

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division
Case No. 3:05 CV 391-MU

In re:

Joseph A. DiBruno, Sr.

Joseph A. DiBruno, Jr.

Nicholas DiBruno
Wendy DiBruno

Debtors

Chapter 7

Bankruptcy Case Number 05-33007

Bankruptcy Case Number 05-33006

Bankruptcy Case Number 05-33005

Jointly Administered

AMENDED MOTION FOR AUTHORITY TO OBTAIN UNSECURED CREDIT

The motion of Langdon M. Cooper, trustee herein (“Trustee”), by and through counsel, respectfully represents as follows:

1. The debtors filed their chapter 7 petitions on July 26, 2005. The Trustee is the duly appointed chapter 7 trustee in each case.

2. Section 364(b) of Title 11 of the United States Bankruptcy Code (the “Code”) allows the court, after notice and hearing, to authorize the Trustee to obtain unsecured credit or to incur unsecured debt other than under Section 364(a) of the Code, allowable under Section 503(b)(1) of the Code as an administrative expense.

3. According to the schedules of the Debtors, these are all no asset cases.

4. Locke Holland and Cynthia Dimmette (“Holland & Dimmette”) are scheduled as creditors with a claim of zero in these cases. However, Holland & Dimmette hold a consent judgment against each of the debtors, entered in the Mecklenburg County Superior Court on March 2, 2005. According to the consent judgment, Holland & Dimmette hold a claim against Nicholas DiBruno of \$200,000; against Joseph DiBruno, Jr. of \$1,800,000; and against Joseph DiBruno, Sr. of \$1,200,000.

5. Holland & Dimmette filed their amended complaint against the debtors in state court on September 29, 2004 (“State Court Action”). They have conducted an extensive investigation of the financial affairs of the debtors and have accumulated significant work product that the

Trustee believes will be useful to the Trustee in his investigation of the financial affairs of the debtors, including the work product of a private investigator retained by Holland & Dimmette (the "Holland & Dimmette Work Product"). Upon information and belief, Holland & Dimmette have spent in excess of \$250,000 in connection with their investigation of the debtors and the prosecution of their civil action through the time of the appointment of Johnston Allison & Hord, P.A. and Grier Furr & Crisp, P.A. as special counsel ("Holland & Dimmette Investigative Costs").

6. By separate application, the Trustee sought and this Court approved and confirmed the appointment of the firms of Johnston Allison & Hord, P.A. (which represented Holland & Dimmette in the State Court Action) and Grier Furr & Crisp, P.A., (bankruptcy counsel to Holland & Dimmette), as special counsel to the Trustee (the "Special Counsel"). Further the Trustee is seeking the appointment of Ronald T. Guerette as a private investigator for the estate, Alan Fisher as an auctioneer and appraiser for the estate, and Bill E. Branscum also as a private investigator for the estate.

7. Holland & Dimmette have agreed to advance to the Trustee, for the purposes set out herein, the sum of fifteen thousand dollars (the "Holland & Dimmette Advance") to be used to pay a portion of the allowed administrative claims for the fees and expenses of the Trustee and his general counsel, Mullen Holland & Cooper, P. A., and Holland & Dimmette have also agreed to make available to the Trustee the Holland & Dimmette Work Product to assist the Trustee in his investigation of the financial affairs of the debtors.

8. Holland & Dimmette have also agreed to pay directly the allowed administrative claims for the fees and expenses of the Trustee's Special Counsel, of Ronald T. Guerette, of Alan Fisher and of Bill E. Branscum, and also the costs of storage and appraisal of estate assets, and the relocation of estate assets to the storage facility, including the fees for services of the United States Marshals. Holland & Dimmette will continue to pay the allowed administrative expenses identified in this paragraph (the "Administrative Claims") until they in their sole discretion decide to terminate the funding, and in this regard they will provide the Trustee with two weeks' prior notice of any termination of funding and they will pay all the Administrative Claims accrued through and to the end of the two week notice period. In the event of such notice by Holland and Dimmette, the Trustee will act in good faith to minimize the legal services he seeks to have his Special Counsel perform during such notice period. Once they have paid Administrative Claims, Holland & Dimmette will be subrogated to the claimants' status as holders of the allowed Administrative Claims under Section 503(b)(1) of the Code.

