

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE: GRUPO HIMA SAN PABLO, INC. DEBTOR (EIN #8245)	CASE NO. 23-02510 (ESL) CHAPTER 11
IN RE: CENTRO MEDICO EL TURABO, INC. DEBTOR (EIN #5905)	CASE NO. 23-02513 (ESL) CHAPTER 11
IN RE: HIMA SAN PABLO PROPERTIES, INC. DEBTOR (EIN #2718)	CASE NO. 23-02515 (ESL) CHAPTER 11
IN RE: PORTAL DE CAGUAS, INC. DEBTOR (EIN #4874)	CASE NO. 23-02516 (ESL) CHAPTER 11
IN RE: GENERAL CONTRACTING SERVICES, INC. DEBTOR (EIN #4903)	CASE NO. 23-02517 (ESL) CHAPTER 11
IN RE: IA DEVELOPERS, CORP. DEBTOR (EIN #4128)	CASE NO. 23-02519 (ESL) CHAPTER 11
IN RE CMT DEVELOPMENT, LLC. DEBTOR (EIN #4351)	CASE NO. 23-02520 (ESL) CHAPTER 11

IN RE: JOCAR ENTERPRISES, INC. DEBTOR (EIN #5849)	CASE NO. 23-02521 (ESL) CHAPTER 11
IN RE: JERUSALEM HOME AMBULANCE, INC. DEBTOR (EIN #0175)	CASE NO. 23-02522 (ESL) CHAPTER 11
IN RE: HOST SECURITY SERVICES, INC. DEBTOR (EIN #8802)	CASE NO. 23-02523 (ESL) CHAPTER 11 JOINTLY ADMINISTERED

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO THE DEBTORS' APPLICATION TO EMPLOY
MORALES BOSCIO LAW OFFICES, PSC**

The Official Committee of Unsecured Creditors (the "Committee") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its counsel, Porzio, Bromberg & Newman, P.C., hereby files this limited objection (the "Limited Objection") to the Debtors' application to appoint Morales Boscio Law Offices, PSC, ("MBL") to act as special counsel [Docket No. 411, Case No. 23-02510] (the "MBL Application" or the "Application"). In support of the Limited Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. While the Committee supports the Debtors' efforts to achieve recoveries on contested claims and litigation, the Committee objects to the proposed terms in the MBL Application. The Debtors have not satisfied their burden of showing that the terms sought in the Application are in the best interests of the estates based upon the facts at issue, circumstances and procedural posture of the subject matters and litigation, and purposes for which contingency

arrangements are employed. The MBL Application is therefore improper under the requirements of Section 327(e) of the Bankruptcy Code.

2. The Application poises MBL to potentially receive a contingency fee windfall from a “jewel” asset in these cases, namely, the Molina Litigation (defined below), within a short time period while demonstrating no ability to devote significant resources or commitment to take on significant risk of committing to a longer term investment in the disputed claims if necessary. Indeed, the terms of MBL’s employment are potentially expansive to additional matters than those specifically identified in the Application and subject to change after just two months, leaving all parties in the dark as to the true, long-term scope and value of MBL’s employment and potentially undermining a long term strategy for maximizing recovery. The Molina Litigation itself stands to potentially be the centerpiece of an unsecured creditor recovery in these cases, and a more fulsome assessment and transparent strategic decision-making on the financing of fees and costs, and strategy for deploying appropriate resources to pursue recovery on those claims, is required.

3. Importantly, the Committee does not object to the retention of MBL on a fair hourly basis so long as the Committee has clear notice and an opportunity to consider, and if necessary, object to the scope of matters to be handled by MBL; however, to the extent MBL seeks a percentage share of recoveries in connection with the proposed representations at this time, which may amount to either a short-term windfall or a long term underfunding of the pursuit of maximum recoveries for the Debtors’ bankruptcy estates and their creditors, the Application should be denied.

4. The Committee understands that the Debtors are in the process of adding additional litigations to the proposed MBL engagement and reserves the right to further respond or object.

PROCEDURAL BACKGROUND

5. On August 15, 2023 (the “Petition Date”), the Debtors petitioned this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”) commencing these cases in the United States Bankruptcy Court for the District of Puerto Rico (the “Bankruptcy Court”).

6. On September 7, 2023, the United States Trustee (“UST”) noticed its appointment of an Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 163, Case No. 23-02510]. On September 13, 2023, the UST noticed its amended appointment of the Committee [Docket No. 193, Case No. 23-02510], and on September 15, 2023, the Committee selected Porzio, Bromberg & Newman, P.C., together with its wholly owned subsidiary, Porzio, Bromberg & Newman (PR), LLC, as its proposed counsel.

