

Dated: July 29, 2025



Brenda K. Martin

Brenda K. Martin, Bankruptcy Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:
ATHENA MEDICAL GROUP, LLC,
Debtor.

Chapter 11
Case No. 2:23-bk-01635-BKM

**UNDER ADVISEMENT
DECISION REGARDING
DORSEY & WHITNEY LLP'S
FEE APPLICATION**

I. INTRODUCTION

Before the Court is the Application of Dorsey & Whitney LLP, as Attorneys for the Debtor, for Compensation and Reimbursement of Expenses for the Period June 28, 2023 through January 27, 2025 for Actual and Necessary Work Performed for the Benefit of the Estate After June 27, 2023 (the "Application").¹ Wound Care Specialists, LLC and RENU LLC (collectively, "WCS") filed an objection to the Application. The Application and the objection raise the somewhat novel question of whether counsel for a dispossessed subchapter V debtor may recover from the estate its fees and costs incurred in pursuing a plan of reorganization, or for performing other work. As

¹ Dkt. No. 851.

1 noted in the Final Report of the ABI Subchapter V Task Force p. 49, “[t]he current legal landscape
2 provides no clear path to allowing debtor’s counsel to continue to be compensated following
3 dispossession.” The Debtor, however, claims three paths for payment: 1) because only the Debtor
4 can file a plan under § 1189,² it must be able to retain and pay counsel; 2) as prior counsel for the
5 debtor in possession, the firm is still a professional retained under § 327; and 3) its fees can be
6 awarded as the actual and necessary costs of preserving the estate under § 503(b)(1)(A). The Court
7 finds that these paths are non-navigable as a means of payment post-dispossession. Accordingly,
8 it denies the Application.

9 **II. BRIEF FACTS**

10 The facts of this subchapter V case are also somewhat novel. The Debtor is a medical group
11 that provides wound care services to patients in Arizona, Washington, Texas, and Florida. Before
12 and after the filing of its chapter 11 petition, the Debtor has grossed in excess of \$25,000,000
13 annually. The Debtor has no secured creditors, and only a modest amount of unsecured debt, with
14 one exception: WCS’s asserted claim in excess of \$12,000,000.

15 Debtor filed for bankruptcy under subchapter V of the Bankruptcy Code on March 15,
16 2023,³ in response to WCS’s state court complaint and motion for preliminary injunction.⁴ The
17 case was contentious from the start, with WCS obtaining an order to examine the Debtor under
18 Rule 2004 on March 20, 2023,⁵ as well as an order providing for expedited discovery.⁶ Following
19 a flurry of filings by WCS, including discovery requests and an objection to the Debtor’s

20
21 ² Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532
and “Rule” references are to the Federal Rules of Bankruptcy Procedure.

22 ³ Dkt. No. 2.

23 ⁴ The Debtor vehemently disputes WCS’s claim. The Debtor’s claim objection, as well as its counterclaims against
WCS are the subject of an ongoing adversary proceeding, case no. 2:23-ap-00057-BKM (“Adversary”).

⁵ Dkt. No. 21.

⁶ Dkt. No. 28.

1 subchapter V election,⁷ on April 25, 2023, the Debtor moved to substitute in Dorsey & Whitney
2 LLP (“Dorsey”) as its counsel of record.⁸ Such motion was approved by the Court on May 8,
3 2023.⁹

4 Based largely on information learned through discovery, on May 25, 2023, WCS filed its
5 Motion for Appointment of Chapter 11 Trustee or, in the Alternative, for the Removal of the
6 Debtor-in-Possession and Expansion of the Subchapter V Trustee's Powers.¹⁰ On June 28, 2023
7 (“Disposition Date”), the Court entered its order removing the Debtor as debtor-in-possession and
8 expanding the Subchapter V Trustee’s powers under § 1181(b)(5).¹¹

9 Dorsey continued representing the Debtor after the Disposition Date and filed its first plan
10 on July 13, 2023.¹² While the Subchapter V Trustee supported the Debtor’s first plan, confirmation
11 was, nonetheless, a grueling process. It was not until January 27, 2025, following a series of
12 objections by WCS, three plans, a multitude of other pleadings, several hearings, and two multi
13 day trials, that the Court entered an order confirming the Debtor’s Third Amended Plan (the
14 “Plan”).^{13, 14} WCS did not appeal the order confirming the Plan. On February 12, 2025, the Plan
15 went effective.