9. The Trustee believes that, with the Holland & Dimmette Advance, the Holland & Dimmette Work Product, and Holland & Dimmette's direct funding of the Administrative Claims, his chances of recovering assets for the estates are greatly enhanced.

10. Except as provided below, payment of the Administrative Claims by the estate to Holland & Dimmette as subrogees shall be subordinate to the administrative claims of the Trustee for his commission and Mullen Holland & Cooper, P.A. for its fees and expenses.

11. In exchange for the Holland & Dimmette Advance, the Holland & Dimmette Work Product, and Holland & Dimmette's funding of the Administrative Claims, all as described herein, the Trustee will pay to Holland & Dimmette, as soon as reasonably possible and at reasonable intervals, the following:

a. From the first aggregate \$300,000 in receipts in these estates (other than the Holland & Dimmette Advance):

i. Pay 75% of the aggregate \$300,000 in receipts to Holland & Dimmette first as repayment for the Holland & Dimmette Investigative Costs and then as repayment of the funding by Holland & Dimmette of the payment of the Administrative Claims, and the Trustee shall retain 25% of the remaining balance as general funds of the estates to be used first to pay the Trustee's fees and the fees and expenses of his general counsel, Mullen Holland & Cooper, P.A. The exact amount of the Holland & Dimmette Investigative Costs is subject to review and approval by the Trustee, and Holland & Dimmette have agreed to provide a satisfactory accounting to the Trustee as to the Investigative Costs.

b. From the next aggregate \$500,000 (after the first \$300,000) in receipts in these estates (other than the Holland & Dimmette Advance), the Trustee will:

i. Pay 50% of the aggregate \$500,000 in receipts to Holland & Dimmette first as repayment for the Holland & Dimmette Investigative Costs and then as repayment of the funding by Holland & Dimmette of the payment of the Administrative Claims, and the Trustee shall retain 50% of the remaining balance as general funds of the estates to be used first to pay the Trustee's fees and the fees and expenses of his general counsel, Mullen Holland & Cooper, P.A., The exact amount of the Holland & Dimmette Investigative Costs is subject to review and approval by the Trustee, and Holland and Dimmette have agreed to provide a satisfactory accounting to the Trustee as to the Investigative Costs.

c. From any additional receipts in the estates in excess of \$800,000 in the aggregate (other than the Holland & Dimmette Advance), the Trustee will:

i. Pay twenty-five (25%) percent of such receipts to Holland & Dimmette as repayment of the funding by Holland & Dimmette of the payment of the Administrative Claims and to repay the Holland & Dimmette Advance, until such time as the funding by Holland & Dimmette of the payment of the Administrative Claims, and the Holland & Dimmette Advance, has been repaid in full, and Trustee shall retain the remaining balance as general funds of the estates to be used first to pay the Trustees' fees and the fees and expenses of his general counsel, Mullen, Holland & Cooper, P.A.;

ii. Reserve for accrued administrative claims, and pay in full the allowed administrative claims of the estates, including full payment to Holland & Dimmette as subrogees of the Administrative Claims; and

iii. Pay Holland & Dimmette, as an administrative claim, ten percent (10%) of any additional receipts in the estates. Holland & Dimmette agree to credit their unsecured claims in each case, dollar for dollar, by any sums received pursuant to this subparagraph.

12. Pursuant to Rule 4001(c)(2), the Court was advised of the Trustee's request for an interim hearing on September 20, 2005, on the original motion after case-wide notice in each of the Debtors' cases, and only the Debtors objected. The Trustee requests that the court conduct a final hearing on this amended motion only if the Debtors request such a hearing within fifteen (15) days of the date of the Court's order approving this amended motion.

