v. University of Alaska (In re Dehan, Inc.)*, 327 B.R. 38 (Bankr. D. Mass. 2005); *Official Committee of Unsecured Creditors v. Public Utilities Comm. of California (In re 360 Networks (USA) Inc.)*, 316 B.R. 797 (Bankr. S.D.N.Y. 2004). FGIC submitted its claims and all related matters to the Bankruptcy Court's broad federal jurisdiction by filing proofs of claim and actively participating in Jefferson County's bankruptcy case. Thus, respectfully, the Bankruptcy Court sitting in Alabama, and not this Court, has exclusive jurisdiction over the determination of the FGIC claims, any defenses to those claims, any counterclaims against FGIC related to the FGIC claims, and any classification, treatment, or subordination of those claims under the federal Bankruptcy Code, including under a chapter 9 plan.

Moreover, it is well-established that a state court has no power to enjoin proceedings in a federal court or enjoin parties that have appeared in a federal action from pursuing their claims in that action. *See, e.g., Donovan v. The City of Dallas*, 377 U.S. 408 (1964); *Hawthorne Savings FSB v. Reliance Ins. Co. of Illinois*, 421 F.3d 835, 851 (9th Cir. 2004) (a state court such as a court handling rehabilitation or liquidation of insurance company, has no power to enjoin a federal action even if the federal action involves the insurance company that is the subject of the rehabilitation or liquidation); *Gross v. Weingarten*, 217 F.3d 208, 220-225 (4th Cir. 2000) (federal court properly had jurisdiction over claims against insolvent insurer despite the assertion

of exclusive jurisdiction by state insurance commissioner in insolvency proceeding); *Aluminum Products Distributor Inc. v. Aaacon Auto Transport, Inc.*, 549 F.2d 1381, 1383 (10th Cir. 1977) ("The argument that a state court could in effect enjoin a person from proceeding further in an action previously instituted in a federal court where the federal court admittedly has jurisdiction of both subject matter and the parties, is a bit startling and finds no sanction in the law.").

While a federal court has the authority to abstain from exercising such jurisdiction, such a determination is within the discretion of the federal court. *Gross*, 217 F.3d at 220-225.

In the context of insurance liquidation or rehabilitation proceedings in particular, bankruptcy courts have asserted their exclusive and original jurisdiction to determine the claims that are properly brought before them and are not obligated to defer to the jurisdiction of a state court handling the reorganization or rehabilitation of related insurance entities or of insurance companies that have filed claims against the debtors. *See generally, e.g.*, *In re First Assured Warranty Corp.*, 383 B.R. 502 (Bankr. D. Col. 2008) (bankruptcy court need not abstain in favor of state liquidation proceedings involving related insurance company); *In re Black, Davis & Shue Agency, Inc.*, 471 B.R. 381 (Bankr. M.D. Pa. 2012) (with very few exceptions, bankruptcy court asserted jurisdiction over counterclaims debtor had against insolvent insurance company which was the subject of a pending state receivership proceeding); *In re Butterfield*, 339 B.R. 366 (Bankr. E.D. Va. 2004) (bankruptcy court would not abstain from asserting bankruptcy jurisdiction over debtor that sought turnover of assets from related insurance company that was the subject of a receivership in a separate state court proceeding); *In re Laitasalo*, 193 B.R. 187 (Bankr. S.D.N.Y. 1996) (bankruptcy court refused to abstain in favor of state insurance liquidation proceedings, holding that such an abstention would convert an unsecured claim into a secured claim).

Purporting to enjoin Jefferson County's rights under the Bankruptcy Code with respect to claims already asserted or yet to be asserted in the Jefferson County bankruptcy case would be particularly inappropriate here since the bankruptcy case predates this rehabilitation proceeding;[2] FGIC willingly filed proofs of claim in the Alabama proceeding; and FGIC has actively and extensively litigated its rights in Alabama. The Alabama Bankruptcy Court must be free to adjudicate the FGIC claims in any way that is permitted under federal bankruptcy law, including as part of the financial rehabilitation of Jefferson County. As the insurer of over half of the sewer warrants issued by Jefferson County, FGIC has been and will likely continue to be an active party involved in the resolution of all the conflicting claims and must have its rights adjudicated by the Bankruptcy Court along with all other sewer creditors. There is no basis to enhance any of FGIC's rights against Jefferson County, or to diminish any of Jefferson County's rights against FGIC, through the vehicle of overly expansive language contained in a state insurance rehabilitation plan.

