

RABINOWITZ, LUBETKIN & TULLY, L.L.C.

293 Eisenhower Parkway, Suite 100

Livingston, New Jersey 07039

(973) 597-9100

Jay L. Lubetkin

Counsel for Official Committee of Unsecured Creditors

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

FLORHAM PARK SURGERY CENTER, LLC,

Debtor.

Case No. 16-16964

Chapter 11

Hearing Date: August 4, 2016 at 10:00 a.m.

**OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE
FIRST AND FINAL FEE APPLICATION OF WASSERMAN, JURISTA & STOLZ
AS COUNSEL TO THE DEBTOR**

The Official Committee of Unsecured Creditors (the “Committee”) of Debtor/Debtor-In-Possession Florham Park Surgery Center, LLC, by and through its attorneys, Rabinowitz, Lubetkin & Tully, LLC, hereby objects to the first and final fee application of Wasserman, Jurista & Stolz (“WJS”) as counsel to the Debtor for the reasons set forth hereafter:

GENERAL BACKGROUND

By Order dated May 4, 2016, WJS was retained as counsel to Chapter 11 Debtor/Debtor-In-Possession Florham Park Surgery Center, LLC (the “Debtor”). Such retention Order was effective as of the date of the WJS Application for such relief, which was April 12, 2016.

On June 23, 2016, WJS filed its First and Final Application for allowance of fees and reimbursement of expenses as counsel to the Debtor (the “Application”). In the Application, WJS sought allowance of \$73,768.25 in fees for services rendered between March 2, 2016 and June 17, 2016 and reimbursement of expenses in the amount of \$2,696.00.

For the reasons set forth herein, the Committee currently objects to the allowance of a portion of the fees sought by WJS, as well as the current payment of any amount in excess of the \$25,000 retainer paid to WJS by the Debtor.

INTRODUCTORY STATEMENT

In pursuing the within Objection, the Committee focuses solely on its fiduciary duties to preserve maximum value for the benefit of general unsecured creditors. The Committee casts no aspersions on the talents of WJS, of whom, the Committee and its counsel have the highest respect. Notwithstanding, given its tenure as Debtor's counsel during only the approximate first sixty (60) days of the Debtor's bankruptcy case, and the extremely limited progress made during that time period, the requested fees of in excess of \$73,000 appear exorbitant. Moreover, from a practical perspective, at this early stage of the bankruptcy proceeding, the only amounts which appear to be available to pay any currently awarded fees and expenses to WJS are limited to the \$25,000 retainer the firm is holding. Thus, the Committee suggests that the appropriate resolution of the WJS fee application is to allow it fees and expenses in the amount of \$25,000 at this point in time, and to defer consideration of the remaining balance of the fee application to a later point in the case, either on confirmation of a plan of reorganization or approval of a sale of the Debtor's assets. At that point in time, the Court and all parties in interest will have a better understanding of the financial capabilities of the Debtor and the outcome of the Debtor's bankruptcy case, and therefore the ability to view WJS's request for an allowance and payment in an appropriate context.

SUBSTANTIVE OBJECTIONS

INSUFFICIENT VALUE TO ESTATE

Pursuant to 11 U.S.C. section 330 (a)(1)(A), professionals may seek reasonable compensation for “necessary services”. Thus, if the services of a professional are found to have provided no benefit to the estate, a court should refuse to award compensation for such services. In re Fleming Companies, 304 B.R. 85, 95 (Bankr. D. Del 2003) and Bachman v. Pebfsky, 251 B.R. 359, 365 (8th Cir. BAP 2000). In this matter, the Debtor, through the auspices of WJS, (although, the Committee suspects in response to demands from Edward A. Cienki, Esq.) filed a motion to assume a Management Services Agreement (MSA) notwithstanding the fact that there would have been no benefit to the estate from such assumption, to which the Committee successfully objected. Assumption of the MSA would have necessitated a significant cure payment by the Debtor and would have further created the possibility of an administrative claim in the event of a future breach of such agreement. As articulated in the Committee’s objection to such motion, the Debtor displayed no appreciation of its fiduciary duties in even filing the motion, and did not stand to benefit in any way whatsoever if the requested relief had been granted. Because there are frequent time charges which lump services related to this subject with other, justifiable, activities, it is not possible to quantify with certainty the amount of time that WJS devoted to this subject. However, between April 14, 2016 and June 7, 2016, there are charges totaling 12.7 hours which reference this subject. Those charges, at WJS’s average hourly rate of approximately \$400, justify a reduction of approximately \$5,600.