16 Thereafter, on March 14, 2025, Dorsey filed the instant Application, requesting \$1,251,277
17 in fees and \$25,865.40 in expenses, for work performed from June 28, 2023, through January 27,
18

19 ⁷ Dkt. No. 31.

20 ⁸ Dkt. No. 63.

21 ⁹ Dkt. No. 97.

22 ¹⁰ Dkt. No. 111. The motion focused primarily on “missteps” made by the Debtor, among them, continuing to pay
23 petition vendors after the filing. WCS requested alternative relief in its motion because at the time, its objection to
the subchapter V election was still pending. That objection was denied on June 15, 2023. Dkt. No. 156.

¹¹ Dkt. No. 174.

¹² Dkt. No. 211.

¹³ Dkt. No. 651.

¹⁴ Dkt. No. 811.

1 2025, *i.e.*, the period after the Disposition Date up through the day before the Plan was confirmed.
2 WCS objected to the Application on April 4, 2025, arguing that the attorney for a dispossessed
3 debtor is not entitled to an award of attorney fees from the estate as a matter of law under the
4 Bankruptcy Code, that the Application was untimely, and that many time entries were not
5 compensable (“Objection”).¹⁵ Dorsey filed its reply on April 18, 2025 (“Reply”).¹⁶ While the
6 parties disagree on many things, the fundamental facts necessary to decide the matter are
7 undisputed.

8 **III. LEGAL FRAMEWORK**

9 As noted, the case before the Court was filed under subchapter V of chapter 11. Subchapter
10 V is relatively new having become effective on February 19, 2020, as a result of the Small Business
11 Reorganization Act of 2019 (“SBRA”). *Small Business Reorganization Act of 2019*, 3 Bankruptcy
12 Desk Guide § 26:69. “The purpose of Subchapter V is to provide a better path for small businesses
13 to successfully restructure, reduce liquidations, save jobs and increase recoveries to creditors.” *Id.*
14 To meet this goal, the SBRA did not repeal existing chapter 11 provisions but instead added several
15 alternative procedures under subchapter V of chapter 11. *Id.*

16 Unless and until it is removed by a court, a debtor filing a chapter 11 remains in possession
17 of its assets and in charge of its operations as a “debtor in possession.” Pursuant to § 1107(a),¹⁷ a
18

19 ¹⁵ **Dkt. No. 866**. The Court notes that WCS’s objection to the Application is not a surprise to the parties or the Court,
20 as WCS indicated early on the record that it would object to any fee application by Dorsey on the same or similar
21 grounds as it does here. *See* June 28, 2023, Minute Entry. **Dkt. No. 181**.

¹⁶ **Dkt. No 877**.

¹⁷ Section 1107(a) reads:

22 Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations
23 or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the
right to compensation under section 330 of this title, and powers, and shall perform all the functions
and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee
serving in a case under this chapter.

1 debtor in possession in a traditional chapter 11 holds many of the powers of a trustee, including
2 the right to retain professionals under § 327(a).¹⁸ Similarly, pursuant to § 1184,¹⁹ in a subchapter
3 V case, the debtor in possession has many of the rights of a trustee, including the right to retain
4 professionals under § 327(a). Approval of employment does not guarantee payment. Pursuant to §
5 330,²⁰ before a debtor's attorney can be paid from the estate, there must be notice and an
6 opportunity to be heard, and the court must approve the amounts to be paid.

7 In a traditional chapter 11 under § 1121(b),²¹ the debtor has the exclusive right to pursue a
8 plan for the first 120 days of the case. Pursuant to § 1106(a)(5),²² when a traditional chapter 11
9 debtor is removed as the debtor in possession, the chapter 11 trustee who succeeds it is charged

10
11
12

¹⁸ Section 327(a) reads:

13 Except as otherwise provided in this section, the trustee, with the court's approval, may employ one
14 or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not
15 hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or
16 assist the trustee in carrying out the trustee's duties under this title.

17 ¹⁹ Section 1184 reads:

18 Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations
19 or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the
20 right to compensation under section 330 of this title, and powers, and shall perform all the functions
21 and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee
22 serving in a case under this chapter.