Allowing the Alabama bankruptcy proceedings to proceed unfettered would not have any undue effect on FGIC's rehabilitation process in this Court because any party seeking to obtain affirmative recovery from FGIC must nonetheless ultimately appear in this Court to participate in the distribution of FGIC assets among its various creditors. *See Hawthorne Savings F.S.B.*, 421 F.3d at 842-43; *In re Black, Davis and Shue Agency, Inc.*, 471 B.R. at 398-99. Thus, there is no legitimate purpose to be advanced by purporting to limit Jefferson County's bankruptcy rights through the Plan.

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[2] This rehabilitation proceeding was commenced on June 11, 2012 by the filing of an order to show cause and verified petition seeking to appoint the Superintendent of Financial Services as Rehabilitator of FGIC, approximately six (6) months after the Chapter 9 filing.

III. Requested Relief

For the foregoing reasons, the County respectfully requests that this Court modify the Plan to specifically provide as follows:

> Nothing contained herein shall alter, limit, or otherwise modify (1) the jurisdiction of the United States Bankruptcy Court for the Northern District of Alabama with regard to the Chapter 9 bankruptcy case styled as *In re Jefferson County Alabama*, Case No. 11-05736-TBB9; or (2) any rights of Jefferson County, Alabama under the federal bankruptcy code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), with respect to the automatic stays imposed by the Bankruptcy Code or with respect to the allowance, classification, discharge, priority, subordination, or treatment in Jefferson County's bankruptcy case (including in any plan of adjustment, liquidation, or reorganization proposed by or regarding Jefferson County) of any claims asserted by the FGIC Parties against Jefferson County.

This language would appropriately recognize the Bankruptcy Court's jurisdiction under federal law and ensure that Jefferson County's rights under the Bankruptcy Code are not inappropriately affected by the Plan. If the Superintendent will not include such clarifying language in the Plan, the Court should refuse to approve the Plan.

Dated: November 19, 2012

BOIES, SCHILLER & FLEXNER LLP

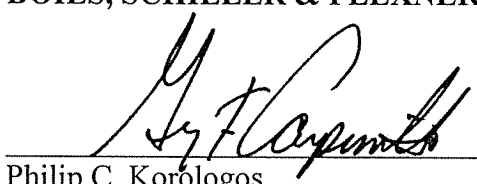
By: 

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EXHIBIT A

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

In re:	)	
	)	Case No. 11-05736-TBB9
JEFFERSON COUNTY, ALABAMA,	)	Chapter 9
	)	
Debtor.	)	
	)	

JOINDER AND RESPONSE BY FINANCIAL GUARANTY INSURANCE COMPANY IN SUPPORT OF THE EMERGENCY MOTIONS FILED BY THE JEFFERSON COUNTY SEWER SYSTEM RECEIVER AND THE INDENTURE TRUSTEE
(Relates to Doc. Nos. 40, 51 and 55)

Financial Guaranty Insurance Company ("**FGIC**"), by and through its undersigned counsel, hereby submits this joinder and response ("**Response**") in support of (i) Docket. No. 40 (the "**Receiver Motion**"), and (ii) Docket Nos. 51, 55 (the "**Trustee Motion,**" and, with the Receiver Motion, the "**Motions**").[1]

FGIC'S INTEREST AND STANDING

1. FGIC is a credit insurer[2] and warrant holder that (a) currently insures $1,624,790,000 in outstanding Jefferson County ("**County**") Sewer Warrants ("**Warrants**"), (b) has purchased and owns $101,465,000 in outstanding Warrants after the County defaulted on the payment of certain Warrants, (c) has $16,580,417.93 in outstanding available insurance coverage under Debt Service Reserve Policies ("**DSR Policies**") issued to provide reserve funding for

[1] Capitalized terms not otherwise defined in this Response have the meanings set forth in the Motions.

[2] It should be pointed out that FGIC is operating under Section 1310 restrictions issued by the New York Department of Financial Services. Nonetheless, as of the filing date of this Chapter 9 case, FGIC has not defaulted and has made all required payments under the applicable policies. It also should be pointed out that the County historically has claimed that the credit insurers (along with countless others not including the County) caused the County's financial problems. Finally, it should be pointed out that the Receiver (despite the prior claims of achievement by Commissioners Carrington and Stephens) was solely responsible for successfully negotiating FGIC's material participation in the most recent attempts of out-of-court restructuring for the debt relating to the Sewer System. Of course, the Commission ultimately doomed that restructuring when it unexpectedly filed Chapter 9 on November 9, 2011.

