

WATCHTELL LIPTON
ROSEN & KATZ

1999 MAR 22 A
KENNETH E. GIBSON
CLERK OF COURT
DISTRICT OF ARIZONA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)
)
UNISON HEALTHCARE CORPORATION,)
and related proceedings,)
)
Federal I.D. No. 86-0684011)
)
Debtors.)

In Proceedings Under Chapter 11
Case No. B-98-06583-PHX-GBN
(Jointly Administered)

APPLICABLE DEBTOR(S) (Check))

- UNISON HEALTHCARE CORPORATION)
- (Case No. 98-06583-PHX-RGM))
- SUNQUEST SPC, INC.)
- (Case No. 98-06584-PHX-SSC))
- BRITWILL HEALTHCARE COMPANY)
- (Case No. 98-06585-PHX-SSC))
- BRITWILL FUNDING CORPORATION)
- (Case No. 98-06602-PHX-CGC))
- MEMPHIS CLINICAL LABORATORY, INC.)
- (Case No. 98-06588-PHX-CGC))
- AMERICAN PROFESSIONAL HOLDINGS, INC.)
- (Case No. 98-06587-PHX-GBN))
- AMPRO MEDICAL SERVICES, INC.)
- (Case No. 98-06609-PHX-GBN))
- GAMMA LABORATORIES, INC.)
- (Case No. 98-06611-PHX-SSC))
- SIGNATURE HEALTH CARE CORPORATION)
- (Case No. 98-06591-PHX-SSC))
- BROOKSHIRE HOUSE INC.)
- (Case No. 98-06608-PHX-RGM))
- CHRISTOPHER NURSING CENTER, INC.)
- (Case No. 98-06596-PHX-JMM))
- AMBERWOOD COURT, INC.)
- (Case No. 98-06597-PHX-RGM))
- THE ARBORS HEALTH CARE CORPORATION)
- (Case No. 98-06598-PHX-CGC))

**APPLICATION PURSUANT TO
ARTICLE 7.12 OF CONFIRMED
PLAN FOR REIMBURSEMENT OF
ATTORNEYS' FEES AND
EXPENSES OF AD HOC
COMMITTEE OF NOTEHOLDERS**

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LOS ARCOS, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06603-PHX-RGM))
PUEBLO NORTE, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06604-PHX-RTB))
RIO VERDE NURSING CENTER, Inc.	<input checked="" type="checkbox"/>)
(Case No. 98-06606-PHX-CGC))
SIGNATURE MANAGEMENT GROUP, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06605-PHX-GBN))
CORNERSTONE CARE CENTER, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06595-PHX-RTB))
ARKANSAS, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06590-PHX-GBN))
DOUGLAS MANOR, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06589-PHX-CGC))
SAFFORD CARE, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06593-PHX-RTB))
REHABWEST, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06594PHX-CGC))
QUEST PHARMACIES, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06586-PHX-RGM))
SUNBELT THERAPY MANAGEMENT SERVICES, INC.))
(ALABAMA)	<input checked="" type="checkbox"/>)
(Case No. 98-06607-PHX-RTB))
DECATUR SPORTS FIT & WELLNESS CENTER,)
INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06601-PHX-SSC))
THERAPY HEALTH SYSTEMS, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06600-PHX-GBN))
HENDERSON & ASSOCIATES REHABILITATION,)
INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06599-PHX-SSC))
SUNBELT THERAPY MANAGEMENT SERVICES, INC.))
(ARIZONA)	<input checked="" type="checkbox"/>)
(Case No. 98-06592-PHX-RGM))
CEDAR CARE, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-06612-PHX-GBN))
SHERWOOD HEALTHCARE CORP.	<input checked="" type="checkbox"/>)
(Case No. 98-06610-PHX-SSC))
BRITWILL INVESTMENTS-I, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-0173-PHX-GBN))
BRITWILL INVESTMENTS-II, INC.	<input checked="" type="checkbox"/>)
(Case No. 98-0174-PHX-GBN))
BRITWILL INDIANA PARTNERSHIP	<input checked="" type="checkbox"/>)
(Case No. 98-0175-PHX-GBN))

