

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In Re: : Chapter 11  
: Case No. 13-12769-PJW  
**Laboratory Partners, Inc.** : (Jointly Administered<sup>1</sup>)  
: :  
Debtor. : Judge Peter J. Walsh  
: :  
: Related to Doc-626

Administrative Claim Deadline: 08.25.2014

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**APPLICATION FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM BY  
THE STATE OF OHIO BUREAU OF WORKERS' COMPENSATION**

Pursuant to 11 U.S.C. §§503(b)(1)(B)(i) & (D), and 507(a)(2), as well as the *Notice of (i) Confirmation of Debtors' First Amended Joint Chapter 11 Plan, (ii) the Occurrence of the Effective Date, and (iii) Deadlines for Filing Administrative Claims, Final Fee Applications and Rejection Damages Claims* (Doc 626) (“**Confirmation Order**”) the State of Ohio Bureau of Workers' Compensation (“**OBWC**”) hereby makes this application for classification and treatment of its claim as an administrative expense claim, and gives notice of the following:

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<sup>1</sup> Pursuant to PACER, the lead case is 13-12769-PJW Laboratory Partners, Inc., and is jointly administered with the following cases, 13-12771-PJW Kilbourne Medical Laboratories, Inc., 13-12772-PJW MedLab Ohio, Inc., 13-12773-PJW Suburban Medical Laboratory, Inc., 13-12774-PJW Biological Technology Laboratory, Inc. 13-12775-PJW Terre Haute Medical Laboratory, Inc., and 13-12776-PJW Pathology Associates of Terre Haute, Inc. See, *Order Approving Motion for Joint Administration* (Doc 25).

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BMC GROUP



### RELEVANT PROCEDURAL HISTORY

1. The Jointly Administered Debtors (“**Debtors**”) voluntarily filed petitions for relief under Chapter 11 of the United States Bankruptcy Code on October 25, 2013.
2. On July 10, 2014, this Court held the confirmation hearing and docketed its *Findings of Fact, Conclusions of Law, and Order Pursuant to 11 U.S.C. Section 1129 and Fed. R. Bankr. P. 3020 Confirming the Debtors' First Amended Joint Chapter 11 Plan* (Doc 605) and, subsequently, on July 25, 2014, the Court issued the Confirmation Order (Doc 626) which set, among other things, the Bar Date for Administrative Claims as August 25, 2014.
3. Pursuant to the Confirmation Order and because the Jointly Administered Debtors (“**Debtors**”), specifically, Suburban Medical Laboratory, Inc. (13-12773), Kilbourne Medical Laboratories, Inc. (13-12771), MedLab Ohio, Inc. (13-12772) and Laboratory Partners, Inc. (13-12769), have filed their payrolls for the First Half of 2014 (January 1, 2014 – June 30, 2014) but have indicated to OBWC that these taxes will be paid through the bankruptcy estate, OBWC is filing this Application, out of an abundance of caution, as further explained below.

### JURIDICTION

4. This court has jurisdiction over the subject matter of this application pursuant to 28 U.S.C. §1334(b). Venue in this district and division is proper pursuant to 28 U.S.C. § 1409. This matter is a core proceeding. 28 U.S.C. §157(b) (1), (b) (2) (A).

**THE DEBTOR'S STATUS**

5. In general, according to Ohio Constitution, Article II, §35 and, Ohio Revised Code (“ORC”) §§ 4123.35 et al, any company employing people in the State of Ohio must provide worker’s compensation as either a “state fund employer” or as a “self-insured employer” (“SI”). There is no “opt-out” provision and, OBWC is the monopolistic administrator of Ohio’s workers compensation system.
6. The State Fund employer pays premiums to OBWC, and it is OBWC who then administers and pays any valid claims made. Similarly, SI employers “. . . *must still pay assessments to OBWC*”<sup>2</sup>, but then the SI employers “self” administer the claims process, and directly pay any injured workers, usually at a savings to the SI employer.