23 ²⁰ Section 330(a)(1), in particular, reads:

After notice to the parties in interest and the United States Trustee and a hearing, and subject to
sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman
appointed under section 332, an examiner, an ombudsman appointed under section 333, or a
professional person employed under section 327 or 1103--

(A) reasonable compensation for actual, necessary services rendered by the trustee,
examiner, ombudsman, professional person, or attorney and by any paraprofessional
person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

²¹ Section 1121(b) reads:

Except as otherwise provided in this section, only the debtor may file a plan until after 120 days
after the date of the order for relief under this chapter.

²² Section 1106(a)(5) reads:

A trustee shall-- as soon as practicable, file a plan under section 1121 of this title, file a report of
why the trustee will not file a plan, or recommend conversion of the case to a case under chapter 7,
12, or 13 of this title or dismissal of the case.

1 with the responsibility of filing a plan, and under § 1121(c)²³ the door is also opened for any other
2 party in interest to file a plan.

3 Among its many features that distinguish it from a traditional chapter 11, under the SBRA,
4 §§ 1106, 1107 and 1121 do not apply in a subchapter V case,²⁴ and “[o]nly a debtor may file a
5 plan....” § 1189(a). Absent from the SBRA is any corollary provision that allows an interested
6 party, including a subchapter V trustee, in a subchapter V to file a plan, even in the event the debtor
7 is dispossessed. The parties’ dispute emanates from the lack of clarity as to how counsel for a
8 dispossessed debtor in a subchapter V is to be compensated for assisting a debtor in pursuing a
9 plan.

10 **IV. LEGAL ANALYSIS**

11 WCS objects to the Application arguing that nothing in the Bankruptcy Code entitles
12 Dorsey to have its fees paid by the estate. Its argument sets forth the same analysis courts have
13 used in traditional chapter 11 cases, noting that a “prerequisite for an award of compensation for a
14 professional under § 330 is ... employment under § 327 (or § 1103),”²⁵ and concluding that,
15 because a debtor’s authority to retain counsel under § 327(a) is premised on it asserting the rights

16 ²³ Section 1121(c) reads:

17 Any party in interest, including the debtor, the trustee, a creditors’ committee, an equity security
18 holders’ committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if
and only if—

- 19 (1) a trustee has been appointed under this chapter;
20 (2) the debtor has not filed a plan before 120 days after the date of the order for relief under
this chapter; or
21 (3) the debtor has not filed a plan that has been accepted, before 180 days after the date of
the order for relief under this chapter, by each class of claims or interests that is impaired
under the plan.

22 ²⁴ Section 1181(a) reads in pertinent part:

Sections 105(a), 1101(1), 1104, 1105, 1106, 1107, 1108, 115, 1116, 1121, 1123(a)(8), 1123(c),
1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case
under this subchapter.

23 ²⁵ Objection, 8:5-6, citing § 330(a); *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004); and *In re Tevis*, 347 B.R. 679,
694 (B.A.P. 9th Cir. 2006).

1 of a trustee as debtor in possession, once the debtor is removed as debtor in possession it can no
2 longer retain counsel under § 327 and counsel is, accordingly, no longer appointed thereunder.²⁶

3 In support of this argument, WCS relies primarily on four cases.

4 The first case cited is *Lamie*. The issue before the Supreme Court in *Lamie* was whether a
5 chapter 11 debtor’s counsel could recover fees from the estate for work performed after the case
6 converted to chapter 7. *Id.* at 538-39. The focus of the Supreme Court’s analysis in *Lamie* was on
7 a change made to the text of § 330(a) in the Bankruptcy Reform Act of 1994, 108 Stat. 4106, which
8 provided that only entities employed under § 327 could be paid under § 330(a). Employing the
9 plain meaning of the text, the Supreme Court noted that “§ 327 professional persons undoubtedly
10 includes attorneys, as much as does § 330(a)(1)’s reference to professional persons.” *Id.* at 536.
11 Accordingly, it concluded that debtor’s counsel appointed under § 327 in a chapter 11 was not
12 entitled to fees under § 330(a)(1) for work performed after the case converted to chapter 7 because
13 upon conversion, counsel ceased to be “employed as authorized by § 327. If the attorney is to be
14 paid from estate funds under § 330(a)(1) in a Chapter 7 case, he must be employed by the trustee
15 and approved by the court.” *Id.* at 538-539.

