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NABL, SIFMA: Ratepayers' JeffCo Appeal Undermines Market.

WASHINGTON – Municipal bond groups are seeking federal appeals court guidance in a ratepayer appeal of part of Jefferson County, Ala.'s Chapter 9 bankruptcy plan, saying the district court decision allowing a challenge of the plan threatens to undermine market stability.

The National Association of Bond Lawyers and Securities Industry and Financial Markets Association filed friend of the court briefs Thursday with the Eleventh Circuit Court of Appeals in Atlanta, Ga., asking it to provide guidance to municipal issuers by taking up the question of whether the ratepayers' appeal of the bankruptcy plan is moot because the plan is largely consummated.

The issue before the court is whether bankruptcy courts confirming a Chapter 9 plan of adjustment, can be the final determiner of issues that involve certain rights of citizens and state powers over utilities rates if the plan is not stayed on appeal and implemented.

A federal district court judge ruled earlier this month that the county's sewer ratepayers' appeal of the bankruptcy court's decision on the confirmation order wasn't moot, even though the plan is largely implemented, but decided to allow the county to appeal to the Eleventh Circuit before the district court has fully considered the merits of the ratepayers' case. At issue in the district court is the plan's provision to grant sewer rate-setting powers to the bankruptcy court.

NABL's brief, penned by Richard Carmody and Aaron McLeod of Adams and Reese in Birmingham, Ala., said the appeals court should hear the case because it raises serious questions for other municipalities that may contemplate Chapter 9 proceedings and could make a difference in the marketability of the new sewer warrants the county has issued to settle existing debts as part of the plan.

"Because no circuit court of appeals has ruled on the mootness of appeals from a substantially consummated Chapter 9 plan, resolution of these issues by the Eleventh Circuit would help settle the secondary market for the new sewer warrants," NABL said.

NABL president Tony Martini of Edwards Wildman in Boston said NABL tried to be neutral on the merits of the appeal, but feels strongly the appeals court should hear it.

"We recognize that this is a very important question," Martini said.

SIFMA's brief, written by Jayna Lamar and Kasdin Miller of Maynard, Cooper & Gale in Birmingham as well as SIFMA attorneys Ira Hammerman, Kevin Carroll, and Leslie Norwood, told the Eleventh Circuit it should act now because the district court's order allowing the ratepayers' appeal threatens to undermine market stability.

"The disruption created by the order for all issuers must be resolved now," SIFMA said. "The market cost of awaiting full district court proceedings is simply too high."

THE BOND BUYER

BY KYLE GLAZIER

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