***There are Four Risk Accounts Assigned to the Debtors***

7. In this instance, there are four entities which have applied for and received State Fund risk accounts so as to be able to conduct business in Ohio and all four were converted to a “DIP” risk account, effective October 26, 2013, to wit:

<u>Debtor Name/Bankr. No.</u>	<u>Origin Date</u>	<u>Original No</u>	<u>DIP No</u>
<b><i>Suburban Medical Laboratory, Inc.</i></b>			
13-12773	09.11.1975	632335	1687426
<b><i>Kilbourne Medical Laboratories, Inc.</i></b>			
13-12771	02.06.1979	717449	1687307
<b><i>MedLab Ohio, Inc.</i></b>			
13-12772	10.15.2007	1539983	1687311
<b><i>Laboratory Partners, Inc.</i></b>			
13-12769	09.18.2008	1564153	1687428

**ADMINISTRATIVE EXPENSE ANALYSIS**

*The Assessment Periods Occurred Post-Petition*

8. These assessments arise after the petition date of October 25, 2013. First, pursuant to, *inter alia*, ORC §§ 4123.01(A)(1) & 4123.35, all Ohio employers are required to report and remit State Fund premiums or SI assessments, on a semi-annual basis<sup>3</sup> In this instance, all four premiums proofed represent the 1<sup>st</sup> half of 2014 (01/01.2014 – 06.30.2014) and, each will be due on or before August 31, 2014 (six days after the admin bar date, August 25, 2014). As Debtors are no differently situated, they must also report and remit these premiums. Herein, Debtors have reported and filed their payrolls as required but have not remitted the tax owed. In that regard, these are actual assessments based on the Debtors’ own records and bookkeeping methodology.
9. The four (4) assessments are due, without penalty or interest, for a total of \$177,415.90 as follows:

<u>Debtor Name/Bankr. No.</u>	<u>1<sup>st</sup> Half-2014</u>	<u>DIP No</u>	<u>Amount Owed</u>
<i>Suburban Medical Laboratory, Inc.</i> 13-12773	01/01/14-06/30/14	1687426	\$ 1,835.72 <sup>4</sup>
<i>Kilbourne Medical Laboratories, Inc.</i> 13-12771	01/01/14-06/30/14	1687307	\$83,466.55 <sup>5</sup>
<i>MedLab Ohio, Inc.</i> 13-12772	01/01/14-06/30/14	1687311	\$90,413.95 <sup>6</sup>
<i>Laboratory Partners, Inc.</i> 13-12769	01/01/14-06/30/14	1687428	\$ 1,699.68 <sup>7</sup>

<sup>2</sup> See, *In re Belden Locker Co.*, 06-60316, 2008 WL 762243 (Bankr. N.D. Ohio Mar. 21, 2008)

<sup>3</sup> Payroll reports and their requisite taxes are due semi-annually, on or before, August 31 of the tax year, for the First Half (01/01/20xx-06/30/20xx) of that tax year; the Second Half (07/01/20xx-12/31/20xx) is due on or before, February 28 of the following year. ORC § 4123.35 (A).

<sup>4</sup> See Exhibit “A”, as attached hereto.

<sup>5</sup> See Exhibit “B”, as attached hereto.

<sup>6</sup> See Exhibit “C”, as attached hereto.

*The Assessments Represent Taxes*

10. As stated, pursuant to ORC §4123.35, these four (4) assessments were incurred by the estate on or about August 31, 2014 for the tax period of January 1 through June 30, 2014 and, as the petition date in the above captioned case was October 25, 2013, these claims represent Administrative Expense Claims, pursuant to 11 U.S.C. § 503(b)(1)(B) &(D).
11. OBWC's premiums constitute taxes because "*they are involuntary pecuniary burdens laid upon individuals for the purposes of defraying the expenses of government or of undertakings authorized by it*", and because the Ohio workers' compensation system is "*monopolistic and mandatory*"<sup>8</sup>. The OBWC premiums and SI assessments are a "tax" as they are (1) a pecuniary obligation that is "*universally applicable to similarly situated entities*"; and (2) by according priority treatment to these government claims, such priority "*will not disadvantage private creditors with like claims.*"<sup>9</sup>
12. Because the Claim represents a statutory tax, it should be interpreted pursuant to, *inter alia*, ORC §§ 4123.35 and 4123.79 and this is so, because "*[I]n the absence of modification expressed in the Bankruptcy Code the burden of proof on a tax claim in bankruptcy remains where the substantive tax law puts it*".<sup>10</sup>

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<sup>7</sup> See Exhibit "D", as attached hereto.