Warrants, and (d) has paid out $3,304,060.07 in claims under the DSR Policies that is due and owing plus interest, expenses and all other amounts due and owing under the applicable debt service reserve funding agreements after the County defaulted on the payment of certain interest obligations under the Warrants.[3]

JOINDER

2. FGIC agrees with and supports the Motions and hereby joins in the relief requested by the Receiver and the Indenture Trustee.

ADDITIONAL FACTS AND ARGUMENTS THAT SUPPORT THE MOTIONS

3. The County certainly has significant financial issues. However, the problems relating to the debt surrounding the Sewer System should be the easiest to resolve, whether the County is in or out of bankruptcy.

4. The reason why the Sewer System debt problem should be the easiest to resolve (despite all of the complex, historic financing) is that the value of the Sewer System and the debt it can support is totally a function of sewer rates.

5. The Indenture under which the Sewer System debt is issued provides that sewer rates should be increased to whatever level necessary to service the debt. *See* Indenture, § 12.5. This became highly impracticable in 2008 due to the implosion of the credit markets and the resulting demands placed on sewer debt service.

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[3] As more fully set forth in the *Memorandum Of Financial Guaranty Insurance Company In Support Of Its Right To Appear And Be Heard At The Hearing On The Emergency Motions Filed By The Jefferson County Sewer System Receiver And The Indenture Trustee*, filed by FGIC simultaneously herewith, these facts provide FGIC with standing to appear and be heard on all issues in this bankruptcy case if this Court determines that the County is eligible for Chapter 9 relief. *See* Sections 1109(b) of the Bankruptcy Code, which is applicable in Chapter 9 cases pursuant to Section 901, and Rule 2018(a) of the Federal Rules of Bankruptcy Procedure.

6. However, the County was well aware prior to 2008 that the Sewer System debt structure was likely to implode (irrespective of the unforeseen credit market melt down) if sewer rates were not significantly raised and/or other revenue sources were not created to service the Sewer System debt.

7. After the 2008 implosion of the Sewer System debt, the County (for purely political reasons) has chosen to do absolutely nothing to resolve this crisis. Instead, it has blazed a trail from court to court, and political leaders to political leaders, with absolutely nothing to show for its efforts other than massive professional fees.

8. Ultimately, this is what led to the appointment of the Receiver, which has ushered in a new era of responsible behavior with regard to sewer operations. Through this appointment, the Receiver, the Receivership Court, the Governor of the State of Alabama and Birmingham business leaders have expended significant effort to try and help solve the crisis surrounding the Sewer System debt.

9. Now back to why resolving the Sewer System debt crisis is simple and straight forward whether the County is in or out of bankruptcy, but impossible if the County is in bankruptcy and the Receiver is removed from all or any part of his responsibilities.

10. Sewer rates and the sewer rate structure need to be set according to state law, including whatever limitations pertain to reasonableness under Alabama state law. Any challenges to the sewer rate structure will need to be made in the Alabama state court system, not in this Court. This process presumably (even if expedited) will take some time. If it is appropriate for this Court to value the revenues associated with the Sewer System (which may,

or may not be, the case), the sewer rate structure will be critical to the ultimate determination of the value of the revenue stream produced by the Sewer System.[4]

11. Respectfully, this Court does not have jurisdiction (or should abstain from accepting jurisdiction) to set, review or implement the County's sewer rates.

12. However, once the sewer rates are lawfully established (and assuming this Court finds the County eligible under Chapter 9 and enters an order for relief in this case[5]), it should be much easier to determine how (and under what circumstances) to refinance or restructure the Sewer System debt.

13. Hopefully, while the sewer rate determination process plays out in the Alabama state court system, the Governor and the Alabama legislature will consider and find ways to assist the County with regard to its sewer and non-sewer financial problems, all of which may help the County cross the goal line of a successful restructuring.

14. However, if the County is returned to the helm of the Sewer System, rates will not be properly set and the bankruptcy process will flounder or fail.

15. Accordingly, the Alabama State Court, and not this Court, should continue to exercise jurisdiction over the Receiver and to enforce the terms of the Receiver Order.