WJS also devoted 4.0 hours (2.5 on May 17, 2016 and 1.5 on June 13, 2016) to the preparation of a motion to establish a bar date for administrative claims, which efforts were premature in this proceeding and, more importantly, which motion was never filed by the debtor,

rendering such services of no value to the estate. Such justifies a \$1,760 fee reduction.

Additionally, WSJ spent at least 7.2 hours between March 2, 2016 and March 31, 2016 negotiating with Valley National Bank's counsel regarding the terms of a cash collateral order, only to have the loan in question be sold to a related entity, rendering all such discussions premature and of no value to the Debtor. Such justifies an approximate \$3,200 fee reduction.

UNAUTHORIZED SERVICES

WJS was retained as Debtor's counsel pursuant to an Order dated May 4, 2016 which order indicates an effective date as of "the date the application was filed with the Court." The Application was filed on April 12, 2016, the day after the Debtor filed its Chapter 11 Petition. In excess of \$30,000 of services for which compensation is sought were rendered prior to such effective date, with such services going back as far as March 2, 2016, some six weeks prior to the Debtor's filing date! While the Committee understands that a debtor's counsel must necessarily spend time preparing and filing the petition and related "first day" pleadings prior to such counsel's formal retention, it is submitted that the amount of prepetition time for which compensation is being sought by WJS is excessive, unauthorized, and inappropriate. A court's review of a fee application is intended to protect the estate from overreaching by a retained professional, which does appear necessary with respect to these charges. In re Busy Beaver Building Centers, Inc., 19 F.3d 833, 844 (3d Cir, 1994). Simply put, WJS should have addressed payment of its more than \$30,000 pre-petition receivable prior to the bankruptcy filing, and without considering whether such claim should have been disclosed in the WJS retention application or waived in connection with WJS's retention, such an excessive pre-petition amount should not be visited on the Debtor's estate.

DUPLICATE CHARGES

Presumably inadvertently, WJS requests compensation for several duplicate charges, one of the areas of review highlighted by the Third Circuit in Busy Beaver, Id. at 856. On both March 17, 2016 and March 21, 2016, LCW charged 1.0 to review a Management Services Agreement. On both April 22, 2016 and June 3, 2016, LCW charged a total of .4 to review a Proof of Claim filed by the IRS and to inform the debtor of such filing.

UNREASONABLE CHARGES

“The fee applicant has the burden of proving it has earned the fees it requests, and that the fees are reasonable.” Zolfo Cooper & Co. v, Sunbeam-Oster Company, Inc., 50 F3d. 253, 261 (3d Cir. 1995). Without limitation, the Committee believes that the following charges for which compensation is requested by WJS may be considered excessive, given the tasks involved:

- A. 3/17: 1.0 to draft a 366 utilities motion;
- B. 3/17: 1.0 to review a 16 page management services agreement;
- C. 3/17: 1.0 to review a lease;
- D. 3/21: 1.0 to (once again) review the management services agreement;
- E. 4/4: 4.5 to meet to prepare schedules (there are charges by both LCW and LLD for this task);
- F. 4/6: .5 to review a 2 page addendum to the management services agreement;
- G. 4/11: .5 to review a Security Agreement and UCC-1; and
- H. 5/3: 1.2 to prepare for a hearing

TIMING OF PAYMENT TO WJS

Because it is too early to predict with any certainty whether or not the Debtor will be able to reorganize or the terms of any Plan that may be filed in this proceeding, as well as the fact that