Pursuant to Section 7.12 of the “Debtors’ First Amended Joint Plan of Reorganization Dated October 15, 1998” (as amended, modified and supplemented, the “Confirmed Plan”) and paragraph 4 of the “Order Confirming Debtors’ First Amended Joint Plan of Reorganization Dated October 15, 1998 (as modified)” (hereinafter, the “Confirmation Order”), Wachtell, Lipton, Rosen & Katz (“Wachtell Lipton”) as legal counsel for the Ad Hoc Committee of Noteholders (the “Committee”) of Unison HealthCare Corporation (“Unison”) and its subsidiaries (collectively, the “Debtors”) hereby submits an application for the court to determine the reasonableness of its fees and expenses incurred in connection with the Chapter 11 Cases. This application (“Application”) requests (a) the allowance of reasonable fees for the period from May 28, 1998 through February 28, 1999 (the “Requested Period”) in the amount of \$162,770.50 (which represents compensation for 346.8 hours of professional services and 62 hours of paraprofessional services at the applicable billing rates set forth on Exhibit A) and (b) the allowance of actual and necessary out of pocket expenses in the amount of \$13,538.91 incurred during the Requested Period in connection with the rendition of such services. Wachtell Lipton requests authorization to apply to such aggregate fees and expenses monies retained in its trust accounts in the amount of \$35,915.90 which were paid by Unison prior to the Unison Petition Date and not previously applied. Accordingly, Wachtell Lipton is requesting payment of \$140,393.51. Capitalized terms used in this application that are not otherwise defined herein shall have the meanings ascribed to such terms in the Confirmed Plan.

Background

1. On January 7, 1998 (the "Britwill Petition Date"), Britwill Investments-I, Inc., BritWill Investments-II, Inc. and Britwill Indiana Partnership commenced cases under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On May 28, 1998 (the "Unison Petition Date"), the other Debtors commenced cases under Chapter 11 of the Bankruptcy Code. Pursuant to the Confirmation Order, the Plan was confirmed on January 29, 1999 with an Effective Date of January 31, 1999.

2. Considering the complexity and magnitude of the issues involved, the Chapter 11 Cases have been, by most measures, a major success. As the Court is well aware, the Chapter 11 Cases involved the restructuring of a public company with a complicated corporate structure in a highly regulated industry. The total claims subject to the restructuring exceeded \$150,000,000 and included two issues of guaranteed indenture debt, a number of complicated claims asserted by the Related Party Creditors, secured claims and complex lease relationships of Omega, and large numbers of general unsecured claims against different entities. At the outset of the cases, there were a number of substantial disputes and other differences between the parties. As the Court is aware, all of the major issues in the Chapter 11 Cases were ultimately settled in a timely matter and the cases reached a successful legal conclusion. Although this successful resolution involved the efforts of many parties, Wachtell Lipton submits that its efforts and role in the Chapter 11 cases were critical to obtaining a consensual resolution of these complex cases such that Reorganized Unison can now focus its efforts on a successful business turnaround for the benefit of all parties in interest, and that the fees and expenses incurred in its role are

eminently reasonable. It should also be noted at the outset of this Application that Wachtell Lipton performed its services without the assistance of a separate financial advisor, but rather, where appropriate, utilized the services of the Debtors' financial advisor.

3. Section 7.12 of the Confirmed Plan and paragraph 4 of the Confirmation Order provides that the Committee is to be reimbursed for its reasonable attorneys' fees and expenses incurred in connection with the Chapter 11 Cases, subject to the Court's review of such fees and costs to determine their reasonableness. The purpose of this Application is to request that the Court find that the fees and expenses of Wachtell Lipton incurred in connection with the Chapter 11 Cases are reasonable. Wachtell Lipton has provided a draft of this Application to the Debtor prior to its filing with the Court and the Debtor has stated that they support the Application and the reasonableness of the amounts requested.

