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Jefferson County Lawyer Says Creditors Threaten Talks

By Steven Church, Martin Braun and Beth Jinks - Dec 13, 2012

Jefferson County, [Alabama](#), may break off debt-reduction talks with hedge funds holding more than \$700 million in defaulted sewer warrants because of the group's litigation tactics, the county's lead bankruptcy lawyers said.

Should the hedge funds try to question county commissioners under oath about settlement talks the county is holding with its major creditors, negotiations with the funds will end, attorney Kenneth Klee said in an interview. Yesterday, the hedge funds, who call themselves the ad hoc group of sewer warrant holders, won court permission to depose three commissioners about their efforts to end the county's bankruptcy.

The depositions may give the hedge funds an unfair advantage in negotiations, which continued in New York this week, county attorney Patrick Darby said yesterday in court.

"I can't fly to New York and ask his clients what their real number is," Darby said, referring to hedge fund lawyer Gregory Horowitz. "I can't ask under oath what a reasonable settlement number is."

For months, the county and its major creditors have been trying to negotiate a plan to cut the sewer debt and end the biggest-ever municipal U.S. bankruptcy. The county today is scheduled to end three days of talks in New York with representatives of creditors who hold more than \$3 billion in sewer warrants at the heart of the biggest municipal bankruptcy.

The hedge funds don't intend to ask the commissioners inappropriate questions that would violate any confidentiality agreements, Horowitz told U.S. Bankruptcy Judge Thomas Bennettin court yesterday.

No Interference

Bennett said he won't allow creditors to ask questions that would interfere with negotiations.

The hedge funds include Brigade Capital Management LLC, Claren Road Asset Management LLC, Fundamental Advisors LP and Monarch Capital Master Partners LP. In court filings, they said the county could base a settlement on a pre-bankruptcy agreement that creditors and state and local elected officials failed to implement.

That plan would have required Jefferson County residents to absorb three sewer rate increases of about 8.2 percent each and creditors to make more than \$1 billion in concessions.

That plan also required state law makers to pass laws that would help the county raise money and offer a qualified guarantee that warrant holders would be repaid. The legislature didn't pass any of the laws.

The hedge funds offered a new plan that would have cut the rate increases and saved money by refinancing the warrants at lower interest, according to a declaration filed in the bankruptcy case by hedge fund financial adviser J. Soren Reynertson.

Funds' Plan

Creditors would reduce the sewer warrants "in amounts comparable to the 2011 refinancing," Reynertson, a Managing General Partner of GLC Advisors & Co., said.

The county has approved a 5.9 percent rate increase, according to court documents.

Any new deal would not include support from Alabama legislature, county Commissioner Jimmie Stephens said in an interview last week. The talks in New York follow talks last month in Los Angeles, Stephens said.

"I'm not saying we're close yet, but we're at least talking," he said.

The hedge funds and other sewer-warrant holders have asked Bennett to let them sue Jefferson County in Alabama state court over sewer rates that don't raise enough money to cover the system's debt payments.

Bennett ruled yesterday that the sewer creditors can question three county commissioners under oath to collect evidence to support the lawsuit request.

Court Permission

To sue a municipality in bankruptcy, creditors need permission from the judge overseeing the case.

"If the ad hoc group wants to take discovery of commissioners under oath about the substance of the settlement discussions, we are not going to have settlement discussions until the litigation is over," Klee said yesterday in an interview.

Last year, after the first settlement agreement failed, Jefferson County filed for bankruptcy, blaming the loss of tax revenue when a business-related tax was struck down by a state court and the high cost of the sewer debt.

In one of his written court opinions in the bankruptcy case, Bennett said that it took “courage” for the county to come so close to the original settlement.

“We have a right to take discovery to find out where that courage went,” Horowitz said in court yesterday, referring to the depositions.

The case is In re Jefferson County, 11-05736, U.S. Bankruptcy Court, Northern District of Alabama (Birmingham).

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