<sup>8</sup> See, *In re Lorber Industries of California*, 675 F.2d 1062 (9th Cir.1982); *In re Belden Locker Co.*, 06-60316, 2008 WL 762243 (Bankr. N.D. Ohio Mar. 21, 2008)

<sup>9</sup> See, *Yoder v. Ohio Bureau of Workers' Compensation (In re Suburban Motor Freight, Inc.)*, 998 F.2d 338 (6th Cir.1993) ("*Suburban I*"), and *Ohio Bureau of Workers' Compensation v. Yoder (In re Suburban Motor Freight)*, 36 F.3d 484 (6th Cir.1994) ("*Suburban II*"), which elaborated on the Supreme Court's rule in *City of New York v. Feiring*, 313 U.S. 283 (1941), as cited by *In re Belden Locker Co.*, 06-60316, 2008 WL 762243 (Bankr. N.D. Ohio Mar. 21, 2008)

<sup>10</sup> See, *Raleigh v. Ill. Dept. of Revenue*, 530 U.S. 15, 26, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000); *In re BHS & B Holdings LLC*, 435 B.R. 153, 163 (Bankr. S.D.N.Y. 2010)

*Legal Analysis of What Constitutes an Admin Expense*

13. "To determine whether a claim constitutes an administrative expense under § 503(b), the Sixth Circuit applies what is known as the "benefit to the estate" test. Under this test, "a debt qualifies as an 'actual, necessary' administrative expense only if: (1) it arose from a transaction with the bankruptcy estate; and (2) directly and substantially benefitted the estate."<sup>11</sup>
14. If a claim constitutes an administrative expense under this test it is "entitled to first priority among unsecured and priority claims"<sup>12</sup>, and "it is an absolute requirement for administrative expense priority that the liability at issue arise post-petition."<sup>13</sup>
15. For its approach, the Third Circuit holds a similar, if not identical view: "*In determining whether a claim is entitled to administrative status under section 503(b)(1)(A), courts apply a two-part test: "(1) there must be a post-petition transaction between the creditor and the debtor; and (2) the estate must receive a benefit from the transaction."* *In re Goody's Family Clothing, Inc.*, 443 B.R. 5, 19 (Bankr. D. Del. 2010)<sup>14</sup> In *Goody*, "both the transaction and the benefit of continued occupancy of the leased premises" occurred prior to the petition date and, thus, "did not satisfy either prong of the test." *Id.*

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<sup>11</sup> *Pension Benefit Guar. Corp. v. Sunarhauserman, Inc. (In re Sunarhauserman, Inc.)*, 126 F.3d 811, 816 (6th Cir. 1997); *BK Novi Project, LLC v. Stevenson (In re Baby N' Kids Bedrooms, Inc.)*, U.S. Dist. LEXIS 29930 (D. Mich. 2007).

<sup>12</sup> *United States v. Schottenstein, Zox & Dunn (In re Unitcast, Inc.)*, 219 B.R. 741, 746 (BAP 6th Cir. 1998) (citing 11 U.S.C. § 507(a) (1)). *BK Novi Project, LLC v. Stevenson (In re Baby N' Kids Bedrooms, Inc.)*, U.S. Dist. LEXIS 29930 (D. Mich. 2007).

<sup>13</sup> *Sunarhauserman*, 126 F.3d at 817. *BK Novi Project, LLC v. Stevenson (In re Baby N' Kids Bedrooms, Inc.)*, U.S. Dist. LEXIS 29930 (D. Mich. 2007).

16. In the instant case and, pursuant to 11 U.S.C. § 503 (b) (1) (A), the four (4) premium assessment, which are based on the payroll reports filed by the individual Debtors, satisfy each prong of the aforementioned test, as they each (1) arose post-petition and (2) estate received a benefit. To wit: (1) the tax (1<sup>st</sup> Half 2014, premiums) herein, arose no sooner than June 30, 2014, which obviously falls after the October 25, 2014 petition date, and; (2). by remaining in uninterrupted, day-to-day operation during the bankruptcy, while not being in compliance with the reporting and remittance mandates of ORC §4123.35, Debtor was not enjoined, as a non-petitioning debtor would be, from *further operation*, as prescribed in ORC § 4123.79 (A) &(C)(1)(b),(c).
17. Consequently, the payment of these taxes an “*actual, necessary costs and expenses of preserving the estate*”, as without its payment, Debtor would not be able to operate in the State of Ohio and generate monies for the benefit of the bankruptcy estate, thereby reducing the estate’s value.<sup>15</sup>