16. In addition, it is imperative to preserve and maintain the payment of debt service on the Warrants. For this to take place, Sewer revenues, less operating expenses ("**Net Sewer Revenues**")[6] must be paid to the Indenture Trustee so that the Indenture Trustee can pay debt service to the Warrant holders. Since being appointed, the Receiver has fulfilled the

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[4] FGIC reserves its rights with respect to whether this Court can value the revenue stream produced by the Sewer System.

[5] On which point FGIC reserves all of its rights.

[6] Net Sewer Revenues are "special revenues" as defined in Section 902(2) of the Bankruptcy Code and are entitled to all of the protections set forth in Chapter 9 related thereto.

responsibility of paying Net Sewer Revenues to the Indenture Trustee. In addition, unlike the County in prior years, the Receiver has not permitted Sewer System revenues to be siphoned off by the County for inappropriate (non-sewer) expenses. This, along with extensive efforts (and numerous forbearance agreements) by the Indenture Trustee, Liquidity Banks and Insurers has resulted in Net Sewer Revenues continuing to flow to the Indenture Trustee, which has permitted the Indenture Trustee to pay debt service to Warrant holders.[7]

17. Accordingly, the ability to adjust and resolve the Sewer System debt depends totally on the continuation of the Receiver's administration of the Sewer System and the Sewer System revenues, and the proper establishment of sewer rates.

WHEREFORE, premises considered, FGIC respectfully requests that it be permitted to prove and argue (to the extent non-duplicative) the points set forth above at the upcoming hearing on the Motions.

Respectfully submitted on the 15th day of November, 2011.

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[7] This has resulted (to date) in the sewer debt not being accelerated and all Warrant holders (except for the Liquidity Banks and two Insurers (including FGIC) who have been consensually forbearing on their entitlement to receive payment in full of the principal due and owing on the Liquidity Bank Warrants) receiving all principal and interest payments to which they are entitled. Presumably, this has been of tremendous benefit to individual and family Warrant holders. Any change would only further diminish the potential for a consensual restructuring of the Sewer System debt and it would create tremendous hardship for many Warrant holders who so far have been spared from the County's financial difficulties.

-and-

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EXHIBIT B

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

In re:	)	
	)	Case No. 11-05736-TBB9
JEFFERSON COUNTY, ALABAMA,	)	Chapter 9
	)	
Debtor.	)	

MEMORANDUM OF FINANCIAL GUARANTY INSURANCE COMPANY IN SUPPORT OF ITS RIGHT TO APPEAR AND BE HEARD AT THE HEARING ON THE EMERGENCY MOTIONS FILED BY THE JEFFERSON COUNTY SEWER SYSTEM RECEIVER AND THE INDENTURE TRUSTEE
(Relates to Doc. 98)

Financial Guaranty Insurance Company ("**FGIC**"), by and through its undersigned counsel, hereby files this Memorandum in support of its right to appear and be heard at the hearing on the Emergency Motions (collectively, the "**Motions**") filed by the Jefferson County Sewer System Receiver ("**Receiver**") and the Indenture Trustee.

PROCEDURAL BACKGROUND

1. On November 11, 2011, following the status conference on the Motions held on November 10, 2011, the Court entered an order granting the Receiver and Indenture Trustee's request for expedited consideration of the Motions (Doc. 98) (the "**Order**"). The Order permitted FGIC to submit a brief on issues not previously briefed by the Receiver or Indenture Trustee. *Id.* at ¶ 8. FGIC's response and joinder to the Motions (the "**Response**") is being separately and simultaneously filed herewith. The Order further instructed FGIC to file a separate memoranda "setting forth the basis on which [it] should be allowed to question witnesses testifying during the Expedited Motions hearings, which memoranda are to specify the

legal and factual issues that are different from or supplemental to those presented to the Court by the Movants and the County." *Id.* at ¶ 9.

2. This Memorandum is in response to that portion of the Order instructing FGIC to set forth the "basis on which [it] should be allowed to question witnesses testifying during the Expedited Motions hearings . . . ." The Court is respectfully referred to FGIC's Response for a discussion of additional facts and arguments raised by FGIC in support of the Motions.

FACTUAL BACKGROUND

3. FGIC is a credit insurer and warrant holder that (a) currently insures $1,624,790,000 in outstanding Jefferson County ("**County**") Sewer Warrants ("**Warrants**"), (b) purchased and owns $101,465,000 in outstanding Warrants after the County defaulted on the payment of certain Warrants, (c) has $16,580,357.93 in outstanding available insurance coverage under Debt Service Reserve Policies ("**DSR Policies**") issued to provide reserve funding for the Warrants, and (d) has paid out $3,304,060.07 in claims under the DSR Policies that is due and owing, plus interest, expenses and all other amounts due and owing under the applicable debt service reserve funding agreements after the County defaulted on the payment of certain interest obligations under the Warrants.

