

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:

Case No. 25-30191

The Bellevue Hospital

Chapter 11

Debtor.

Judge Mary Ann Whipple

**OBJECTION TO THE APPLICATION FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIM OF FISHER-TITUS HEALTH**

Comes Firelands Regional Health System (“Firelands”), as sole member of The Bellevue Hospital, the reorganized debtor (the “Debtor”) and Successful Party as that term is defined in the Bidding Procedures, by counsel, and for its Objection to the Application (the “Application”) of Fisher-Titus Health (“Fisher-Titus”) for allowance and payment of an administrative expense claim pursuant to 11 U.S.C. § 503 [Docket No. 316] (the “Objection”), states as follows:

BACKGROUND

On February 10, 2025, the Debtor filed a motion seeking, *inter alia*, (i) the assumption of a Restructuring Support Agreement, and (ii) approval of Bid Procedures and Scheduling an Auction (the “Bid Procedures Motion”) [Docket No. 75.] The Bid Procedures Motion sought approval of a Stalking Horse Bid from Firelands worth approximately \$15 million. [*Id.*] On February 21, 2025, the Court entered an Order granting the Bid Procedures Motion and establishing the Bid Procedures to govern the Debtor’s sale process (“Bid Procedures”) [Docket No. 127.]

Per the Bid Procedures, the Debtor solicited potential bidders to proffer higher and better offers than the Stalking Horse Bid and required any potential bidder to submit an “Alternative Transaction Proposal” by March 28, 2025 (the “Bid Deadline”) for its review. To assist with the

marketing process, the Debtor sought to employ Juniper Advisory, LLC, as its advisor and investment banker, which this Court approved on February 27, 2025 [Docket No. 155]. On the Bid Deadline, Fisher-Titus submitted an initial bid which was deemed a “Meritorious Alternative Transaction” pursuant to the criteria set forth in the Bid Procedures [Docket No. 316-1]. Accordingly, the Auction began with a starting bid from Fisher-Titus that was greater than the Stalking Horse Bid.

On April 2, 2025, the Auction was held pursuant to the terms of the Bid Procedures. During the Auction, as is normally the case, Firelands and Fisher-Titus exchanged bids in increments governed by the Bid Procedures. The Auction concluded after Fisher-Titus declined to bid in response to what was the final bid placed by Firelands, and the Debtor deemed Firelands’s final bid the highest and best bid after conference with its Consulting Parties. The final bid was necessarily higher than Firelands’s Stalking Horse Bid as is the case in all auctions in which more than one bidder participates.

On April 9, 2025, the Debtor filed its Notice of Auction Results announcing that Firelands was the “Successful Party” having made the highest and best bid at the Auction. Fisher-Titus was named the “Reserve Party” [Docket No. 230]. Contemporaneously to the filing of the Notice of Auction results, the Debtor also filed a First Amended Plan (the “Amended Plan”) reflecting the Debtor’s economic projections for the treatment of its creditors based on the results of the Auction [Docket No. 227].

On April 17, 2025, the Court entered an Order confirming the Debtors Amended Plan (the “Confirmed Plan”) which included approval of the auction process and resulting sale [Docket No. 245]. Further, on May 19, 2025, the Debtors filed a Notice of Occurrence of Effective Date of First Amended Chapter 11 Plan [Docket No. 291].

It was not until June 13, 2025, nearly a month after the Plan was confirmed, that Fisher-Titus filed its Application of Fisher-Titus for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503 [Docket No. 316].

ARGUMENT

Fisher-Titus bears the burden of proving that it is entitled to an administrative expense claim by a preponderance of the evidence. *See, e.g., In re Betty Jean Gurley*, 235 B.R. 626, 631 (Bankr. W.D.Tenn. 1999); *In re Primary Health Servs., Inc.*, 227 B.R. 479, 484 (Bankr. N.D Ohio 1998) (citations omitted). Fisher-Titus has failed to meet its burden, and the Application should be denied for the following reasons.

I. Fisher-Titus's Application is improper because it did not provide an actual and demonstrable benefit to the Debtor's estate.

Courts within the Sixth Circuit have considered and addressed substantial contribution in the context of chapter 11 cases. *See In re Big Rivers Elec. Corp.*, 233 B.R. 739, 745-51 (W.D.Ky. 1998); *see also In re Gillette Associates, Ltd.*, 101 B.R. 866, 881 (Bankr.N.D.Ohio 1989). These courts adopted the substantial contribution test found in the Third and Tenth Circuits, which requires a court to ask whether the actions of a creditor resulted in an actual and demonstrable benefit to the debtor's estate and its creditors. *See In re Big Rivers Elec. Corp.*, 233 B.R. at 746. This test calls for a two-part inquiry that analyzes claims of substantial contribution by looking at (1) whether the "benefit" was rendered solely for the claimant's individual self-interest or for the benefit of the bankruptcy estate and (ii) whether the claimant's action conferred a direct and substantial benefit to the estate. *See Id.* at 746. Accordingly, this approach recognizes that self-interest is a pertinent factor to weigh in determining if a substantial contribution was made by a creditor. *See Id.* at 748; *see also In re AmFin Financial Corp.*, 468 B.R. 827, 833 (Bankr.N.D.Ohio 2012) ("The applicant's motive for its actions is a factor that may be considered.")