### CONCLUSION

18. Therefore, as cited by the Third Circuit, taxes are “*incurred by the estate*” pursuant to 11 U.S.C. § 503 (b) (1) (A), if the tax obligation arises after the petition date according to the relevant state law.<sup>16</sup> Herein, Debtors’ liability for the 1<sup>st</sup> Half 2014 premiums is clearly post-petition as the petition date is October

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<sup>14</sup> See, *In re Garden Ridge Corporation*, 323 B.R. 136, 142 (Bankr.D.Del.2005) (quoting *In re Waste Systems Intern., Inc.*, 280 B.R. 824, 824 (Bankr.D.Del.2002)), as these case were cited by *Goody*.

<sup>15</sup> See, *Nicholas v. United States*, 384 U.S. 678, 86 S.Ct. 1674, 16 L.Ed.2d 853 (1966), as cited by *In re Flo-Lizer, Inc.*, 916 F.2d 363 (6<sup>th</sup> Cir. 1990)

<sup>16</sup> See, *Matter of Columbia Gas Sys., Inc.*, 146 B.R. 114, 116 (Bankr. D. Del. 1992) subsequently aff’d sub nom. *In re Columbia Gas Transmission Corp.*, 37 F.3d 982 (3d Cir. 1994), citing, *inter alia*, *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979)

25, 2014. This is true whether based on either this measuring date of June 30, 2014, or the “due date” of August 31, 2014<sup>17</sup>, which represents the first date, upon which OBWC can demand payment pursuant to ORC § 4123.35.

19. Thus, the Claim, comprised of taxes, because it is “post-petition” and, for the “benefit of the estate” is properly charged to and payable by the bankruptcy estate as administrative expenses, pursuant to 11 U.S.C. § 503(b) (1) (B) (i) and (b) (1) (C).<sup>18</sup>

20. Stated differently, “[I]t is an absolute requirement for administrative expense priority that the liability at issue arise post-petition.”<sup>19</sup> Further, the Third Circuit concurs with this analysis by holding that “The priority for taxes ‘incurred by the estate’ extends only to taxes ‘incurred’ post-petition,”<sup>20</sup> as does the Ninth Circuit, in *U.S. v. Hall*,<sup>21</sup> concurs with the Third and Sixth Circuits in that it also concludes that “Taxes incurred by the estate are administrative expenses pursuant to Section 503(b)(1)(B)(i). Because the estate does not exist prepetition, priority treatment is limited to taxes incurred post-petition.”

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<sup>17</sup> See, *In re Unitcast, Inc.*, 219 B.R. 741, 746 (B.A.P. 6th Cir. 1998)

<sup>18</sup> See, *In re Flo-Lizer, Inc.*, 916 F.2d 363 (6<sup>th</sup> Cir. 1990)

<sup>19</sup> See, *PBGC v. Sunarhauserman, Inc. (In re Sunarhauserman, Inc.)*, 126 F.3d 811, 816, 817 (6th Cir.1997), as cited by *In re Unitcast, Inc.*, 219 B.R. 741, 746 (B.A.P. 6th Cir. 1998)

<sup>20</sup> See, *In re Columbia Gas Transmission Corp.*, 37 F.3d 982, 986 (3d Cir. 1994), which interprets 11 U.S.C. § 503(b)(1)(B)(i)

<sup>21</sup> See, *United States v. Hall*, 617 F.3d 1161, 1165 (9th Cir. 2010) aff'd, 132 S. Ct. 1882, 182 L. Ed. 2d 840 (U.S. 2012), which cites *In re Ne. Ohio Gen. Hosp. Ass'n*, 126 B.R. 513, 515 (Bankr. N.D. Ohio 1991) and the Third Circuit in *In re Columbia Gas Transmission Corp.*, 37 F.3d 982, 984 (3d Cir.1994)

WHEREFORE, because, in this instance these premiums were not incurred or measured until June 30, 2014, until well after the "estate" was created on October 25, 2013, OBWC requests that it be allowed an administrative expense claim in the amount of \$177,415.90 and that the Debtors/Debtors-in-Possession be ordered to pay the allowed administrative expense claim immediately upon entry of the Order.