WHEREFORE, the Trustee respectfully requests that the court:

- a. Based on the fact that no party but the debtors objected to the original motion at an interim hearing on Tuesday, September 20th, 2005, conduct a final hearing on this amended motion on shortened notice on 17 October 2005;
- b. Authorize the Trustee to incur as unsecured credit the Holland & Dimmette Advance and to make all other disbursements contemplated in this amended motion;
- c. Authorize specifically the distributions from estate funds to Holland & Dimmette as described herein; and
- d. Grant such further relief as is just.

Dated this 9th day of October, 2005.

/s/ Langdon M. Cooper

Langdon M. Cooper
N.C. State Bar No. 936

MULLEN HOLLAND & COOPER P.A.
Attorneys for the Trustee
301 South York Street
P.O. Box 488
Gastonia, NC 28053-0488
Telephone: (704) 864-6751
Facsimile: (704) 861-8394
Email: icooper@mhc-law.com

CERTIFICATE OF SERVICE

CERTIFIED that on the 10th day of October, 2005, I served a copy of the **Amended Motion for Authority to Obtain Unsecured Credit and Notice of Hearing** by placement in a postpaid envelope addressed to the parties hereinafter named, at the place and address stated below, which is the last known address, and by depositing the envelope and its contents in the United States mail:

John Bramlett
Bankruptcy Administrator
402 West Trade Street
Charlotte, NC 28202

Joseph W. Grier, III
Grier, Furr & Crisp, P.A.
(served via email - jgrier@grierlaw.com)

Gary J. Welch
Johnson, Allison & Hord, P.A.
(served via email – gwelch@jahlaw.com)

John Miller, Jr.
Albert F. Durham
Rayburn Cooper & Durham
(served via email - adurham@rcdlaw.net)

Others on attached sheet(s)

Sandra Cummings
(served via facsimile 704-376-3334
and US mail)

/s/ Langdon M. Cooper

Langdon M. Cooper
N.C. State Bar No. 936

MULLEN HOLLAND & COOPER P.A.
Attorneys for Trustee
301 South York Street
P.O. Box 488
Gastonia, NC 28053-0488
Telephone: (704) 864-6751
Facsimile: (704) 861-8394
e-mail: lcooper@mhc-law.com

Alltel Communications
3044 E. Franklin Avenue
Gastonia, NC 28056

Blue Dolphin Pool Service
4676 U.S. Hwy #1
Vero Beach, FL 32967

Langdon M. Cooper
P. O. Box 488
Gastonia, NC 28053-0488

Sandra U. Cummings
The Cummings Law Firm, P.A.
1230 W. Morehead Street, Suite 404
Charlotte, NC 28208

Joseph A. DiBruno Sr.
7319 Wilkinson Blvd.
Belmont, NC 28012

Dr. James Needett
Gastonia Specialty Clinic
1021 X Ray Drive
Gastonia, NC 28054

Dr. John Miles
825 Majestic Court
Gastonia, NC 28054

Dr. Needell
1021 X-Ray Dr
Gastonia, NC 28053

Gaston County Tax Collector
PO Boc 1578
Gastonia, NC 28053

Gaston Memorial Hospital
P.O. Box 1747
Gastonia, NC 28053-1747

Gaston Memorial Hospital
PO Box 1474
Gastonia, NC 28053

Gaston Radiology
620 Summit Crossing Place
Gastonia, NC 28054

Internal Revenue Service
Bankruptcy Section
insolvency Unit
320 Federal Pl.RM 335
Greensboro, NC 27401

John Miles MD
825 Majestic Ct.
Gastonia, NC 28053

Larry Farmer
419 Dogwood St.
Gastonia, NC 28056

Locke Holland & Cynthia Dimmette
9540 Hunting Court
Matthews, NC 28105

Mullen Holland & Cooper P.A.
301 South York Street
PO Box 488
Gastonia, NC 28053-0488