16 The second case cited is *In re Tevis*, 347 B.R. at 694, which is cited for the proposition that
17 a debtor in possession may retain professionals under § 327 and that employment is prerequisite
18 to compensation.²⁷

19 The third case cited is *In re Sunergy California LLC*, 646 B.R. 840 (Bankr. E.D. Cal. 2022),
20 *aff’d*, No. BAP EC-22-1230-GCB, 2023 WL 4184860 (B.A.P. 9th Cir. June 26, 2023). In *Sunergy*,
21 the debtor in possession was removed and replaced by a chapter 11 trustee. Following confirmation
22

23 ²⁶ Objection, 8:5-17.

²⁷ Objection, 8:9-10; 14-15.

1 of the trustee’s liquidating plan, debtor’s counsel filed its application for fees which included time
2 for work performed in appealing the court’s order appointing the chapter 11 trustee. *Id.* at 845
3 (noting its previous decision *In re Johnson*, 397 B.R. 486 (Bankr. E.D. Cal. 2008)). In *Johnson*,
4 the court had taken up a similar issue and concluded that *Lamie*’s “underlying rationale turned on
5 cessation of status as debtor in possession indicat[ing] that there is no reason to doubt that *Lamie*
6 applies equally to chapter 11 cases in which a trustee is appointed.” *Id.* at 490. Not surprisingly,
7 the court followed the same reasoning in *Sunergy*, concluding that “under *Lamie* the key event is
8 termination of DIP status. The distinction between appointment of a chapter 11 trustee or
9 conversion to chapter 7 makes no difference. The putative services after appointment of the chapter
10 11 trustee were rendered without the benefit of an employment authorization under § 327.” 646
11 B.R. at 845. The new trustee under *Lamie*, had “three alternatives,” according to the court in
12 *Sunergy*: “(1) re-employ former DIP counsel under § 327(a); (2) employ former DIP counsel for a
13 specified special purpose under § 327(e); or (3) not employ former DIP counsel. Here, the trustee
14 chose option three.” *Id.* Accordingly, the *Sunergy* court denied the debtor’s counsel’s fee
15 application to the extent incurred after the removal of the debtor in possession. *Id.*

16 The fourth case, and only subchapter V case cited by WCS, is in *In re NIR West Coast*,
17 *Inc.*, 638 B.R. 441 (Bankr. E.D. Cal. 2022). In *NIR West Coast*, debtor’s counsel applied for its
18 fees after the court had removed the debtor in possession and expanded the subchapter V trustee’s
19 powers. The Court denied the fees in their entirety, concluding that debtor’s counsel held an
20 adverse interest to the estate and that counsel had failed to disclose its connections that gave rise
21 to the adverse interest. *Id.* at 447-452. It went on, however, to independently deny a portion of the
22 fees that were incurred after the debtor was removed as debtor in possession, as well as a portion
23 of the fees incurred prior to being appointed as counsel. As to the former amounts, relying on

1 *Johnson* and its interpretation of *Lamie*, the court noted that § 1184 is “substantively similar to §
2 1107(a),” and as § 1107:

3 ...provides the debtor as the debtor in possession-and thence as the functional
4 equivalent of a trustee-with authority to employ attorneys under § 327 and to
5 compensate attorneys from the estate under § 330...[s]o too must the former. And
6 so just as the removal of the debtor as the debtor in possession in a non-subchapter
7 v chapter 11 case terminates the debtor's authority and status under § 1107(a),
8 removal of the debtor as the debtor in possession in a subchapter v chapter 11 case
9 equally terminates the debtor's authority and status under § 1184. In other words,
10 *Lamie* is no less applicable in a subchapter v chapter 11 case.

11 *NIR West Coast*, 638 B.R. at 452-453. Accordingly, the court concluded that:

12 Termination of the Debtor's status as the debtor in possession ... terminated the
13 Debtor's retention of the Law Firm under § 327(a) as the estate's attorneys and the
14 ability to compensate and reimburse the Law Firm from the estate under § 330.
15 Compensation and reimbursement of expenses for services that the Law Firm
16 provided on and after April 1, 2021, are therefore denied for the independent
17 reasons stated above.

18 *Id.* at 453.