Exhibits

4. Exhibit A to this Application is a summary setting forth the name of each professional and paraprofessional who worked on the matter during the Requested Period, the position with Wachtell Lipton on the date hereof and the year of admission of each such professional admitted to the bar, the aggregate number of hours for each professional and paraprofessional that represents services on behalf of the Committee during the Requested Period together with the hourly rate and aggregate time charges of such professionals and paraprofessionals for such services.

5. Exhibit B to this Application is a detailed breakdown of the actual and necessary out-of-pocket expenses incurred by Wachtell Lipton during the Requested Period in connection with the rendition of professional services to the Committee.

6. Exhibit C to this Application consists of a compilation of daily time records prepared by professionals and paraprofessionals of Wachtell Lipton in connection with the rendition of professional services to the Committee during the Requested Period, showing individually the hours expended and the nature of the services rendered.

Summary of Role

7. Some of the more significant aspects of Wachtell Lipton's activities during the Requested Period are highlighted in narrative form below. The following is not intended to be a complete description of professional services rendered by Wachtell Lipton, but is intended solely to identify certain of the more significant matters. Reference is made to Exhibit C of this Application for a more detailed daily description of professional services rendered.

8. Shortly after the Britwill Petition Date, certain significant holders of the 12.25% Senior Notes due 2006 (the "12.25% Notes") and the 13% Senior Notes due 1999 (the "13% Notes") issued by Unison and guaranteed by the other Debtors organized as an unofficial committee and retained Wachtell Lipton as its counsel. The Committee represented approximately 88% of the outstanding dollar amount of the 12.25% Notes (representing aggregate allowed claims of over \$95,000,000) and a substantial amount of the 13% Notes. Because the Committee represented by far the largest (by dollar amount)

constituency in the cases and the future ultimate owners of substantially all of the equity of the Debtors in connection with any restructuring, at the outset of these cases it was clear to all parties in interest that the input and active role of the Committee and Wachtell Lipton were critical to achieving an effective restructuring.

9. During the period from the Committee's formation through the Unison Petition Date and thereafter, Unison and its advisors, the Committee and Wachtell Lipton, and Omega HealthCare Investors, Inc. ("Omega") and its counsel conducted extensive negotiations regarding the terms of a consensual restructuring and related plan of reorganization for Unison. Until shortly before the Unison Petition Date, the Related Party Creditors (namely, David Kremser and Bruce Whitehead, officers and directors of Unison prior to the Unison Petition Date, and certain entities affiliated with them) participated in those negotiations in their capacities as creditors and interest holders.

10. In connection with these negotiations, Wachtell Lipton conducted extensive due diligence with respect to the complex claims of Omega and the Related Party Creditors which resulted in certain conclusions regarding the strengths and weaknesses of those claims and the Debtors' options and alternative courses of action. On June 15, 1998, after months of negotiations, including meetings in New York and Detroit, the Committee, Unison and Omega executed an agreement-in-principle (the "Agreement in Principle") regarding the terms of a consensual plan. Although certain terms and provisions were later modified, the Agreement in Principle was the basis for the complicated treatment of Omega set forth in the Confirmed Plan.

11. Early in the Chapter 11 Cases, Wachtell Lipton, on behalf of the Committee, engaged in lengthy negotiations with the executive team of Unison regarding the terms for the retention of such executives both during the cases and following confirmation. Such negotiations culminated in the approval by the Court of severance and retention arrangements for Senior Management and certain other key employees which brought considerable stability to the Debtors at a critical time during the Chapter 11 Cases.

12. In addition, shortly after the Unison Petition Date, Wachtell Lipton commenced negotiations with the Official Committee of Unsecured Creditors of the Debtors (the "Official Committee") concerning the treatment of trade and other general unsecured creditors. The relations between the Official Committee and the Committee were always cooperative and, in the interests of economy, Wachtell Lipton and the Official Committee jointly discussed possible strategies concerning Omega and the Related Party Creditors and proactively sought to avoid duplication of efforts. In that regard, Wachtell Lipton freely shared with counsel to the Official Committee its conclusions from the previously conducted due diligence concerning the Related Party Creditors and Omega. After lengthy negotiations, the Committee, the Debtors and the Official Committee reached an agreement that was ultimately embodied in the Confirmed Plan concerning the treatment of general unsecured creditors.