7. Since the filing of the Chapter 11 Cases, the Debtors have continue managing their properties and/or business affairs as Debtors-in-Possession pursuant to the provisions of 11 U.S.C. §§ 1101, 1107 and 1108.

8. On October 17, 2023, the Debtors filed an initial application to employ MBL as special counsel, proposing a 25% contingent fee (minus a \$200.00 hourly rate to be paid in the ordinary course) [Docket No. 365, Case No. 23-02510].

9. On October 19, 2023, the Debtors withdrew the initial application upon receiving numerous objections informally.

10. The Debtors filed the MBL Application on October 26, 2023. *See* Docket No. 411, Case No. 23-02510. The Morales Boscio Verified Statement was attached to the MBL Application as an exhibit, along with the curriculum vitae of Jose A. Morales Boscio (“Morales Boscio”) and MBL engagement letter. Currently, the MBL Application appears, but is not clearly limited to,

four legal proceedings (the “Molina Litigation”):

- i. *CMT v. UTICORP, MOLINA*; 18- BN-03-001/18-BN-09-067, before ASES
- ii. *CMT v. MOLINA et als*, 21-V-06-734, before ASES
- iii. *CMT v. MOLINA et als*, SJ2021CV03145; and
- iv. *Molina Healthcare of Puerto Rico, Inc. v. ASES, SJ2021CV05150* (Interventor)

11. Pursuant to the MBL Application, the Debtors seek to retain MBL for “corporate matters” to “recover Debtor’s assets,” which allows MBL to recover fees on a hybrid hourly/contingent basis of 10% or 15% (minus a \$200.00 hourly rate to be paid in the ordinary course), with the 10% contingency fee applicable if a recovery is obtained within two months of the MBL Application’s effective date. See MBL Application ¶ 12. Separately, the Debtors propose to pay MBL a \$250 hourly rate for the matter *Molina Healthcare of Puerto Rico, Inc. v. ASES, SJ2021CV05150*.

12. Furthermore, the Debtors propose for MBL to perform “any act” required to “recover medical plans outstanding claims due to the estate, including monies, property or any other owed by insurance healthcare providers or agents, this as a result of settlement agreement or a judgement.” Notably, MBL’s proposed contingency fees apply to “*any* amount recovered in the litigation matters, this may include any kind of assets, including but not limited to, monies, properties, or any other as a result of a settlement agreement or judgement.” (emphasis added). Finally, Morales Boscio, MBL’s principal attorney, has a claim against the Debtors for unspecified purposes, totaling approximately \$26,583.21. Upon information and belief, Morales Boscio will not waive this prepetition claim.

LIMITED OBJECTION

13. As noted above, the Committee objects to the MBL Application to the extent that it seeks to pay a contingency fee at this time, which is not in the best interest of the Debtors bankruptcy estates under the section 327(e) standard.

14. Pursuant to Section 1107(a), the debtor-in-possession of a chapter 11 bankruptcy estate has virtually the same rights and responsibilities as a trustee, including the authority to employ professionals at the expense of the bankruptcy estate. Section 327(a) authorizes a debtor-in-possession to employ as general counsel an attorney who is a "disinterested person" and does not hold or represent an interest adverse to the bankruptcy estate. Section 327(e) creates a limited exception to the "disinterested" test under section 327(a). It authorizes a debtor-in-possession to employ as "special counsel" an attorney who may otherwise not be "disinterested" and eligible for employment under section 327(a):

The trustee, with the court's approval, may employ, for a *specified special purpose, other than to represent the trustee in conducting the case*, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does *not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed*. (Emphasis added.)

15. Under Section 327(e), four requirements must be met to employ special counsel: (1) employment of the attorney must be for a specified special purpose, which does not include representing the trustee in conducting the case, (2) the attorney must have previously represented the debtor, (3) the employment of the attorney must be in the best interest of the estate, and (4) the attorney must not have any interest adverse to the debtor or the estate with respect to the matter on which special counsel is to be employed. *In re Johnson*, 433 B.R. 626, 635 (Bankr. S.D. Tex. 2010) citing *In re Potter*, No. 7-05-14071, 2009 WL 2922850, *1 (Bankr. D. N.M. June 12, 2009). The debtor has the burden of proof to show that the proposed employment is proper. *In re Johnson*, 433 B.R. 626, 635 citing *In re Big Mac Marine*, 326 B.R. 150, 154 (8th Cir. BAP 2005).

