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.	)	**Hearing Date: September 22, 2004 at 3:00 p.m. (ET)** **Objection Deadline: September 15, 2004 at 4:00 p.m. (ET)**
	)	

NOTICE OF MOTION FOR AN ORDER PURSUANT TO SECTIONS 365(a) AND 554(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO (I) REJECT CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND (II) ABANDON PERSONAL PROPERTY

TO: OFFICE OF THE UNITED STATES TRUSTEE FOR THIS DISTRICT, COUNSEL TO THE COMMITTEE, COUNSEL TO THE LENDERS, THE LANDLORD AND THE OTHER NON-DEBTOR PARTIES TO THE CONTRACTS, AND ALL PARTIES THAT HAVE REQUESTED NOTICE PURSUANT TO BANKRUPTCY RULE 2002

The above-captioned debtor and debtor-in-possession (the "Debtor") has filed the attached **MOTION FOR AN ORDER PURSUANT TO SECTIONS 365(a) AND 554(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO (I) REJECT CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND (II) ABANDON PERSONAL PROPERTY** (the "Motion").

Responses, if any, to the Motion must be filed with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **September 15, 2004 at 4:00 P.M. (ET)** (the "Objection Deadline").

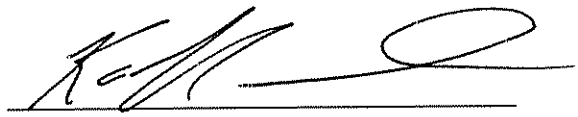
At the same time, you must serve a copy of your response upon the undersigned counsel.

A HEARING ON THE MOTION WILL BE HELD ON **SEPTEMBER 22, 2004 AT 3:00 P.M. (ET)** BEFORE THE HONORABLE MARY F. WALWRATH, CHIEF JUDGE, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, WILMINGTON, DELAWARE 19801.

IF YOU FAIL TO RESPOND TO THE MOTION IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED THEREIN WITHOUT FURTHER NOTICE OR A HEARING.

Dated: Wilmington, Delaware
September 2, 2004

YOUNG, CONAWAY, STARGATT & TAYLOR, LLP



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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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MOTION FOR AN ORDER PURSUANT TO SECTIONS 365(a) AND 554(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO (I) REJECT CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND (II) ABANDON PERSONAL PROPERTY

Women First HealthCare, Inc., the debtor and debtor-in-possession in the above-captioned case (the "Debtor"), by and through its undersigned counsel, respectfully seeks entry of an order pursuant to sections 365(a) and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), authorizing the Debtor to: (i) reject certain unexpired leases and executory contracts listed on Exhibit A hereto that the Debtor has determined are no longer necessary or useful to its estate; and (ii) abandon personal property in relation thereto. In support of this motion (the "Motion"), the Debtor respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicate for the relief requested herein is section 365(a) of the Bankruptcy Code.

BACKGROUND

A. Procedural Background

1. On April 29, 2004 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

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

3. On May 11, 2004, the Office of United States Trustee (the "Trustee") appointed the official committee of unsecured creditors (the "Committee").

4. On June 2, 2004, the Debtor filed its schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules"), pursuant to Bankruptcy Rule 1007.

5. On July 16, 2004, the Debtor filed the Debtor's Disclosure Statement Accompanying First Amended Chapter 11 Plan of Liquidation dated as of July 16, 2004 (as amended, the "Disclosure Statement") and the First Amended Chapter 11 Plan Of Liquidation dated as of July 16, 2004 [Docket No. 225] (the "Plan"). On August 20, 2004, the Debtor filed its amended Disclosure Statement and amended Plan, both dated as of August 19, 2004 [Docket Nos. 322 and 324]. The Court approved the adequacy of the Disclosure Statement on August 20, 2004 [Docket No. 327]. The Confirmation Hearing in respect of the Plan has been scheduled for September 22, 2004 at 3:00 p.m. (Eastern Time).

