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: D.I. 111, 270 and 458

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTOR'S INTENT TO CONTINUE THE MILLER BUCKFIRE LEWIS YING & CO., LLC ENGAGEMENT

The Official Committee of Unsecured Creditors (the "Committee") objects to the Debtor's intent to continue the Miller Buckfire Lewis Ying & Co., LLC ("MBLY") engagement and asserts as follows:

I. 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. Prior to the Petition Date, the Debtor retained MBLY as its financial advisor pursuant to an engagement letter dated March 5, 2004 (the "Engagement Letter").

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

A. MBLY Retention and Compensation

5. On May 4, 2004, the Debtor filed an Application for Order Under Sections 327 and 328 of the Bankruptcy Code and Bankruptcy Rule 2014 Approving Retention of MBLY

as Financial Advisor to Debtor and Waiving Certain Requirements Under Local Rule 2016-2. (D.I. No. 42).

6. On or about May 18, 2004 the Court entered an Order Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code Approving the Retention of MBLY as Financial Advisor to the Debtor through August 31, 2004 (the "MBLY Order"). (D.I. 111). Pursuant to the terms of an Engagement Letter, which was incorporated into the MBLY Order, MBLY is compensated as follows: (1) an initial fee of $100,000, credited against any Sale Transaction Fee, Restructuring Transaction Fee or Financing Transaction Fee; (2) a monthly financial advisory fee of $100,000, of which the first two monthly fees are credited against any Sale Transaction Fee, Restructuring Transaction Fee or Financing Transaction Fee; (3) a Sale Transaction Fee equal to the sum of: (i) 2.00% of the Aggregate consideration up to $50,000,000 plus (ii) 1.50% of the Aggregate Consideration in excess of $50,000,000; provided the minimum Sale Transaction Fee payable to MBLY shall be $1,000,000; (4) if the Debtor consummates a Restructuring, then upon consummation of such Restructuring, a Restructuring Transaction Fee equal to $1,000,000; and (5) if the Debtor consummates a Financing, then upon consummation of such Financing, a Financing Transaction Fee equal to (i) 0.75% of the gross proceeds of any indebtedness issued that is secured by a first lien, (ii) 1.5% of the gross proceeds of any indebtedness issued that is secured by a second or more junior lien, unsecured or subordinated and (iii) 3.0% of the gross proceeds of any equity financing. See MBLY's Engagement Letter, pp. 4-8.

7. On July 30, 2004, the Debtor filed a Notice of Intent to Continue the MBLY Engagement. (D.I. 270).

8. On August 11, 2004, the Committee filed an Objection to the Debtor's Notice of Intent to Continue the MBLY Engagement. (D.I. 290).

9. On September 2, 2004, the Debtor and the Committee entered into an agreement, subject to Court approval, whereby the Debtor was allowed to continue the MBLY Engagement for the month of September 2004 subject to certain conditions and restrictions (the "Agreement").

10. On September 2, 2004, the Court entered a Supplemental Order approving the Agreement thereby Extending the Retention of MBLY as Financial Advisor and Investment Banker to the Debtor (the "Supplemental Order") (D.I. 354).

11. Under the terms of the Supplemental Order, the Debtor was allowed to continue the engagement of MBLY for the month of September 2004. Further, the Supplemental Order allowed the Debtor to continue the MBLY engagement for the month of October 2004 unless any of certain parties in interest, including the Committee, filed an objection to such continued engagement with the Court on or before September 15, 2004. See Supplemental Order, p. 2.

12. On September 15, 2004, the Committee filed its Objection to the Debtor's Intent to Continue the MBLY Engagement (the "MBLY Objection") because the vast majority of the Debtor's assets had already been sold and the continued retention provided no benefit to the Debtor's estate. (D.I. 406).

13. On September 23, 2004, the Court heard argument on the Committee's MBLY Objection. After hearing argument from both sides, the Court ruled that the Debtor could continue the retention of MBLY for the month of October 2004 to complete the sale of the Debtor's Esclim product line, but MBLY's fees would (as provided in a prior order) be subject to a "reasonableness" review under Section 330 of the Bankruptcy Code.

14. On October 4, 2004, the Court entered the Second Supplemental Order Extending the Retention of MBLY as Financial Advisor and Investment Banker to the Debtor (the "Second Supplemental Order"). (D.I. 458). Further, the Second Supplemental Order allowed the Debtor to continue the MBLY engagement for the month of November 2004 unless any of certain parties in interest, including the Committee, filed an objection to such continued engagement with the Court on or before three (3) days before the last hearing date scheduled in October 2004. See Second Supplemental Order, p. 2.