NC Dept of Revenue
P.O. Box 1168
Bankruptcy Unit
Raleigh, NC 27602-1168

Paul F. Donahue
70 West Madison Street
Suite 3300
Chicago, IL 60602

Geoffrey A. Planer
P.O. Box 1596
Gastonia, NC 28053-1596

Richard C. Richmond III
One Indiana Square
Suite 3500
Indianapolis, IN 46204

Robert Vance Cheek
2309 South Point Rd.
Belmont, NC 28012

Sanger Clinic
PO Box 34489
Charlotte, NC 28234

Time Warner Cable
212 S. Union Road
Gastonia, NC 28054

Wayne P. Huckel
214 N. Tryon St
Suite 4700
Charlotte, NC 28202

Total labels: 25

Not printed due to inadequate address: 5

Bell, Boyd, & Lloyd LLC
70 West Madison Street
Suite 3300
c/o Paul F. Donahue
Chicago, IL 60602

Caromont Health
P.O. Box 890325
Charlotte, NC 28289

Caromont Health
PO Box 21648
Columbia, SC 29221

Charles Katzenstein
P.O. Box 1473
Gastonia, NC 28053-1473

City County Taxes
Tax Collector
700 East Stonewall St.
Suite 102
Charlotte, NC 28202-2778

Cleveland Regional Medical Center
201 E. Grover Street
Shelby, NC 28150

Langdon M. Cooper
P. O. Box 488
Gastonia, NC 28053-0488

Credit Collection Services
Payment Processing Center - 27
PO Box 55126
Boston, MA 02205-5126

Sandra U. Cummings
The Cummings Law Firm, P.A.
1230 W. Morehead Street, Suite 404
Charlotte, NC 28208

Dann Pecar Newman & Kleiman
2300 One American Square
Suite 2300
Indianapolis, IN 46282

Dann, Pecan, Newman & Kleiman
One American Square, Suite 2300
Box 82008
Indianapolis, IN 46282

Joseph A. DiBruno Jr.
107 Westwood Dr.
Belmont, NC 28012

Firstpoint Collection Resources, Inc.
PO Box 26140
Greensboro, NC 27402-6140

Ford Motor Credit Corporation
National Bankruptcy Center
P.O. Box 537950
Livonia, MI 48153-7950

Gaston Emergency Phys. Inc.
PO Box 65321
Charlotte, NC 28265-0321

Gaston Gastroenterology
2450 Aberdeen Blvd., Ste. A
Gastonia, NC 28054-0614

Gaston Neurological
815 Cox Road
Gastonia, NC 28054

Gaston Radiology
Attn: Billing Dept.
620 Summit Crossing Place
Gastonia, NC 28054

Gaston Radiology
P.O. Box 1495
Gastonia, NC 28053-1495

Internal Revenue Service
Bankruptcy Section
insolvency Unit
320 Federal Pl.RM 335

Jon Barry & Associates, Inc.
c/o Gaston Emergency Sanger
PO Box 127
Concord, NC 28026-0127

Laboratory Corporation of America
PO Box 2240
Burlington, NC 27216-2240

Larry Farmer
419 Dogwood St.
Gastonia, NC 28056

Locke Holland Jr & Cynthia Dimmette
9540 Hunting Court
Matthews, NC 28105

Mullen Holland & Cooper P.A.
301 South York Street
PO Box 488
Gastonia, NC 28053-0488

NC Dept of Revenue
P.O. Box 1168
Bankruptcy Unit
Raleigh, NC 27602-1168

PRM Financial Services, Inc.
PO Box 819092
Dallas, TX 75381-9092

Paul F. Donahue
70 West Madison Street
Suite 3300
Chicago, IL 60602

Geoffrey A. Planer
P.O. Box 1596
Gastonia, NC 28053-1596

RMS Insurance Services
PO Box 280431
East Hartford, CT 06128-0431

Rachel Bean
823 Ike Lynch Rd.
Dallas, NC 28034

Richard C. Richmond III
One Indiana Square
Suite 3500
Indianapolis, IN 46204

Robert Vance Cheek
2309 South Point Rd.
Belmont, NC 28012

Ruby Wells
524 Bend Ave.
Murrells Inlet, SC 29576

Scott, Hollowell, Palmer & Windham, LLP
401 E. Franklin Blvd.
PO Box 995
Gastonia, NC 28053