The actions taken by bidders such as Fisher-Titus during the reorganization process, and their attendant costs, are “presumed to be incurred for the benefit of the engaging party and are reimbursable if, but only if, the services ‘directly and materially contributed’ to the reorganization. *See Lebron v. Mechem Financial Inc.*, 27 F.3d 937, 943 (3rd Cir. 1994); *see also In re Lister*, 846 F.2d 55, 57 (10th Cir. 1988). In general, “creditors are presumed to act in their own self-interest and must satisfy the court that their efforts have transcended self-protection to recover administrative expenses.” *In re Big Rivers Elec. Corp.*, 233 B.R. at 748-49 (citing *Lebron v. Mechem Financial Inc.*, 27 F.3d at 944).

To demonstrate this transcendent effort, Fisher-Titus must demonstrate that its self-interested actions did more than incidentally benefit the Debtor’s bankruptcy estate because substantial contribution “should be applied in a manner that excludes reimbursement in connection with activities of creditors and other interested parties which are designed primarily to serve their own interests and which, accordingly, would have been undertaken absent an expectation of reimbursement from the estate.” *See Id.* (citing *Lebron v. Mechem Financial Inc.*, 27 F.3d at 944 and *In re Lister*, 846 F.2d at 57).

In this case, Fisher-Titus has not acted in a similar role or performed work akin to that of the creditors in the cases it cited in support of its Application. Instead, Fisher-Titus simply participated in the Auction of the Debtor’s assets for the express purpose of obtaining those assets, which is an action inherently based in self-interest. Fisher-Titus’s submitting a bid and participating at the Auction for the purpose of acquiring the Debtor’s assets does not suggest that its goal was to benefit the estate in a way that warrants the extraordinary measure of awarding it an administrative expense claim.

Fisher-Titus, like all participants in an auction, was pursuing an opportunity to expand its own economic interests by acquiring assets from a bankruptcy estate. Any benefit derived by the Debtor as a result of those actions is, at best, indirect and incidental to any effort put forth by Fisher-Titus.

A similar situation occurred in a sister Sixth Circuit Bankruptcy Court when an unsuccessful bidder sought approval for administrative expense priority treatment for its legal fees after its aggressive bidding at an auction resulted in an increased purchase price and alleged net benefit to the estate. *See Application Of TSFR Apple Venture LLC Pursuant To 11 U.S.C. §§ 503(b)(3) And 503(b)(4) For Allowance And Reimbursement Of Actual And Reasonable Expenses Incurred In Making A Substantial Contribution In This Chapter 11 Case* at Doc No. 291, pg. 9, ¶¶ 21-22, *In re AppleILLINOIS, LLC*, No. 13-20723-tnw (Bankr. E. D. Ky. July 15, 2013). Similar to Fisher-Titus in the present case, the unsuccessful bidder, TSFR Apple Venture, posited that due to its participation as a second bidder in the debtor's auction, the stalking horse's bid increased and thus, TSFR Apple Venture's private costs related to submitting a bid and participating in the auction were deserving of administrative claim treatment.

The presiding judge in the case, Judge Wise, was not swayed by the movant's arguments and simply overruled the Application with no additional opinion. *See Order Denying Application Of TSFR Apple Venture LLC For Allowance And Reimbursement Of Actual and Reasonable Expenses*, at Doc No. 348, *In re AppleILLINOIS, LLC*, No. 13-20723-tnw (Bankr. E. D. Ky. July 15, 2013). Firelands submits the Fisher-Titus Application should be similarly overruled.

Beyond the Sixth Circuit, other courts have correctly determined that an unsuccessful and possibly disgruntled bidder, such as Fisher-Titus, is not entitled to an administrative expense claim merely because the bidder participated in a bankruptcy auction sale. *See In re Public Serv. Co. of*

New Hampshire, 160 B.R. 404, 453 (Bankr. D. N. H. 1993) (holding that unsuccessful bidders are not entitled to make a claim and receive reimbursement out of the estate for their expenses incurred during the auction/bidding process); *see also In re S.N.A. Nut Co.*, 186 B.R. 98, 106 (Bankr. N.D. Ill. 1995) (holding that “the costs of bidding should be borne by those who are best able to bear them – the bidders who have voluntarily entered the bidding process, and who are bidding for a company with title free and clear of liens and with all the advantages provided by the Bankruptcy Code.”).

II. Fisher Titus never provided notice of its intent to claim administrative expenses which precludes recovery of its costs as an administrative expense.