B. Factual Background

6. On June 20, 2003, the Debtor and WCB Five Limited Partnership (the "Landlord") entered into a non-residential real property lease (the "Lease") for Suite 700 of 5355 Mira Sorrento Place, located in San Diego, California (the "Leased Property") for a term of three years and four months. The Property included 10,998 rentable square feet of space and 39 parking passes located in an adjacent building owned by Landlord. The Commencement Date of the Lease was on or about September 1, 2003.

7. In addition to the Lease, the Debtor currently has leases or contracts for office phones, phone and voicemail systems, copiers, printers, scanners and maintenance

services (the "Additional Contracts," as specified on Exhibit A hereto, and collectively with the Lease, the "Contracts"). The Additional Contracts all relate to the Leased Property in that the Additional Contracts are for the Debtor's telephones, telephone service, copiers or scanners located at the Leased Property location.

RELIEF REQUESTED

8. By this Motion, the Debtor respectfully requests the entry of an order authorizing: (i) the rejection of the Contracts listed on Exhibit A annexed hereto pursuant to section 365(a) of the Bankruptcy Code, which rejection shall be effective the earlier of (a) September 30, 2004, or (b) the date that the Debtor surrenders the Leased Property to the Landlord or personal property to the non-Debtor parties to the Additional Contracts with an unequivocal statement of such intent (the "Rejection Date"); and (ii) abandonment of personal property located at the Leased Property after the date of rejection pursuant to section 554(a) of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

A. Rejection of the Contracts

9. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject an executory contract or an unexpired lease." 11 U.S.C. § 365(a); see also University Med. Ctr. v. Sullivan (In re University Med. Ctr.), 973 F.2d 1065, 1075 (3d Cir. 1992). The Court may approve a debtor's rejection of an executory contract or unexpired lease if such rejection is made in the exercise of the debtor's sound business judgment, and if such rejection benefits its estate. See e.g., Sharon Steel Corp. v. National Fuel Gas Distrib. Corp., 872 F.2d 36, 39 (3d Cir. 1989); NLRB v. Bildisco & Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982), aff'd, 465 U.S. 513 (1984); In re Patterson, 119 B.R. 59 (E.D. Pa. 1990). See also In re Federated Dep't. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) ("Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases"); Westbury Real Estate

Ventures, Inc. v. Bradlees, Inc. (In re Bradlees, Inc.), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996) ("[u]nder the business judgment test, . . . [a court should approve a debtor's proposed rejection] if the debtor can demonstrate that rejection will benefit the estate"). It is enough if a debtor determines in its business judgment that a benefit will be realized. Sharon Steel Corp., 872 F.2d at 39 (citing Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987)). The business judgment standard requires that the Court approve the debtor's business decision unless that judgment is the product of bad faith, whim or caprice. Lubrizol Enter., Inc. v. Richmond Metal Finishers, 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986).

10. As an integral component of the Debtor's efforts to maximize value for its estate and creditors by, among other things, eliminating unnecessary operating costs, the Debtor has determined that it is in its best business interest to avoid the accrual of any further obligations under the Contracts. The Debtor has consummated the sale of substantially all of its assets and has terminated substantially all of its employees. The Debtor has reviewed the Contracts and determined that the Contracts hold no material economic value to the Debtor or its estate and are not essential to the liquidation of the Debtor's estate. The decision to reject the Contracts will eliminate the Debtor's obligation to perform under the Contracts and the accrual of any further obligations thereunder.

11. The Debtor further requests that this Court approve the Rejection Date as the earlier of (1) September 30, 2004 or (2) the date Debtor surrenders the Leased Property to the Landlord or personal property to the non-Debtor parties to the Additional Contracts with an unequivocal statement of such intent. In re Namco Cybertainment, Inc., Ch. Case No. 98-173 (PJW) (Bankr. D. Del. 1998).[1] Bankruptcy courts are empowered to grant retroactive rejection of a contract or lease under sections 105(a) and 365(a) of the Bankruptcy Code. See e.g., Thinking Machines Corp. v. Mellon Fin. Serv. Corp. (In re Thinking Machines Corp.), 67 F.3d

[1] This case is being submitted as persuasive authority, not precedent, and is attached hereto as Exhibit B.