19 Dorsey argues that *Lamie* is distinguishable because it involved conversion from a
20 traditional chapter 11 to chapter 7, not the removal of a debtor in possession in a subchapter V
21 case. It argues that *Tevis* and *Sunergy* are distinguishable because neither involved subchapter V,
22 the former dealing with a chapter 7 trustee in a converted chapter 13 case and the latter, because it
23 “converted to Chapter 7.”²⁸ Dorsey also argues that *NIR West Coast* is not binding on the Court
and is distinguishable because the court in *NIR West Coast* was focused primarily on the debtor’s
attorney’s failure to disclose an adverse interest to the estate and did not address any of the
arguments it raises as to the payment of its fees.

²⁸ Reply, p. 15, n. 13. The comment regarding *Sunergy* may have been in error; the Court sees nothing in the opinion to indicate the confirmed liquidating case converted to chapter 7.

1 Dorsey raises three possible theories on which the Court can award its fees: 1) because
2 only the Debtor can file a plan under § 1189, it must be able to retain and pay counsel; 2) as prior
3 counsel for the debtor in possession, the firm is still a professional retained under § 327; and 3) its
4 fees can be awarded as the actual and necessary costs of preserving the estate under §
5 503(b)(1)(A).²⁹ The Court will address WCS’s arguments first and then turn to Dorsey’s.

6 Key to a professional being compensated from the estate under § 330 is that person’s
7 employment under § 327(a)(1): “A debtor's attorney not engaged as provided by § 327 is simply
8 not included within the class of persons eligible for compensation.” *Lamie*, 540 U.S. at 534.
9 Focusing on the effect of conversion from chapter 11 to 7, the Supreme Court noted that the
10 conversion to chapter 7 “terminated [the debtor’s] status as debtor-in-possession and so terminated
11 petitioner's service under § 327 as an attorney for the debtor-in-possession.” *Id.* at 532. “Adhering
12 to conventional doctrines of statutory interpretation,” the Supreme Court concluded “that §
13 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless
14 they are employed as authorized by § 327. If the attorney is to be paid from estate funds under §
15 330(a)(1) in a Chapter 7 case, he must be employed by the trustee and approved by the court.” *Id.*
16 at 538-39.

17 Although the *Lamie* court was most certainly relying on § 348(e) in its determination that
18 the debtor was terminated as debtor in possession upon conversion, the focus of the Supreme
19 Court’s analysis was on the effect of such termination. That is, the Supreme Court concluded that
20 once terminated as debtor-in-possession, the debtor’s attorney’s services were also terminated. In
21

22 ²⁹ These theories derive from those set forth in *In re ComedyMX, LLC*, No. 1:22-bk-11181, **Dkt. No. 153** (Bankr. D.
23 Del. April 25, 2023) and by the Hon. Paul W. Bonapfel, *Subchapter V Update* (March 2024),
<https://www.flmb.uscourts.gov/judges/tampa/mcewen/SubchapterV.pdf> (“*Bonapfel Update*”), at p. 28, n. 22.

1 the chapter 11 context, once a debtor is dispossessed, it no longer functions as the trustee and
2 therefore has no ability to hire counsel under Section 327. It stands to reason, then, that upon
3 removal of the debtor in possession, counsel is likewise removed or terminated as counsel for the
4 debtor in possession. This Court agrees with the court’s analysis in *Johnson* (as adopted in
5 *Sunergy*):

6 Although *Lamie* involved the different situation of a case that was converted from
7 chapter 11 to chapter 7, the fact that its underlying rationale turned on cessation of
8 status as debtor in possession indicates that there is no reason to doubt that *Lamie*
9 applies equally to chapter 11 cases in which a trustee is appointed.

10 *Johnson*, 397 B.R. at 490.

11 While Dorsey distinguishes *Sunergy* as not involving subchapter V, the *Sunergy* court’s
12 analysis appears sound in the context of a traditional chapter 11 and the Court is unaware of any
13 courts holding to the contrary.³⁰ The court in *NIR West Coast* expanded this analysis to the
14 subchapter V context, finding no reason to differentiate. But as Dorsey notes, *NIR West Coast* did
15 not analyze the arguments that Dorsey puts forth, and at least one court in the unreported
16 *ComedyMX* decision did just that and allowed the fees.

