

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION

In re:

FAIRMONT GENERAL HOSPITAL, INC.,
et al.

Debtors.

Case No.: 1:13-bk-01054

Chapter 11

Jointly Administered

**OBJECTION OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO MOTION FOR PAYMENT BY RICHARD L. COOK**

The Official Committee of Unsecured Creditors (the “Committee”) hereby objects to the Motion for Payment (the “Motion”) [Docket No. 1139] filed by Richard L. Cook and respectfully represents as follows:

OBJECTION

1. Although the Committee does not join the objection of Fairmont General Hospital, Inc. and Fairmont Physicians, Inc. (together, the “Debtors”) to the Motion [Docket No. 1189], the Committee agrees that the Motion should be denied.

2. Among other things, the Motion is premature. As stated in the Motion and Mr. Cook’s prior correspondence with the Court, Mr. Cook filed a proof of claim with the claims agent retained in these cases. His purported claim should be addressed during the claims resolution process according to procedures established in these cases (by way of a bankruptcy plan or otherwise), not on an *ad hoc* basis well before the claims of similarly-situated creditors.

3. Notwithstanding the foregoing, Mr. Cook’s purported claim should be disallowed to the extent that it was resolved pursuant to any settlement with either or both of the Debtors. However, no such settlement appears to have been approved by the Court, and the Committee

reserves all rights with respect to any such settlement, including the right to challenge the settlement and seek the return of any payments made by the Debtors pursuant thereto.

4. To the extent that Mr. Cook has any claim for incentive compensation for services rendered from January 1, 2013 to April 5, 2013, it is a prepetition claim because (i) the agreement on which the alleged claim was based was a prepetition contract, (ii) the services allegedly entitling Mr. Cook to incentive compensation were performed before the petition date, and (iii) the employment agreement was rejected. Mr. Cook has not demonstrated that any portion of his purported claim is attributable to the priority period under section 507(a)(4). Accordingly, any such claim should be classified as a general unsecured claim. *See In re Heritage Village Church & Missionary Fellowship*, 137 B.R. 888, 892 (Bankr. D.S.C. 1991) (“An underlying presumption in the administration of bankruptcy cases is that a debtor’s limited resources will be equally distributed among creditors, and, consequently, statutory priorities must be narrowly construed. Further, the burden to demonstrate that the requisite elements for a priority status are met rests upon the claimant[.]”) (citations omitted).

5. Finally, because the employment agreement was between Mr. Cook and Fairmont Physicians, Inc. and the Debtors have not been substantively consolidated, any claim by Mr. Cook is a claim against Fairmont Physicians, Inc. only.

WHEREFORE, the Committee respectfully requests that the Motion be denied, and such other and further relief that the Court deems just and appropriate.

Dated: December 5, 2014

SILLS CUMMIS & GROSS P.C.

By: /s/ Andrew H. Sherman

Andrew H. Sherman
Boris I. Mankovetskiy
Lucas F. Hammonds

One Riverfront Plaza
Newark, New Jersey 07102
Tel.: 973-643-7000
Fax: 973-643-6500

-and-

HUDDLESTON BOLEN LLP

By: /s/ Janet Smith Holbrook

Janet Smith Holbrook; WV Bar No. 5853
Post Office Box 2185
Huntington, WV 25722-2185
Tel.: 304-529-6181
Fax: 304-522-4312
Email: jholbrook@huddlestonbolen.com

*Attorneys for the Official Committee of Unsecured
Creditors of Fairmont General
Hospital, et al.*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the *Objection of the Official Committee of Unsecured Creditors to Motion for Payment by Richard L. Cook* on the 5th day of December, 2014, with service of same being upon those listed on the Court's electronic notice list and upon the following by placing a copy of same in the U.S. mail, first class postage prepaid:

Fairmont General Hospital, Inc.
1325 Locust Ave.
Fairmont, WV 26554

Fairmont Physicians, Inc.
1325 Locust Ave.
Fairmont, WV 26554

Spilman Thomas & Battle PLLC
Attn: Rayford K. Adams, III
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103

Spilman Thomas & Battle, PLLC
Attn: David R. Croft
1233 Main St., Suite 4000
Post Office Box 831
Wheeling, WV 26003

Spilman Thomas & Battle, PLLC
Attn: Michael S. Garrison
48 Donley Street, Suite 800
Post Office Box 615
Morgantown, WV 26507

U.S. Trustee's Office
Attn: Douglas A. Kilmer
300 Virginia Street East
Room 2025
Charleston, WV 25301

Jenkins Fenstermaker, PLLC
Attn: Stephen J. Golder
P.O. Box 2688
Huntington, WV 25726

Tucker Arensberg, P.C.
Attn: Michael A. Shiner
Attn: Danielle L. Dietrich
1500 One PPG Place
Pittsburgh, PA 15222