Smith, Debnam, Narroon, Wyche
Saintsing & Myers
c/o Ford Motor Credit
PO Box 26268
Raleigh, NC 27611-6268

Templeton & Raynorr Attorney At Law
1800 East Blvd
Charlotte, NC 28203

Total labels: 37

Not printed due to inadequate address: 5

AFNI Inc
404 Brock Dr.
Bloomington, IL 61702-3427

Alltel
1 Allied Dr. Bldg.5
Little Rock, AR 72202

Amcol Systems Inc
P.O. Box 21625
Columbia, SC 29221

American Express
P.O. Box 360001
Ft. Lauderdale, FL 33336

BB&T
P.O. Box 1489
Lumberton, NC 28359-1489

Bank of America
P.O. Box 7216
Philadelphia, PA 19101-7216

Capital One
PO Box 707600
Richmond, VA 23276

Caromont Health
P.O. Box 890325
Charlotte, NC 28289

Charles Katzenstein
P.O. Box 1473
Gastonia, NC 28053-1473

Langdon M. Cooper
P. O. Box 488
Gastonia, NC 28053-0488

Sandra U. Cummings
The Cummings Law Firm, P.A.
1230 W. Morehead Street, Suite 404
Charlotte, NC 28208

Nicholas DiBruno
184 Reese Wilson Rd.
Belmont, NC 28012

Wendy DiBruno
184 Reese Wilson Rd.
Belmont, NC 28012

FBCS
841 E. Hunting Park Ave
Philadelphia, PA 19124-4824

First Performance Recovery Corp
4901 NW 17th Way Suite 201
Fort Lauderdale, FL 33309-3777

Ford Motor Credit
P.O. Box 10567
Atlanta, GA 30348

Ford Motor Credit Corporation
National Bankruptcy Center
P.O. Box 537950
Livonia, MI 48153-7950

Gaston County Tax Collector
PO Boc 1578
Gastonia, NC 28053

Gaston Emergency Physicians
P.O. Box 65321
Charlotte, NC 28265-0321

Gaston Memorial Hospital
P.O. Box 1747
Gastonia, NC 28053-1747

Gaston Radiology
620 Summit Cr. Pl
Ste 106
Gastonia, NC 28054

Internal Revenue Service
Bankruptcy Section
insolvency Unit
320 Federal Pl. RM 335
Greensboro, NC 27401

Leone Pathology Associates
P.O. Box 3628
Gastonia, NC 28054-0020

Locke Holland & Cynthia Dimmette
9540 Hunting Court
Matthews, NC 28105

Loris HealthCare
3655 Mitchell St.
Loris, SC 29569

Mercantile Adjustment Bureau, LLC
6390 Main Street
Buffalo, NY 14221

Mullen Holland & Cooper P.A.
301 South York Street
PO Box 488
Gastonia, NC 28053-0488

NC Dept of Revenue
P.O. Box 1168
Bankruptcy Unit
Raleigh, NC 27602-1168

Nextel
P.O. Box 5818
Denver, CO 80217

Paragon Way Inc
2101 W. Ben White Blvd
Austin, TX 78704

Paul F. Donahue
70 West Madison Street
Suite 3300
Chicago, IL 60602

Geoffrey A. Planer
P.O. Box 1596
Gastonia, NC 28053-1596

Professional Credit Services, Inc
P.O. Box 13128
Hauppauge, NY 11788-0563

Providian
P.O. Box 660487
Dallas, TX 75266-0487

Richard C. Richmond III
One Indiana Square
Suite 3500
Indianapolis, IN 46204

Robert Cheeks
2369 South Point Rd
Belmont, NC 28012

Ruby Wells
524 Bend Ave.
Murrells Inlet, SC 29576

Sprint PCS
P.O. Box 660092
Dallas, TX 75226

Total labels: 38

Not printed due to inadequate address: 5