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

In re:

FLORHAM PARK SURGERY CENTER, LLC,

Debtor.

Case No. 16-16964

Chapter 11

Hearing Date: July 12, 2016 at 10:00 a.m.

**SUPPLEMENTAL OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO THE DEBTOR'S APPLICATION TO RETAIN
EDWARD CIENKI, ESQ. AS SPECIAL COUNSEL**

The Official Committee of Unsecured Creditors (the "Committee"), by and through its counsel, Rabinowitz, Lubetkin & Tully, LLC, hereby further objects to the Debtor's Application for an order authorizing the retention of Edward Cienki, Esq. ("Cienki") as its special counsel.

In support of its Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

On June 10, 2016, the Committee filed a letter objection briefly noting its concerns regarding the Debtor's proposed retention of Cienki and requesting that the Court refrain from entering an order of retention to allow the parties to attempt to resolve their concerns regarding such subject. In response to such Objection, the Court has scheduled a hearing regarding the Debtor's proposed retention of Cienki on July 12, 2016.

Since filing its Objection, the Committee has repeatedly attempted to meet with the Debtor's bankruptcy counsel and Cienki to discuss the nature of its Objection to Debtor's

retention of Cienki, but not has not received any substantive response from any party regarding the scheduling of a meeting. Accordingly, the Committee must necessarily file the within supplemental Objection to Cienki's retention, in order to preserve its rights, and to present those concerns it hoped to address with the Debtor and Cienki privately.

LEGAL ARGUMENT

1. The Committee fully adopts the objection to Cienki's retention filed on June 14, 2016 by the United States Trustee. See docket entry 81.

2. As noted in paragraph 11 of the United States Trustee's objection, 11 U.S.C. § 327(e) permits a debtor to employ an attorney for a specified special purpose provided such attorney does not hold or represent an interest adverse to the debtor or its estate (emphasis supplied). In the within matter, it appears exceedingly likely that Cienki does in fact represent or hold one or more interests that are or may be adverse to the Debtor and its estate, even with respect to the matters for which Cienki seeks employment.

3. Upon information and belief, Cienki has provided significant legal services to Associated Ambulatory Services, LLC ("AAS"), the entity that is currently managing the Debtor. Moreover, AAS is a potential purchaser of the Debtor's assets as reflected in the Management Services Agreement ("MSA") executed between the Debtor and AAS. Accordingly, Cienki has provided services, and may continue to provide services, to the potential purchaser of the Debtor's assets while at the same time seeking to be authorized to be retained by the Debtor.

4. The Committee believes that the untenable conflict of interest in this regard has already been demonstrated through the Debtor's unfounded insistence in seeking immediate assumption of the MSA through the filing of a motion for such relief. As detailed in the

Committee's objection to such motion, assumption of the MSA would have provided no benefit whatsoever to the Debtor, would have obligated the Debtor to make a significant cure payment to AAS, and would have had the potential of creating a significant administrative expense claim on behalf of AAS.

5. Further evidence of the actual conflict of interest associated with Cienki's prior and current representation of AAS and simultaneous desired representation of the Debtor, is found in the language in the MSA that attempts to obligate the Debtor to sell its assets to AAS, rather than to the party that makes the highest and best offer after a well-advertised and public effort to market the Debtor's assets.

6. Another conflict is acknowledged by Cienki in paragraph 5(d) of his Certification in support of his retention. As Cienki states, he "facilitated" the transfer of notes due to Valley National Bank from the Debtor to Florham Park Capital, an entity which is owned by a prior member of the Debtor's board. Not only is this problematic because of Cienki's involvement on the part of the Debtor's current secured creditor, but Cienki could actually be a witness in future litigation in this proceeding if, as anticipated, the Committee seeks to subordinate the secured claim of Florham Park Capital. That conflict is further exacerbated by the apparent reality that the Debtor is making monthly payments to Florham Park Capital, without a Court order indicating at the least, the reservation of the Committee's rights to assert the payments should be applied to principal, rather than interest, or that they're subject to disgorgement in the event Florham Park Capital's alleged secured claim is equitably subordinated. In this circumstance, if retained, Cienki would be involved in the simultaneous representation of the Debtor, the Debtor's alleged secured creditor, the Debtor's manager, and the Debtor's contract purchaser!