Fisher-Titus’s claim for reimbursement is also barred by its complete failure to raise the issue of reimbursement until well after the sale hearing and closing of the transaction with the Successful Bidder, Firelands. Fisher-Titus had multiple opportunities to raise this issue, including in its bid, at the auction itself, at which representatives of Fisher-Titus and its counsel were present for many hours, or at any time prior to the Debtor’s closing with Firelands.

There is a good reason to require advanced notice of a party’s intent to seek reimbursements for these types of fees. As explained in *In re Public Serv. Co. of New Hampshire*:

All bidders include in their total internal calculation of a maximum ‘bid’ not only their direct bid but also the amount of their professional expenses. If one bidder is compensated for their participation, then the party receiving a section 503(b) compensation after-the-fact may artificially inflate its bid and in so doing perhaps alter the outcome on the knowledge that if it loses, it risked virtually nothing. Were the Court to grant . . . [the] application [for reimbursement], its transactional costs would approach zero and [it] could bid more than the other parties. This the Court considers to be a perversion of the auction bidding process.

160 B.R. 404, 455-56 (Bankr. D.N.H. 1993) (rejecting claim seeking reimbursement after unsuccessful bid as an attempt to “end run” around the Court’s attempts to have a level playing field).

This rationale likewise applies here. An indication that Fisher-Titus would seek reimbursement for its costs may have altered the course of the auction in terms of Firelands' full understanding of the claims it would be responsible for as it was bidding. Indeed, the claims landscape will change for the Debtor (and for Firelands as payor of Debtor's administrative claims) if the Application is approved. Fisher-Titus had many opportunities to give notice of its intent to seek administrative expense claim treatment for its costs but chose not to, and it should not be allowed to do so now. Granting Fisher-Titus's Application would be a perversion of the auction process in this case, and it should therefore be rejected.

III. The Application Itself Is Unreasonable.

Notwithstanding the forgoing arguments establishing why this Court should summarily reject the Application on its face for failing to establish a substantial contribution to the Debtor's estate, the Application should not be approved on the grounds that the fees asserted therein are wholly unreasonable.

Juniper's first and final fee application requested a total fee of \$500,000 as compensation for Juniper's efforts to build a database of Debtor's information to serve as a resource for potential bidders to conduct their due diligence, market Debtor's assets to potential bidders, facilitate onsite inspections, meet with and counsel potential bidders and conduct the auction itself. Juniper's application was approved on June 8, 2025 [Docket No. 311].

Debtor's lead counsel, Allen Stovall Neuman & Ashton, LLP's First and Final Fee Application for a total of \$355,199.32 was approved by this Court on June 30, 2025 [Docket No. 341]. Debtor's special counsel, Franz Ward's First and Final Fee Application for a total of \$152,183.61 was approved by this Court on July 1, 2025 [Docket No. 344]. Together, these firms expended \$507,382.93 for work including, but not limited to, preparing the petition and first day

pleadings, negotiating debtor in possession financing and membership substitution agreements, drafting bidding procedures and seeking approval for same, conducting the Auction, and drafting and securing confirmation of the Debtor's Chapter 11 Plan.

In light of the Debtor's professional costs attached to the work described above which this Court has approved as fair and reasonable, Fisher-Titus's request for \$618, 877.78 for costs associated with its participation in the auction is wildly disproportionate. The Application seeks payment of expenses equivalent to sixty percent (60%) of Juniper and Debtor's counsel's fees incurred throughout the *entire case* combined and over a hundred thousand dollars more than either Debtor's financial advisor or Debtor's counsel requested in their fee applications as compensation for the valuable work that led to the successful reorganization of the Debtor's estate.

IV. Conclusion.

Fisher-Titus's Application should be denied because (i) its unsuccessful bid did not provide an actual and demonstrable benefit to the Debtor's estate due to Fisher-Titus's self-interest, (ii) Fisher-Titus did not provide notice of its desire to seek an administrative expense claim for its participation until well after the auction's conclusion and confirmation of the sale through the approval of the Debtor's Chapter 11 Plan, and (iii) the request itself is unreasonable. Undoubtedly, Fisher-Titus's assertions do not rise to the level of a "substantial contribution" to the bankruptcy case pursuant to Section 503(b)(3)(D) and (4) and the Application should be overruled.

Dated: July 15, 2025.

Respectfully submitted,

DINSMORE & SHOHL LLP

/s/ Ellen Arvin Kennedy

Ellen Arvin Kennedy, Esq.
100 West Main Street, Suite 900
Lexington, KY 40507

Telephone: (859) 425-1000
Facsimile: (859) 425-1099
Email: ellen.kennedy@dinsmore.com
*Counsel for Firelands Regional Health
System*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served this the 15th day of July, 2025, electronically upon all parties in the electronic filing system in this case, and further, in conjunction of the filing of this Objection, I have requested service of the objection by the Debtor's claims and noticing agent, Kroll Restructuring Administration LLC, which will file a separate certificate of service.

/s/ Ellen Arvin Kennedy.
Counsel for Firelands Regional Health System