17 Before exploring Dorsey’s arguments, the context in which the *ComedyMX* decision was
18 issued merits discussion. In *ComedyMX*, the court had before it a request for fees for work
19 performed by debtor’s counsel after the removal of the debtor as debtor in possession. The court
20 referenced three theories for recovery, describing each as “potential” bases for relief, “subject to

21 ³⁰ The ruling appears in line with other rulings on the topic, e.g., *In re Bresnick*, 406 B.R. 582 (Bankr. E.D.N.Y. 2009),
22 *aff’d sub nom. Morrison v. U.S. Trustees*, No. 09-CV-3565 (CBA), 2010 WL 2653394 (E.D.N.Y. June 24, 2010) and
23 *In re Int’l Gospel Party Boosting Jesus Groups, Inc.*, 487 B.R. 12 (D. Mass. 2013). Notably, the Supreme Court in
Lamie, 540 U.S. at 531, cited with apparent approval *Matter of Pro-Snax Distributors, Inc.*, 157 F.3d 414, 425 (5th
Cir. 1998), *overruled on other grounds by In re Woerner*, 783 F.3d 266 (5th Cir. 2015), which held that Section 330(a)
“excludes attorneys from its catalog of professional officers of a bankruptcy estate who may be compensated for their
work after the appointment of a Chapter 11 trustee.”

1 counterarguments that are at least colorable” and specifically noting that its order “does not
2 adjudicate or resolve any such issue.” *Id.* at p. 2-3. The *ComedyMX* court was not required to
3 resolve any such argument as it was in the unique situation where “no party object[ed] to awarding
4 [debtor’s counsel’s] compensation from the estate for actual, necessary worked [sic] performed
5 for the benefit of the state [sic] after the Dispossession Date. The Court accordingly grant[ed] this
6 relief on that basis.” *Id.* While the decision can hardly be considered a ringing endorsement of any
7 particular theory of recovery, it does set forth three different paths of analysis which Dorsey adopts
8 in its briefing.

9 *1. The “Necessity” Argument*

10 The theory behind Dorsey’s first argument, as mentioned in *ComedyMX* and explained in
11 the *Bonapfel Update*, is that “after dispossession, the debtor retains the limited obligation of a
12 trustee to file a plan so that the dispossessed debtor can retain counsel under § 327(a) (entitled to
13 compensation under § 330(a)) for services necessary to perform that function.” *Bonapfel Update*
14 at p. 29, n. 22. Despite the Code’s silence on the theory, Dorsey contends that this theory is logical
15 because it would be *illogical* for Congress to enact the SBRA – with the intent of making chapter
16 11 more efficient and affordable to small businesses and giving a debtor the exclusive ability to
17 file a plan – while also making it impossible for a dispossessed debtor to pursue a plan because it
18 cannot pay counsel. It also argues that any interpretation that does not allow for compensation of
19 counsel would disincentivize debtors from filing under subchapter V.³¹

20 The Court does not find this argument persuasive. The weaknesses of this argument are
21 also well stated in the *Bonapfel Update*:

22 The difficulty with this position is that the duty of a trustee to file a plan under §

23 ³¹ Application, 20:18-21.

1 1106(a)(5) is not applicable in a subchapter V case. See § 1181(a). The argument
2 thus depends on the proposition that the duty to file a plan is a trustee duty that §
3 1189 vests in the debtor and that the debtor retains this trustee duty even after
4 dispossession.

5 *Id.* at p. 29, n. 22.

6 As noted in the *Bonapfel Update*, a trustee’s duty to file a plan emanates from § 1106(a)(5)
7 which is not applicable in a subchapter V case. Accordingly, a subchapter V debtor’s right to file
8 a plan does not emanate from the trustee, but directly from § 1189(a). Therefore, it is illogical to
9 argue that a debtor continues to retain the rights of the trustee to file a plan, when the debtor’s right
10 never emanated from the trustee’s rights in the first place.

11 If the dispossessed debtor is to have the right to retain counsel who will be paid from the
12 estate, the right must arise from some other provision in the Bankruptcy Code. Sections 1189 and
13 330 are, however, silent on the issue, even though Congress has demonstrated it knows how to
14 allow compensation for attorneys who represent debtors with the exclusive ability to file plans. In
15 chapters 12 and 13 only the debtor can file a plan³² and § 330(a)(4)(B) specifically allows for the
16 compensation of a debtor’s attorney in each instance.³³ No other Code section provides that a
17 dispossessed debtor is entitled to pay its counsel from estate funds.

18 This Court also disagrees with Dorsey’s argument that it is illogical and inequitable that
19 Congress would grant the debtor the exclusive right to pursue a plan and then make it “impossible”
20 for a dispossessed debtor’s attorney to be entitled to compensation.³⁴ It is well established that

21 ³² See §§ 1221 and 1308.