Halperin Battaglia Raicht, LLP
Attn: Alan D. Halperin
Attn: Debra J. Cohen
40 Wall Street, 37th Floor
New York, NY 10005

Mirick O'Connell, Demallie & Lougee LLP
Attn: Christine E. Devine
Attn: Gina Barbieri O'Neil
1800 West Park Drive, Suite 400
Westborough, MA 01581

RWDSU Funds
Attn: Mark Davis, Fund Administrator
P.O. Box 55728
Birmingham, AL 35255

Friedman & Wolf
Attn: Eugene S. Friedman
1500 Broadway
New York, NY 10036

White Law Offices, PLLC
Attn: Steven Ryan White
332 6th Ave.,
P.O. Box 18387
South Charleston, WV 25303

Michael F. Doty
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

W. Bradley Sorrells
Robinson & McElwee PLLC
Post Office Box 1791
Charleston, WV 25326

Bruce J. Borrus
Riddell Williams P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154

Noreen C. O’Grady, Esq.
Assistant Regional Counsel
Office of the General Counsel, Region III
Department of Health and Human Services
Suite 418, The Public Ledger Building
150 S. Independence Mall W.
Philadelphia, PA 19106-3499

Helen C. Altmeyer, Esq.
Assistant United States Attorney
United States Attorney’s Office
1125 Chapline Street, Suite 3000
P.O. Box 591
Wheeling, WV 26003

McDermott Will & Emery LLP
Attn: Darren Azman
340 Madison Ave.
New York, NY 10173

William F. Dobbs, Jr.
Jackson Kelly PLLC
500 Lee Street, East, Suite 1600
Post Office Box 553
Charleston, WV 25322

William C. Ballard
Jackson Kelly PLLC
500 Lee Street, East, Suite 1600
Post Office Box 553
Charleston, WV 25322

Sodexo, Inc.
c/o Judy D. Thompson, Esq.
JD Thompson Law
P.O. Box 33127
Charlotte, NC 28233

Timothy F. Cogan
Cassidy, Myers, Cogan & Voegelin, L.C.
1413 Eoff Street
Wheeling, WV 26003

David M. Fusco
Schwartzwald McNair & Fusco LLP
616 Penton Media Building
1300 East Ninth Street
Cleveland, OH 44114-1503

Jennifer M. McLemore, Esq.
Christian & Barton, LLP
909 East Main Street, Suite 1200
Richmond, VA 23219-3095

Erich N. Durlacher
Burr & Forman LLP
Suite 1100, 171 Seventeenth St., NW
Atlanta, GA 30363

Bryan T. Glover
Burr & Forman LLP
Suite 1100, 171 Seventeenth St., NW
Atlanta, GA 30363

Milbank, Tweed, Hadley & McCloy LLP
Attn: Matthew S. Barr
Brian Kinney
1 Chase Manhattan Plaza
New York, NY 10005

Jackson Kelly PLLC
Attn: William F. Dobbs, Jr.
William C. Ballard
500 Lee Street, East, Suite 1600
P.O. Box 553
Charleston, WV 25322

McDermott Will & Emery LLP
Attn: Nathan F. Coco
227 West Monroe Street, Suite 4700
Chicago, IL 60606

Klie Law Offices, PLLC
Attn: Erika Klie Kolenich, Esq.
Lorena Ellen Waddell, Esq.
85 W. Main Street
Buckhannon, WV 26201

Shulman Hodges & Bastain LLP
Attn: Mark Bradshaw
8105 Irvine Center Drive, Suite 600
Irvine, CA 92618

Lewis Glasser Casey & Rollins, PLLC
Attn: Spencer D. Elliott
300 Summers Street, Suite 700
P.O. Box 1746
Charleston, WV 25326

Time Warner Cable Media Sales -
Milwaukee
c/o Szabo Associates, Inc.
Attn: Ms. Jennifer Toolan
3355 Lenox Road NE, Suite 945
Atlanta GA, 30326

Phillips, Gardill, Kaiser & Altmeyer, PLLC
Attn: Jacob C. Altmeyer, Esq.
61 Fourteenth Street
Wheeling, WV 26003

Baker & Hostetler LLP
Attn: Sherri Blank Lazear
65 East State Street, Suite 2100
Columbus, OH 43215

Steptoe & Johnson
Attn: Arthur M. Standish
P.O. Box 1588
Charleston, WV 25326

Tucker Arensberg, P.C.
Attn: Michael A. Shiner
1500 One PPG Place
Pittsburgh, PA 15222

Kay Casto & Chaney PLLC
Attn: Steven L. Thomas
P.O. Box 2031
Charleston, WV 25327

Richard L. Cook PAC
314 White Street
Nutter Fort, WV 26301

/s/ Janet Smith Holbrook
Janet Smith Holbrook, WV Bar No. 5853