13. As the Court is well aware, the treatment of the Related Party Creditors was perhaps the most contentious issue in the Chapter 11 Cases. At the outset, the Related Party Creditors asserted numerous secured claims arising from multiple transactions in an aggregate amount of over \$20,000,000, which, if allowed, would have constituted a

substantial portion of the estates' value. The demands of the Related Party Creditors threatened to derail or substantially delay ultimate confirmation of a chapter 11 plan. As previously noted, Wachtell Lipton conducted extensive due diligence concerning the origin and appropriate treatment of these claims and identified major potential weaknesses and vulnerabilities in the asserted claims. Wachtell Lipton had extensive discussions with the Debtors, the Official Committee and Omega concerning these weaknesses. When the Debtors ultimately filed the Related Party Avoidance Action in August 1998, a large part of the product of Wachtell Lipton's efforts were embodied in the filed pleadings.

14. Wachtell Lipton also took a very aggressive role in seeking a consensual resolution that would not only settle the Related Party Creditor Claims and avoid a contested confirmation hearing, but also require the Related Party Creditors to make significant concessions in both the amount and secured status thereof. On the initiative of Wachtell Lipton, the negotiations with the Related Party Creditors became predicated on the model of bifurcating the different types of asserted claims and providing different treatments based on the individual attributes of such claims. Given the disparate positions and interests, the three way negotiations between the Debtors, the Committee and the Related Party Creditors became strenuous and somewhat heated at times. Wachtell Lipton submits that the aggressive position it took in the negotiations ultimately played a significant part in reaching, for the benefit of all parties in interest, a fair and practical settlement of the claims of the Related Party Creditors, as embodied in the Confirmed Plan.

15. In addition to the highlights enumerated above, Wachtell Lipton closely followed and played an important role in many other aspects of the Chapter 11 Cases. By

way of example only, Wachtell Lipton provided significant input to the Debtors concerning the assumption of leases, resolution of the dispute with Wayland Investment Fund, LLC and the structure and drafting of the Confirmed Plan and related documents including the Reorganized Unison Certificate and the Reorganized Unison By-Laws. Wachtell Lipton took an active role in negotiating the terms of the Omega New Master Lease, the New Senior Notes Indenture and related documents. Finally, Wachtell Lipton has provided, and continues to provide at this time, input concerning the consummation of the Confirmed Plan including the selection of the initial Board of Directors of Reorganized Unison and advice concerning the mechanics of the distributions to be made under the Confirmed Plan. As mentioned, reference is made hereby to Exhibit C hereto for a complete description of the services rendered by Wachtell Lipton in connection with the Chapter 11 Cases.

16. In sum, Wachtell Lipton made a material, significant and substantial contribution to the Chapter 11 Cases for the benefit of all parties in interest.

Reasonableness of Fees and Expenses

17. As mentioned, Section 7.12 of the Confirmed Plan and paragraph 4 of the Confirmation Order provides that the Committee is to be reimbursed for its reasonable attorneys' fees and expenses incurred in connection with the Chapter 11 Cases, subject to the Court's review of such fees and costs to determine their reasonableness. The fees for which review is sought herein averages to about \$18,000 per month. Wachtell Lipton submits that the total fees and expenses for which payment is requested herein are eminently reasonable. Wachtell Lipton has at all times been cognizant of the need for economy in the Chapter 11