16. When analyzing the retention of special counsel under Section 327(e), courts should consider the following:

all relevant facts surrounding the debtor's case, including but not limited to, the nature of the debtor's business, all foreseeable employment of special counsel, the history and relationship between the debtor and the proposed special counsel, the expense of replacement counsel, potential conflicts of interest and the role of general counsel.

In re Roper and Twardowsky, LLC, 566 B.R. 734, 750 (Bankr. D.N.J. 2017); *see In re Woodworkers Warehouse, Inc.*, 323 B.R. 403, 406 (D. Del. 2005) (citing *In re First Am. Health Care of Ga., Inc.*, 1996 WL 33404562, *3 (Bankr. S.D. Ga. Apr.18, 1996)).

A. Employing MBL to serve as special counsel pursuant to the terms proposed in the Application is not in the best interest of the Debtors' estates

17. Counsel appointed under section 327(e) must be in the best interest of the estate. In discussing Section 327(e) retention and compensation, courts have required that, “property of [the] estate is threatened and the need for services is real. Employment cannot be based on some ‘hypothetical or speculative benefit.’ ” *In re Roper and Twardowsky, LLC*, 566 B.R. at 752 citing *In re Engel*, 124 F.3d 567, 575 (3d Cir.1997) citing *In re Duque*, 48 B.R. 965 (S.D. Fla. 1984). Bankruptcy courts have discretion “to evaluate each case on its facts, taking all circumstances into account.” *Id* quoting *In re BH & P, Inc.*, 949 F.2d 1300, 1315 (3d Cir. 1991) (further citations omitted); *see In re Kurtzman*, 220 B.R. 538, 540 (S.D.N.Y. 1998) (finding that the bankruptcy court did not abuse its discretion when it denied the retention of counsel based on “prior problems involving time records, billing errors, professional conduct, and overall costs of legal services that had led to its conclusion of loss of confidence in the firm.”).

18. Here, the Debtors request the appointment of MBL as special counsel in connection with pursuing recoveries in various matters including the Molina Litigation under a hybrid hourly/contingency arrangement notwithstanding that the Debtors are unable to demonstrate that this approach is in the best interest of the estates. The Debtors propose for MBL to receive a 10%-

15% contingent fee (minus its hourly rate) on *any settlement* that would otherwise be deemed property of the Debtors' estates and potentially available to creditors.

19. The Committee opposes the contingent nature of the MBL Application and the Debtors have failed to prove why MBL should be retained on a contingency basis across matters generally, and especially with respect to the Molina Litigation, which may either be valued and monetized in the short term through settlement without the need for payment of a contingency fee or require counsel with the wherewithal to invest significant time and resources to pursue recoveries over a longer period of time. While the Committee does not object to the MBL Application under a fair hourly rate structure, a contingency fee component is not appropriate based upon the current posture of the subject actions at this time.

B. Employing MBL on the terms proposed is adverse to the Debtors' estates

20. Not only is MBL's employment on the terms proposed not in the best interest of the Debtors' estates, it puts MBL's interests in a position adverse to the estates. Indeed, MBL stands to gain significant value from a quick settlement that comes with no risk of having to bear longer term investment costs. As currently proposed, the Application allows for MBL to recover as much (or as little) in assets as it can in a two-month span and then exit the case while generating hundreds of thousands of dollars in contingency fees. If the Committee determines that a contingency fee arrangement is appropriate in any of these matters, it wants to ensure the financial wherewithal of the estates' contingency counsel to handle a potentially long-term litigation.¹ Thus, the Committee objects to a structure that incentivizes counsel to reach settlement as swiftly as possible whether in the best interest of the estate or not due to potential inability to bear the longer

¹ The Committee also notes that litigation budgeting also must take into account expenses, costs, and other fees anticipated in pursuing claims, and MBL's two-month retention does not take into account these longer term budgeting considerations, including here, potentially having to hire replacement counsel after two months.

term risk that comes with a typical contingency fee arrangement.

21. The Committee believes this adverse interest to the estates can be eliminated by compensating MBL at a fair hourly rate, and revisiting potential contingency fee arrangements with MBL or other counsel, as may be necessary, at a later date.

C. Employing MBL as special counsel may not serve a “specified special purpose” as currently proposed

22. The Committee is also concerned that the proposed MBL engagement may not be for a “specified special purpose” pursuant to section 327(e). Notably, counsel appointed under section 327(e) are explicitly barred from "represent[ing] the trustee in conducting the case." *In re Johnson*, 433 B.R. 626, 636. While the term "'conducting the case' is not defined in the Bankruptcy Code, it has been recognized to include matters related to formulation of a chapter 11 plan, and/or liquidation of the debtor's assets." *Id.*; *In re Running Horse, L.L.C.*, 371 B.R. 446, 453 (Bankr. E.D. Cal. 2007). Additionally, courts have noted that the specified special purpose requirement of section 327(e) is typically appropriate "when an attorney is employed to handle a specific legal action that is unrelated to the reorganization and the attorney is particularly suited for that action." *In re Johnson*, 433 B.R. 626, 637 quoting *In re Goldstein*, 383 B.R. 496, 501 (Bankr. C.D. Cal. 2007).