4. Given the critical importance of the issues raised in the Motions and FGIC's role as a significant creditor and participant in this Chapter 9 case, FGIC must be given a full and fair opportunity to set forth its positions and legal arguments in order to protect its economic interests in this Chapter 9 case.

ARGUMENT

5. Section 1109(b) of the Bankruptcy Code, which is applicable in Chapter 9 cases pursuant to Section 901, provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a case under this chapter." The Bankruptcy Code does not define a party in interest, but it is generally understood that an entity is a party in interest if it has a personal or practical stake in the outcome of the proceedings such as a pecuniary interest. *See, e.g., In re O'Dell*, 268 B.R. 607, 616 (N.D. Ala. 2001), *affirmed by Greer v. O'Dell*, 305 F.3d 1297 (11th Cir. 2002); *see also* 6 COLLIER ON BANKRUPTCY, ¶ 901.04[33] (16th ed. 2010) ("To qualify as a party in interest, the person must have a sufficient stake in the particular issue being challenged to warrant individual representation."). "[I]t is possible for more than one party to be a real party in interest as to the creditor claim [based on] an understanding of modern day financing by which creditors frequently carve up the bundle of rights associated with the claim." *Id.* (discussing standing of mortgage servicers).

6. Rule 2018(a) of the Federal Rules of Bankruptcy Procedure provides that "[i]n a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter." Rule 2018(a) controls the intervention of a party in a main case proceeding or contested matter as opposed to an adversary proceeding which is controlled by Rule 7024. *See Chalk Line Mfg. v. Frontenac Venture V Ltd. Partnership* (*In re Chalk Line Mfg.*), 184 B.R. 828, 831 n.2 (Bankr. N.D. Ala. 1995).

7. FGIC is a party in interest in this case because it (i) holds fixed, liquidated claims against the Debtor for all amounts previously paid to the Indenture Trustee on account of the Warrants, and (ii) holds contingent, unliquidated claims against the Debtor for any amounts it

may be required to pay the Indenture Trustee in the event additional sums become due to Warrant holders or under DSR Policies that cannot be paid by the County. FGIC itself also holds a portion of the Warrants. Accordingly, FGIC is a party in interest under 11 U.S.C. § 1109(b) and may appear and be heard in connection with the Motions.

8. It is worth noting that FGIC was an active participant in the prepetition suits which led to the appointment of the Receiver. Having consistently been involved in the receivership process from the very beginning, the Court should not now limit FGIC's right to be heard on the critical question of whether the Receiver may continue to control the Sewer System under the Receiver Order. As the Court is aware, there were substantial out of court negotiations and a potential settlement reached before the County filed this Chapter 9 case. FGIC and the other insurers were parties to those discussions and were prepared to make critical concessions as part of the proposed settlement; FGIC will likewise have a role in any plan of adjustment in this case. Therefore, it is appropriate to allow FGIC to appear and be heard in connection with the Motions.

9. FGIC respects the Court's justifiable concern for controlling its docket in a case of this magnitude. However, FGIC has real (and substantial) pecuniary interests at stake in this case, unlike public interest groups or concerned citizens who attempt to appear based on a general notion of taxpayer standing. *See, e.g., In re Addison Community Hosp. Auth.*, 175 B.R. 646 (Bankr. E.D. Mich. 1994) (denying a "concerned citizens" group's Rule 2018 motion to intervene as affected taxpayers by a proposed plan in a Chapter 9 hospital case unless they could show they were creditors).

10. As a party in interest, FGIC has the right to be fully heard on any issue related to this case, including those raised in the Motions. Nonetheless, allowing FGIC to appear

and be heard in connection with the Motions will not cause delay or waste the Court's or the County's resources.

CONCLUSION

WHEREFORE, premises considered, FGIC requests this Court allow FGIC to appear and be heard at the hearing on the Motions commencing on November 21, 2011.

Respectfully submitted on the 15th day of November, 2011.

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Index No. 401265/2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of
FINANCIAL GUARANTY INSURANCE COMPANY

CONDITIONAL OBJECTION OF JEFFERSON COUNTY, ALABAMA TO THE PLAN OF REHABILITATION FOR FINANCIAL GUARANTY INSURANCE COMPANY

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