22 ³³ As explained in *Lamie*, “while § 330(a)(1) requires proper authorization for payment to attorneys from estate funds
23 in Chapter 7 filings, it does not extend throughout all bankruptcy law. Compensation for debtors’ attorneys in Chapter
24 12 and 13 bankruptcies, for example, is not much disturbed by § 330 as a whole. See, e.g., **11 U.S.C. § 330(a)(4)(B)**...”
25 **540 U.S. at 537.**

³⁴ Dorsey argues that the inequity is exacerbated by the fact that entities (as opposed to individuals) can only appear

1 “when the statute's language is plain, the sole function of the courts—at least where the disposition
2 required by the text is not absurd—is to enforce it according to its terms.” *Lamie*, 540 U.S. at 534.

3 While prohibiting counsel’s fees to be paid from the estate may result in a roadblock to a debtor’s
4 reorganization efforts, the Court does not find the result absurd. The Court observes that
5 subchapter V debtors gain several advantages under the SBRA, *e.g.*, the absence of the absolute
6 priority rule, the ability to commit to only a three-year plan, no longer having to file and obtain
7 approval of a disclosure statement, the exclusive ability to file a plan, and more. Along with these
8 benefits, it is equally logical that Congress intended accompanying burdens, *i.e.*, if a debtor wants
9 to confirm a plan after being dispossessed, it must find alternative sources to fund its attorneys.³⁵

10 The Court also disagrees that denying counsel’s fees will have a chilling effect for those
11 wanting to file subchapter V. Given all the benefits of subchapter V, the primary impact of not
12 allowing compensation from the estate would most likely be that future debtors will be more
13 careful not to do things that could lead to their removal. For these reasons, the Court is not
14 persuaded by this argument.

15 2. Retention as a Professional Person Argument

16 For its second argument, Dorsey argues that “post-removal fees are appropriate under 11
17 U.S.C. § 330 because, as prior counsel to the debtor-in-possession, the Dorsey attorneys working
18 on this case are professional persons employed under 11 U.S.C. § 327.”³⁶ Put another way, Dorsey

19
20 through counsel. *See Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 201-202,
(1993); and *McGowan v. Boek*, 402 F. App’x 287 (9th Cir. 2010).

21 ³⁵ Indeed, in this instance, WCS stated at oral argument that it did not object to Dorsey being paid from any income
22 that exceeds the Debtor’s projected disposable income under its Plan, no doubt recognizing that actual income
23 exceeding the projected disposable income inures to the equity holders. In the context of paying its counsel from estate
funds, a debtor could also seek reinstatement under § 1185(b), or with respect to non-plan work, debtor’s counsel
might be approved as special counsel under § 327(e). *See Johnson*, 397 B.R. at 492. Indeed, this happened in this case,
as the Court appointed Dorsey as special counsel to assist with the Subchapter V Trustee with the Adversary.

³⁶ Application, 22:3-5.

1 continued to be employed as “professional persons” even after the Debtor was removed as debtor
2 in possession. Other than citing to *ComedyMX*, and to the *Bonapfel Update*, Dorsey does little in
3 the Application and Reply to explain the mechanics of this theory.³⁷

4 WCS contends that *NIR West Coast* “makes clear that debtor’s counsel does not qualify as
5 a ‘professional person’ under § 327(a) with the ability to obtain compensation from the debtor’s
6 estate following the removal of the debtor as the debtor-in-possession.”³⁸ According to WCS, a
7 “professional person” under § 327(a) is no different than, and has no greater rights than, an attorney
8 employed under § 327(a). Moreover, as WCS points out, Dorsey was appointed as counsel for the
9 debtor in possession, not as a professional person.³⁹

10 While it does not appear that the court in *NIR West Coast* specifically addressed this issue,
11 this Court nonetheless agrees with WCS. The key to employment under § 327(a) is employment
12 by the trustee, whether that person is an attorney or another professional person. Once a debtor is
13 dispossessed, it no longer functions as the trustee; thus, anyone it hires should no longer be
14

15 ³⁷ From *ComedyMX*:

16 Alternatively, it could be argued that an award is appropriate under § 330 on the ground that, as
17 prior counsel to the debtor, the firm is a professional person employed under § 327.