23. Examples of an acceptable purpose of counsel appointed under section 327(e) include: employing divorce counsel to allow debtors to proceed with the dissolution of their marriage satisfied the specified special purpose requirement, litigating a products liability claim that arose pre-petition, *In re Goldstein*, 383 B.R. 496, 501; *In re Gelsinger*, 2000 U.S. Dist. LEXIS 1026, 2000 WL 136812 (E.D. Pa. Feb. 7, 2000); and representing the debtor in an appeal of a criminal conviction, *United States v. Miller, Cassidy, Larroca & Lewin (In re Warner)*, 141 B.R.

762 (M.D. Fla. 1992).

24. Alternatively, courts have denied the employment of special counsel under section 327(e) under the following circumstances: debtor seeking to modify a divorce decree in bankruptcy court, *In re Johnson*, 433 B.R. 626; representing a debtor in possession's real estate and business law firm which had been seeking new financing or buyers for the debtor's golf course, *Running Horse*, 371 B.R. at 448–49.

25. In *Running Horse*, the court found nothing "'specific' or 'special' about the intended scope of [proposed special counsel's] employment. Neither can the court find that [proposed special counsel's] services giving 'support to WLG,' as described in the [a]pplication and supporting documents, are substantially unrelated to the [d]ebtor's reorganization effort." *Running Horse*, 371 B.R. at 452. *See also In re NRG Resources, Inc.*, 64 B.R. 643, 647 (W.D. La. 1986) (finding § 327(e) "does not authorize the employment of the debtor's attorney to represent the estate generally or represent the trustee in the conduct of the bankruptcy case").

26. Here, the Debtors attempt to appoint MBL as special counsel in connection with corporate matters and to recover “monies, property or any other [asset] owed by insurance healthcare providers or agents” as a result of any litigation, settlement agreement or a judgement. Additionally, the Application seeks to employ MBL to conduct “any act required to recover Debtors’ assets” and goes on to vaguely describe that MBL will attempt to recover monies from *any* “litigation matters... .” The Application therefore describes not only pursuit of recoveries in a particular litigation, but a broader engagement in the multiple Molina Litigation matters and beyond which will be a significant part of the Debtors’ reorganization efforts.

27. The scope of the Application is “at the moment” related to the Molina Litigation. However, as mentioned above, the Application allows for: (i) the Application’s terms and

conditions to be renegotiated after two months of employment; and (ii) MBL to handle any additional future litigation, subject to MBL's approval. Given the carte blanche that Debtors attempt to give MBL in recovering any assets, MBL's services are (i) related to the reorganization and (ii) not specific or specialized enough to satisfy section 327(e).

28. The Debtors assert that MBL's "intricate" and "intimate" knowledge of the matters for which MBL is proposed to be engaged stems from Morales Boscio representing the Debtors as in-house counsel for certain asset recovery cases. While this may be true and a benefit to the estates at a fair hourly rate, Morales Boscio's prior employment with the Debtors does not form a basis for the estates to part with a portion of their recoveries on the subject actions.

D. The Court should apply a heightened level of scrutiny to the MBL Application due to Jose A. Boscio Morales's prepetition Claim.

29. Finally, the Court should analyze the MBL Application with a heightened level of scrutiny due to its principal attorney, Morales Boscio's prepetition claim of \$26,583.21.

CONCLUSION

30. The Debtors have not met their burden of showing that granting MBL section 327(e) relief is appropriate at this time.

31. For the reasons set forth above, the Application should be denied unless MBL agrees to an employment arrangement at a fair hourly rate without a contingency fee mechanism at this time. A Contingency fee arrangement may be an appropriate consideration for the estates at a later date when an informed decision can be made on how much bearing of cost and risk, and how much giving away of recoveries, to counsel, is necessary and appropriate.

RESERVATION OF RIGHTS

32. The Committee reserves all of its rights under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, including to object to any amendments or supplements to the

MBL Application, or to any fee applications filed by or on behalf of MBL if the Application is granted.

WHEREFORE, the Committee respectfully requests that the MBL Application be denied unless the engagement is at a fair hourly rate without a contingency fee at this time, and that the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

In San Juan, Puerto Rico, this 9th day of November, 2023.

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