1021, 1028 (1st Cir. 1995) (recognizing that bankruptcy courts are courts of equity that may enter orders authorizing retroactive rejection); In re Amber's Stores, Inc., 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (same).

12. The Debtor has informed the Landlord that it will reject the Lease and has served this Motion upon the Landlord and the non-Debtor parties to the Additional Contracts. The Debtor shall also communicate its intentions to surrender the Leased Property to the Landlord prior to September 30, 2004 in the event that the Debtor vacates the Leased Property prior to that date. Likewise, if the Debtor rejects the Lease prior to September 30, 2004, the Debtor shall contemporaneously inform the non-Debtor parties to the Additional Contracts of its surrender of any personal property or additional service rights on that same date. Accordingly, the Debtor submits that the Rejection Date should be set as the earlier of September 30, 2004 or the date that the Debtor surrenders the Leased Property and any personal property remaining and unequivocally communicates such an intent to the non-Debtor Contract parties.

B. Abandonment of Personal Property

13. To the extent that the Debtor leaves any property that it owns or leases, including, but not limited to, personal property, furniture, fixtures and/or equipment (collectively, the "Personal Property"), at the Leased Property location after the Rejection Date, the Debtor requests that such Personal Property be deemed abandoned pursuant to section 554 of the Bankruptcy Code.

14. Section 554(a) of the Bankruptcy Code provides that "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

15. The Debtor submits that any Personal Property remaining at the Leased Property location will be of inconsequential value or burdensome to the Debtor's estate to remove and some or all of the Personal Property may be owned by certain of the non-Debtor Contract parties. Any non-Debtor Contract parties with an interest in the Personal Property are

hereby on notice that they must work with the Landlord to coordinate the removal of such Personal Property after the Rejection Date. Accordingly, the Debtor has determined that the abandonment of any such Personal Property is in the best interests of the Debtor, its estate and creditors.

C. Rejection Claims Bar Date

16. The Debtor respectfully requests that the Court establish a deadline by which claims allegedly arising from the rejection of the Contracts must be filed (the "Rejection Claims Bar Date"). The Debtor respectfully requests that the Rejection Claims Bar Date be thirty (30) days from the Rejection Date. The Debtor proposes that a holder of a claim allegedly arising from the rejection of the Contracts that fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Bar Date be: (a) forever barred from asserting such claim against the Debtor or its estate; (b) forever barred from sharing in any distribution of the Debtor's estate or assets under any chapter 11 plan confirmed in this case or order of the Court authorizing distributions from the Debtor's estate on account of such claim; and (c) bound by the terms of any chapter 11 plan confirmed in this case and/or any order of the Court authorizing distributions from the Debtor's estate.

CONCLUSION

17. Based upon the foregoing facts and circumstances, the Debtor submits that the rejection of the Contracts and abandonment of Personal Property in the manner set forth above is supported by sound business judgment, and is necessary, prudent and in the best interests of the Debtor, its estate, creditors and parties in interest.

NOTICE

18. No trustee or examiner has been appointed in this case. Notice of this Motion has been given to (i) the Office of the United States Trustee for this District, (ii) counsel to the Debtor's senior secured lenders, (iii) all parties who have requested notice pursuant to

Rule 2002, (iv) counsel to the Committee, and (v) the Landlord and the other non-Debtor parties to the Contracts. The Debtor submits that no other or further notice is necessary.

NO PRIOR REQUEST

19. No previous motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court enter an order, substantially in the form attached hereto, granting this Motion and such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
September 2, 2004