Cases so as to protect the interest of its clients and all other creditors. In this regard, Wachtell Lipton has refrained from expending substantial amounts of time in connection with issues which have arisen unless the matters materially affected the interests of the estates. Wachtell Lipton has not filed any unnecessary objections or responses and has proactively sought to avoid duplication of attorney services by working with the Debtors' counsel and counsel to the Official Committee and sharing information and ideas. Wachtell Lipton actively endeavored to communicate its views on pending issues to the Debtors and other parties in interest informally and to resolve any differences out of Court. Moreover, to avoid unnecessary travel related fees and expenses, Wachtell Lipton participated in all hearings by telephone, except for a single hearing at the beginning of the cases which coincided with a meeting with the advisors to the Official Committee. Moreover, as is Wachtell Lipton's customary practice, the "core" team representing the Committee consisted of a single partner and a single associate. These attorneys developed a familiarity with the issues in the case so that they could efficiently render services with continuity. Additional attorneys were used only for specialized corporate services with respect to the Reorganized Unison Charter, the Reorganized Unison By-Laws and the registration rights agreement. Wachtell Lipton submits that the overall staffing of the matter and the relative proportion of the aggregate professional time spent by its partners and associates is reasonable concerning the nature of the services required.

18. As previously noted, Wachtell Lipton performed its services without the assistance of a separately retained financial advisor. By relying on the services of the

Debtors' financial advisors for appropriate information and analysis, Wachtell Lipton saved the Debtors' estates significant amounts.

Time Charges and Expenses Incurred

19. Wachtell Lipton has expended 408.8 hours during the Requested Period in rendering professional and paraprofessional services on behalf of its representation of the Committee. As set forth on Exhibit A to this Application, the aggregate time charges accrued by the attorneys and paraprofessionals who rendered services during the Requested Period total \$162,770.50. Wachtell Lipton is requesting final allowance of such amount. All hourly rates are at Wachtell Lipton's normal hourly rates for bankruptcy and nonbankruptcy related matters.

20. Wachtell Lipton also seeks allowance in respect of reimbursement of actual and necessary out-of-pocket expenses set forth in Exhibit B in the amount of \$13,538.91, incurred by it in connection with the rendition of professional services during the Requested Period. A large part of such expenses represents telephone, telecopy and duplicating expenses incurred in communicating with members of the Committee and other parties in interest. Hand delivery and overnight services have only been used when first class U.S. mail was impracticable.

21. Prior to the Unison Petition Date, pursuant to a letter agreement dated as of January 22, 1998, Unison agreed to pay the reasonable fees and expenses incurred by Wachtell Lipton in connection with its representation of the Committee. Immediately before the Unison Petition Date, there was \$75,100 of unapplied payments by Unison in its attorney

trust account. After giving effect to the application of \$39,184.10 of such amount to unpaid prepetition fees and expenses, there is presently a remainder of \$35,915.90 which Wachtell Lipton currently maintains in its attorney trust account (the "Unapplied Retainer"). To the extent that the fees and expenses requested in this Application are approved, Wachtell Lipton shall apply the Unapplied Retainer against such amounts. Except for amounts paid prior to the Unison Petition Date pursuant to the above referenced letter agreement, and the provisions of Section 7.12 of the Confirmed Plan and paragraph 4 of the Confirmation Order, no payments have heretofore been made or promised to Wachtell Lipton for services rendered or to be rendered in any capacity whatsoever in connection with these cases. Wachtell Lipton has not shared with any person, or entered into any agreement or understanding to share with any person, compensation received or to be received for services rendered in or in connection with these cases. No agreement or understanding prohibited by 18 U.S.C. section 155 has been made by Wachtell Lipton.

WHEREFORE, pursuant to Section 7.12 of the Confirmed Plan, Wachtell Lipton respectfully requests that this Court enter an order providing for (a) the payment of reasonable fees in the amount \$162,770.50 for professional services rendered during the Requested Period in connection with the Chapter 11 Cases, (b) the allowance of expenses in the amount of \$13,538.91 incurred in connection with the rendition of such services and (c) granting Wachtell Lipton such other and further relief as the Court may deem just and proper.

Dated this 19th day of March, 1999

WACHTELL, LIPTON, ROSEN & KATZ

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