Respectfully submitted,

Michael DeWine (009181)  
Attorney General of Ohio  
/s/ Robert L. Doty  
Robert L. Doty (0047216)  
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*Attorney for Ohio Bureau of Workers Compensation*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2014 a true and accurate copy of the forgoing, *Notice and Application* was filed via ECF and, then true and accurate copies of same were served as follows:

- (i) via email or ECF upon all those so authorized to receive notice, and:
- (ii) via ordinary US Mail upon the following:

Leo T. Crowley  
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/s/Robert L. Doty  
Robert L. Doty (0047216)  
Assistant Attorney General

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In Re: : Chapter 11  
: Case No. 13-12769-PJW  
**Laboratory Partners, Inc.** : (Jointly Administered)  
: :  
Debtor. : Judge Peter J. Walsh  
: :  
: Related to Doc-626

Administrative Claim Deadline: 08.25.2014  
Objection Deadline: 09.08.2014

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**AMENDED -NOTICE OF APPLICATION OF ADMINISTRATIVE EXPENSE**

TO:

Leo T. Crowley  
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*Co-Counsel to the Official Committee  
of Unsecured Creditors*

**PLEASE TAKE NOTICE** that on August 25, 2014 the State of Ohio Bureau of Workers' Compensation ("OBWC") filed (contemporaneous with this Notice) an *APPLICATION FOR ADMINISTRATIVE EXPENSE CLAIM BY THE STATE OF OHIO BUREAU OF WORKERS' COMPENSATION* ("Application") with the court for amounts OBWC asserts arose post-petition. In its Motion/Application, Ohio BWC requests the immediate payment of the sum of \$177,415.90 for post-petition workers' compensation SI and DWRP premiums due OBWC.

**PLEASE TAKE FURTHER NOTICE THAT** Pursuant to 11 U.S.C. §§503(b)(1)(B)(i) & (D), and 507(a)(1), and in response to the *Notice of (i) Confirmation of Debtors' First Amended Joint Chapter 11 Plan, (ii) the Occurrence of the Effective Date, and (iii) Deadlines for Filing Administrative Claims, Final Fee Applications and Rejection Damages Claims* (Doc 626)("Admin Bar Date Order") OBWC has filed this Application.

Objections to the Application, if any, are required to be filed on or before **September 8, 2014 at 4:00 p.m. (ET)** (the "Objection Deadline") with the Clerk of the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware 19801 or electronically filed at <http://www.deb.uscourts.gov> (registration required).

At the same time, you must also serve a copy of the response so as to be received by the following on or before the Objection Deadline: (b) served upon counsel for the Reorganized Debtors, counsel for the LPI Plan Trust and the LPI Plan Trustee, counsel for the Prepetition Lenders, and counsel for the Committee at the addresses listed in Article IX.N of the Plan as well as on the Office of the United States Trustee and if an objection to this application, upon Robert L. Doty, the undersigned counsel to movant at the indicated address.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER FINAL APPROVAL OF THE APPLICATION WILL BE HELD BEFORE THE HONORABLE KEVIN J. CAREY, UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON DELAWARE 19801, ON A DATE AND TIME TO BE DETERMINED.**

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**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT  
MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT  
FURTHER NOTICE OR HEARING.**

Dated: August 25, 2014

Michael DeWine (009181)  
Attorney General of Ohio

/s/ Robert L. Doty  
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*Attorney for Ohio Bureau of Workers Compensation*

## Administrative Expense Claim M E M O R A N D U M

**To:** Bankruptcy File  
**From:** Legal, Bankruptcy Unit

**Policy No.** 1687311  
**Name of Debtor** Medlab Ohio Inc  
**Date:** 8/20/2014

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	<u>Amount</u>
<b><u>Post-Petition Premium Billings:</u></b>	
Reported premium 1/1/14-6/30/14	\$ 90,413.95
<b><i>Total Post-Petition Premium Billings:</i></b>	<b>\$ 90,413.95</b>
<b><u>Post-Petition Penalties:</u></b>	
<b><i>Total Post-Petition Penalties:</i></b>	<b>\$ -</b>
<b>Misc. Credits:</b>	
<b>Total Credits:</b>	<b>\$ -</b>
 <b>Grand Total:</b>	 <b>\$ 90,413.95</b> =====