15. MBLY has filed an application to receive its $1,000,000 Sale Transaction Fee as a result of the closing of the *Vaniqa*® sale.

16. MBLY has received monthly fees amounting to $200,000 as of the date of this objection and will receive monthly fees amounting to an additional $400,000 when its current engagement period ends on October 31, 2004.[1]

17. If the employment of MBLY is continued for the month of November 2004, the estate will incur an additional $100,000 obligation to MBLY.

B. The Debtor's Remaining Product Rights

18. The Debtor has closed on the sale of it rights related to its Vaniqa®, Midrin®, Synalgos®, Equagesic®, Wygesic®, Bactrim™ and Ortho-Est® product rights. The Debtor stated that it should close on the sale of its rights relating to Esclim™ in late October or early November 2004.

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1 $200,000 of MBLY's monthly fees are to be credited against its $1,000,000 Sale Transaction Fee.

19. The Debtor does not have any remaining product rights other then those it holds in its Esclim™ product line.

C. Lack of Diligence by MBLY

20. During the September 23, 2004 hearing, the Court granted the Debtor's request to continue the retention of MBLY for the month of October 2004 for the specific purpose of completing the sale of the Debtor's remaining asset, Esclim™. As of the date of this objection, the Debtor has not filed a motion to sell its Esclim™ product even though Esclim™ is unencumbered by any pre-petition liens and the Committee has *repeatedly* requested during this case that MBLY tee up the Esclim™ rights for sale. Instead, MBLY has proceeded to sell the Debtor's product rights one at a time, thereby unnecessarily prolonging MBLY's engagement and allowing the value of the Debtor's remaining product rights to depreciate as a result of the unnecessarily long sale period.

II. OBJECTION

21. The Committee requests that this Court enter an Order denying the Debtor's engagement of MBLY for the month of November 2004 pursuant to the terms of the Second Supplemental Order.[2]

22. There is little, if any, benefit to the Debtor's estate from the continued retention of MBLY.

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2 This assumes the Court would approve a sale of those assets. The Committee reserves its right to object to the sale of any product that does not provide a benefit to the unsecured creditors.

23. In addition, MBLY's time expended on this case has decreased and the terms of the engagement are no longer prudent for the estate.

24. MBLY has had ample time to complete the sale of the Debtor's Esclim™ product line. The aforementioned is highlighted by the fact that the Court allowed the Debtor to continue the engagement of MBLY for the month of October 2004 (over the objection of the Committee) for the very purpose of completing the sale of Esclim™.

25. As the Debtor is liquidating it is simply a stakeholder. The interests of the unsecured creditors, should govern whether MBLY continues to be retained. The unsecured creditors, not the Debtor, will bear the burden of MBLY's continued retention. Accordingly, the Committee believes that MBLY should not be retained in November 2004.

26. To the extent, if any, that this Court permits the Debtor to continue retaining MBLY, MBLY's fees should be significantly reduced. The amount of compensation sought by MBLY for the Month of November 2004 is disproportionate to the amount of work which would be required and the amount of proceeds the Debtor will receive as a result of the sale of the Remaining Assets. MBLY billed only 208.5 hours in July while it effected the sales of the Debtor's Vaniqa®, Midrin®, Synalgos®, Equagesic® and Wygesic® assets. Due to the fact MBLY would only be working solely on the sale of the Debtor's Esclim™ product in November 2004, the time required to effect the sale should be substantially less than the 208.5 hours billed in July. Accordingly, if this Court grants the Debtor's request to continue its engagement of MBLY for the month of November 2004, MBLY's monthly compensation should be reduced to $10,000 to adequately reflect the value of the services to be provided. It does not make sense for the estate to pay MBLY $100,000 per month to pursue such a sale.

In summary, the Committee believes that it is inappropriate for the Debtor's estate to fund the continued retention of MLBY as it is an unnecessary expense created by unnecessary delays. Accordingly, the Committee objects to the continued retention of MBLY. If this Court determines that the Debtor may continue to retain MBLY, the Committee believes that MBLY's fees should be substantially reduced to $10,000 per month.

WHEREFORE, the Committee respectfully requests that this Court enter an Order (i) denying the continued retention of MBLY or, (ii) to the extent that the Court determines that the Debtor should continue to retain MBLY, reducing MBLY's monthly fees to $10,000.

Dated: October 18, 2004
Wilmington, Delaware

Respectfully submitted,

By: /s/ Kurt F. Gwynne

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