YOUNG, CONAWAY, STARGATT & TAYLOR, LLP

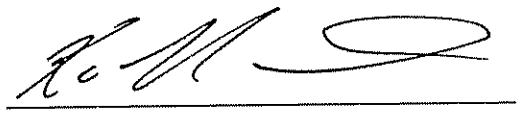

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EXHIBIT A

Non-Debtor Contract Party	Address Of Non-Debtor Contract Party	Description
WCB Five Limited Partnership, a Delaware limited partnership	c/o WCB Properties 450 Newport Center Drive, Suit 304 Newport Beach, CA 92660 Attn: Mr. Ronald A. Lack	Lease of Office Space, dated on or about June 20, 2003, at 5355 Mira Sorrento Place Suite 700 San Diego, CA 92121
Fischer-Anderson	9665 Chesapeake Drive Suite 305 San Diego, CA 92123	Phone and Voicemail System Lease Agreement # 12606-2
Protel Communications, Inc.	3914 Murphy Canyon Rd. Ste. A244 San Diego, CA 92123	Phone and Voicemail System Contract
Preferred Lease	905 North Lake Blvd. Tahoe City, 96145	Phone and Voicemail System Contract
Pitney Bowes Credit Corporation	P.O. Box 85460 Louisville, KY 40285-5460	Lease of Postage Machine and related equipment
Print, Inc.	11255 Kirkland Way Suite 3000 Kirkland, WA 98033	Lease of two HP 8150 MFP's Printer/Scanners through Citicorp Vendor Finance, Inc.
US Bancorp.	115 West College Drive Marshall, MN 56258	Lease of Printers
GE Capital Corporation	1961 Hirst Drive Mobarly, MO 65270	Lease of Copiers
Paetec Communications	PO Box 1283 Buffalo, NY 14240	Maintenance services & specific phone equipment
Citicorp Vendor Finance, Inc.	1800 Overcenter Drive Moberly, MO 65270	Lease of two HP 8150 MFP's Printer/Scanners

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
WOMEN FIRST HEALTHCARE, INC.,	)	Case No.: 04-11278
	)	
Debtor.	)	Docket Ref. No.: []
	)	

ORDER PURSUANT TO SECTIONS 365(a) AND 554(a) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO (I) REJECT CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND (II) ABANDON PERSONAL PROPERTY

Upon the motion (the "Motion") of Women First HealthCare, Inc., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), seeking entry of an order pursuant to sections 365(a) and 554(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), (i) authorizing the Debtor to reject the Contracts[1] effective as of the Rejection Date, (ii) authorizing the abandonment of the Personal Property, and (iii) establishing a rejection damages claims bar date related thereto; and the Court being satisfied that the rejection of the Contracts is in the best interests of the Debtor, its estate and its creditors and is a proper exercise of the Debtor's business judgment; and due and proper notice of the Motion having been given; and it appearing that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is GRANTED and APPROVED.

2. The Debtor's rejection of the Contracts is hereby approved, effective as of the Rejection Date which shall be the earlier of (1) September 30, 2004 or (2) the date the Debtor surrenders the Leased Property and provides an unequivocal statement of abandonment to non-Debtor parties to the Contracts.

3. The last date (the "Rejection Claims Bar Date") for filing any claim (a "Rejection Claim") arising from the rejection of any of the Contracts pursuant to this Order is hereby fixed at thirty (30) days after the Rejection Date.

4. Except as may be provided by the Bankruptcy Code or an order of this Court, any person or entity who fails to file a proof of Rejection Claim so as to be actually received by the Debtor's noticing agent, Bankruptcy Management Corporation at WFHC c/o BMC, 1330 E. Franklin Avenue, El Segundo, CA 90245, with copies to the Debtor's counsel at their respective addresses, on or before 4:00 p.m., prevailing Eastern Time on the Rejection Claims Bar Date, shall be: (a) forever barred from asserting such claim against the Debtor or its estate; (b) forever barred from sharing in any distribution of the Debtor's estate or assets under any chapter 11 plan confirmed in this case or order of the Court authorizing distributions from the Debtor's estate; and (c) bound by the terms of any chapter 11 plan confirmed in this and/or any order of the Court authorizing distributions from the Debtor's estate.

5. This Order shall take effect and be fully enforceable immediately upon execution hereof and shall be binding on the Debtor and all parties to the Contracts.

6. The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: Wilmington, Delaware
_____, 2004

MARY F. WALWRATH
UNITED STATES BANKRUPTCY JUDGE

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.