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August 9, 2017

Via ECF and email at [chambers\\_of\\_jks@njb.uscourts.gov](mailto:chambers_of_jks@njb.uscourts.gov)

Honorable John K. Sherwood  
United States Bankruptcy Judge  
United States Bankruptcy Court  
50 Walnut St., 3<sup>rd</sup> Floor  
Newark, NJ 07102

**Re: Florham Park Surgery Center, LLC.  
Case No. 16-16964  
Motion to Amend Order Authorizing Sale  
Return Date: August 15, 2017 at 10:00 a.m.**

Dear Judge Sherwood:

Please accept the within Letter Memorandum, on behalf of Administrative Claimant, Wasserman, Jurista & Stolz, P.C., ("WJS") in response to the objection to our Motion to Amend the Order Authorizing Sale submitted on behalf of Administrative Creditor Webber McGill, LLC.

Initially, we would note that Mr. McGill's objection is the only timely filed objection to our Motion. Next, we would respectfully point out that the objection is not filed on behalf of the Debtor, but filed on behalf of Mr. McGill's law firm. Finally, we would note that Mr. McGill has not rebutted any of the factual allegations set forth in the Certification submitted in support of our Motion.

In support of our Motion, we submitted to the Court Judge Kaplan's 2011 Decision in the Santiago case, in which Judge Kaplan found that, under New Jersey Law, an attorney holds a security interest on pre-petition retainers received. This is significant since the security interest in the retainer is not addressed in the only case cited by Mr. McGill, a 1996 California case. (In re North Bay Tractor, Inc., 191 B.R. 186 (Bankr. N.D. Cal. 1996). This difference was noted by the Sixth Circuit in its decision in In re Two Gales, Inc., 454 B.R. 427, as well as by the Ninth Circuit Court of Appeals in the case of In re Dick Cepek, Inc., 339 B.R. 730 (9<sup>th</sup> Cir. 2006) cited in and attached to our Certification submitted in support of our Motion.

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A fair analogy is to the treatment of an undersecured creditor, under a Plan of Reorganization. The undersecured creditor is entitled to share pro rata with the remainder of the unsecured creditor body on its deficiency claim. That secured creditor is not required to consider the recovery on its secured claim as a credit towards the distribution on its unsecured claim. That is precisely the position that WJS asserts should apply in this case. The security delivered to WJS has been applied to the fees which we were awarded by the Court and our deficiency claim should share pro rata with the remainder of the professionals in this case.

We note in closing that, as a settlement with the Creditors' Committee, WJS agreed to discount its fees by ten (10%) percent. After WJS was terminated, this case meandered toward the unfortunate conclusion of an administratively insolvent Chapter 11 Estate. Although we could question the benefit to the Bankruptcy Estate from the services rendered by Mr. McGill's firm, in light of the foregoing, we will not do so. We merely ask to be treated on a pro rata basis with the other administrative claimants with regard to the amount due to WJS after the application of our pre-petition retainer.

We thank the Court for its consideration of the within Memorandum.

Respectfully yours,

**WASSERMAN, JURISTA & STOLZ, PC**



**DANIEL M. STOLZ**

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