IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
WOMEN FIRST HEALTHCARE, INC.,	)	Case No.: 04-11278 (MFW)
	)	
Debtor.	)	Re: Docket No. 217

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTOR'S MOTION FOR AN ORDER (I) APPROVING BIDDING PROCEDURES WITH RESPECT TO THE SALE OF THE DEBTOR'S ASSETS; (II) APPROVING BREAK-UP FEE AND EXPENSE REIMBURSEMENT; (III) ESTABLISHING DEADLINE BY WHICH PARTIES MAY OBJECT TO PROPOSED ASSUMPTION AND ASSIGNMENT OF ASSUMED CONTRACTS AND ASSERT CLAIMS FOR CURE AMOUNTS; (IV) APPROVING FORM AND MANNER OF NOTICE OF SALE; AND (V) SCHEDULING AUCTION AND FINAL HEARING ON APPROVAL OF ASSET SALE

The Official Committee of Unsecured Creditors (the "Committee"), by and through its undersigned counsel, objects to the Debtor's Motion for an Order (I) Approving Bidding Procedures with Respect to the Sale of the Debtor's Assets; (II) Approving Break-up Fee and Expense Reimbursement; (III) Establishing Deadline by Which Parties may Object to the Proposed Assumption and/or Assignment of Assumed Contracts and Assert Claims for Cure Amounts; (IV) Approving Form and Manner of Notice of Sale; and (V) Scheduling Auction and Final Hearing on Approval of Asset Sale (D.I. 217) (the "Motion") and asserts as follows:

FACTUAL BACKGROUND

1. On April 29, 2004 Women First Healthcare, Inc. ("Debtor") filed a voluntary petition for relief under chapter 11, title 11, of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

2. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. On May 11, 2004 the United States Trustee conducted a formational meeting of the Debtor's unsecured creditors and formed the Committee.

4. In the Motion, the Debtor identifies FSC Laboratories, Inc. ("FSC") as the "stalking horse" bidder for the Debtor's Midrin®, Equagesic®, Synalgos® and Wygesic® product lines. Under the terms of the Motion, FSC is entitled to a break up fee of $175,000 and expense reimbursement of up to $75,000 in the event that FSC is not approved by the Court as the successful bidder. See APA at § 6.08, p.25.

5. On or about July 9, 2004, the Debtor filed the Motion, in which the Debtor seeks approval of an Asset Purchase Agreement for inventory and rights related to Midrin®, Synalgos®, Equagesic®, and Wygesic®, entered into by and between the Debtor and Wyeth, as sellers, and FSC, as Purchaser, dated July 8, 2004 (the "APA"). Pursuant to the APA, the gross purchase price is $1,750,000. See APA at § 2.03(a)(i), p.11. Under the terms of the APA, the break up fee and expense reimbursement equal approximately 14% of the *gross* purchase price for all property to be sold to FSC. Under the proposed sale, however, the Debtor's estate will only receive $850,000 of the sale proceeds. Thus, the break up fee and expense reimbursement are actually over 29% of the proceeds that would be received by the Debtor's estate under the terms of the proposed sale.

6. Unlike the court-approved sale of the Vaniqa® assets, the proposed sale does not provide for FSC's assumption of any repurchase obligations or liability to customers. The assumption of those liabilities is a significant benefit to the Debtor's unsecured creditors that is lacking in the proposed sale.

RELIEF REQUESTED

7. The Committee requests that this Court enter an Order denying the Motion unless the (i) the total of the proposed break up fee and expense reimbursement are reduced to 2% of the purchase price payable to the Debtor's estate and (ii) the sale provides a benefit to the Debtor's unsecured creditors.

BASIS FOR RELIEF REQUESTED

8. The customary *maximum* break up fee and expense reimbursement permitted by bankruptcy courts is 3%. See generally Samjens Partners I v. Burlington Indus., Inc., 663 F.Supp. 614, 620 (S.D.N.Y. 1987) (declaring that most break up fees were approximately 1% of the transaction value); B. Markell, *The Case Against Breakup Fees,* Am.Bankr.L.J. 349, 356 n.30 (1992) (noting that courts have approved break up fees approximating 2% of the transaction value).

9. As compared to the gross purchase price, the break up fees and expense reimbursement proposed by the Debtor are more than 11% higher than the maximum amounts customarily permitted by bankruptcy courts. As compared to the proceeds that would be received by the Debtor's estate under the terms of the proposed sale, the break up fee and expense reimbursement are over 26% higher than the maximum amount permitted by bankruptcy courts. The break up fee and expense reimbursement are well outside the range of reasonableness.

10. In addition, the sale provides no benefit to the Debtor's unsecured creditors. The bidding procedures should be amended to provide some monetary benefit to the Debtor's unsecured creditors, such as FSC's assumption of the repurchase obligations and

customer liabilities owed to the Debtor's customers, which are among its largest unsecured creditors.

11. As provided in the application to employ Reed Smith as counsel for the Committee, Reed Smith can not be adverse to Wyeth. Accordingly, counsel for the Debtors and the Committee members' counsel are reviewing or have reviewed any issues related to Wyeth in the Motion.

CONCLUSION

WHEREFORE, the Committee respectfully requests that this Court enter an Order (i) denying the Motion unless (a) the proposed break up fee and expense reimbursement are reduced to $17,000, which is 2% of the of the purchase price that would be received by the estate under the terms of the proposed sale and (b) the sale provides some benefit to the Debtor's unsecured creditors, such as the assumption of repurchase obligations and liability to customers, and (ii) granting such further relief to the Committee as is appropriate.

Dated: July 21, 2004
Wilmington, Delaware

Respectfully submitted,

By: /s/ Kurt F. Gwynne

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