7. The Committee is also concerned about the scope of the Debtor's proposed

retention of Cienki based on the pleadings that have been filed to date. While the Debtor's need from time to time for special counsel with respect to healthcare regulatory matters can theoretically be understood by the Committee, (without it having any facts which support any current need), Cienki's request to also be retained to act as "alternate administrator if requested" is highly problematic. Cienki has not provided any information regarding the duties of an alternate administrator, his competency to perform those duties, the circumstances under which the Debtor might make such a "request", nor any reason why an administrator should be compensated at a lawyer's hourly rate of \$450.

8. Cienki also requested to be retained as "special corporate counsel" without indicating either the areas in which such services would be provided, or why the Debtor has any need for special corporate counsel. At a minimum, his retention application should be supplemented to justify the specific services he anticipates performing, and the amount of the anticipated legal fees expected to be incurred for any such needed services.

9. Similarly, as noted by the United States Trustee in his objection, Cienki or the Debtor must justify his request for payment of a post-petition retainer which, if one is to be paid, should be deposited in his trust account, not his business account.

10. Additionally, paragraphs 3(A) and (B) of Cienki's proposed Agreement to Provide Legal Services (the "Agreement") to the Debtor are directly contrary to the provisions of the Bankruptcy Code. Cienki appears to intend to bill the Debtor for services whether or not the Debtor executes the Agreement or Cienki is retained thereby. More importantly, Cienki proposes to automatically deduct from his requested retainer the amount of his billings and requires the Debtor to replenish such amount during each billing cycle. When coupled with the contents of paragraph 5 of the Agreement, it appears that Cienki is attempting to bypass the fee

application process and retain complete control over his billings to the Debtor, which of course is completely inappropriate and in violation of 11 U.S.C. § 330 and 331.

11. The Committee is further troubled by the contents of paragraph 13 of the Agreement pursuant to which Cienki seeks to have his fees personally guaranteed by AAS. As indicated, AAS is a contract purchaser of the Debtor's assets, making an indemnification obligation of Cienki's fees by such a party in interest wholly inappropriate. A clearer example of an actual conflict of interest would be hard to find.

12. Similarly, paragraph 15.2 of the HIPAA Business Associate Agreement, which Cienki also proposes to execute with the Debtor, provides for the Debtor to indemnify Cienki for any claims asserted against him. Such indemnification is also inappropriate and raises another potential conflict, let alone issues under the Rules of Professional Conduct.

13. In summation, neither the Debtor nor Cienki have properly explained the Debtor's purported need to retain special counsel now, which position, to the extent truly necessary, and necessary now, must be filled by someone other than Cienki due to his representation of various parties with interests that are or will be adverse to the Debtor. Moreover, the actual terms of Cienki's retention with respect to the payment of a post-petition retainer, or where such retainer will be maintained, Cienki's proposed billing system, and even his request for interest for payments not made within 30 days, are all inappropriate and improper. Even further, disclosure of Cienki's role, if any, in the Debtor's decision to terminate Wasserman Jurista & Stolz and replace it with Webber McGill, LLC, should also be fully disclosed before his retention application can be properly considered.

CONCLUSION

For all of the reasons set forth herein, the Committee respectfully requests that the Debtor's application to retain Edward A. Cienki as its general corporate and healthcare counsel, alternate administrator, and special corporate counsel, be denied as currently presented.

DATED: July 5, 2016

RABINOWITZ, LUBETKIN & TULLY, LLC
Counsel to the Official Committee of Unsecured Creditors

By: /s/ Jay L. Lubetkin
JAY L. LUBETKIN