18 *Id.* at p. 2-3. *ComedyMX* immediately follows the prior quote with a footnote:

19 *But see Lamie v. United States Trustee*, 540 U.S. 526 (2004) (holding that counsel for chapter 11
20 debtor could not be compensated under § 330 following conversion of case to chapter 7, but not
21 considering or addressing the contention that such counsel remained “a professional person
22 employed under section 327,” perhaps in light of the directive of § 348(e), which is inapplicable
23 here).

Id. at p. 3, n. 3. Judge Bonapfel’s explanation is similar:

20 A second theory could be that fees are appropriate under § 330 because, as prior counsel to the
21 debtor, the professional is a professional person employed under § 327. *Lamie* is potentially
22 distinguishable because the case involved services after conversion to chapter 7. The Court did not
23 address the contention that the attorney was a professional employed under § 327, perhaps in light
of the directive in § 348(e) that conversion terminates the service of the trustee (the debtor-in-
possession) in the chapter 11 case.

Bonapfel Update, p. 28-29, n. 22.

³⁸ Objection, 10:16-11:2.

³⁹ [Dkt. No. 97](#).

1 employed under § 327 unless the trustee independently determines to seek approval to hire them.

2 In addition, redesignating the debtor's counsel as a professional person upon the removal
3 of the debtor in possession would lead to complications with respect to the breadth of counsel's
4 duties, which under such analysis would presumably not be limited solely to filing a plan. Indeed,
5 in its Application, Dorsey is seeking fees not just for formulating and pursuing a plan, but for other
6 general work on the case. While the Court notes that Dorsey and the Subchapter V Trustee both
7 contend that the general work was performed at the Subchapter V Trustee's request, that might not
8 always be the case and could lead to duplication of expenses as well as potential inconsistency in
9 administering the estate. For these reasons, the Court does not find this argument persuasive.

10 *3. Actual Necessary Costs and Expenses Argument*

11 Finally, Dorsey argues that its legal fees incurred after Debtor's removal as debtor in
12 possession qualify as actual, necessary costs and expenses of preserving Debtors' estate under §
13 503(b)(1)(A). According to Dorsey, fees are actual and necessary costs of preserving the estate
14 because, if "the Debtor was prohibited from employing Dorsey for post-removal services, the
15 Debtor would never have confirmed a plan and would have ended up liquidating."⁴⁰ Dorsey also
16 argues that the Debtor's retention of exclusivity to file a plan differentiates this from a traditional
17 chapter 11 in which the trustee can file a plan. Dorsey also notes that the list of examples under §
18 503(b) of those who can be entitled to an award is not exclusive or exhaustive. Thus, nothing in §
19 503(b) excludes its compensation.

20 WCS cites multiple cases for the proposition that Dorsey cannot use § 503(b)(1)(A) to
21 make an end run around of §§ 327, 330, and 503(b)(2). *See, In re Milwaukee Engraving Co., Inc.*,

22
23

⁴⁰ Application, 21:12-13.

1 219 F.3d 635, 636 (7th Cir. 2000); *F/S Airlease II, Inc. v. Simon*, 844 F.2d 99, 108-09 (3d Cir.
2 1988); *In re Keren Ltd. P'ship*, 189 F.3d 86, 88 (2d Cir. 1999); *In re Peterson*, 163 B.R. 665, 675,
3 n. 11 (Bankr. D. Conn. 1994); and *In re Weibel, Inc.*, 176 B.R. 209, 213 (B.A.P. 9th Cir. 1994).
4 Dorsey differentiates these cases by noting their age and observing that none of them interpret the
5 issue in the context of a subchapter V case.

6 Of all the arguments made by Dorsey, this theory has the most surface appeal, as the work
7 performed by Dorsey in proposing and prosecuting the plan unquestionably resulted in a successful
8 confirmation. Indeed, WCS implicitly acknowledges some benefit to the estate by challenging the
9 necessity of only \$836,915.38 of the \$1,251,277, leaving \$414,361.62 in requested fees
10 unchallenged.

11 As tempting as it would be to grant fees on this basis,⁴¹ the Bankruptcy Code and case law
12 do not support Dorsey's argument. To start, the Court must acknowledge the "axiom that a statute's
13 general permission to take actions of a certain type must yield to a specific prohibition found
14 elsewhere." *Law v. Siegel*, 571 U.S. 415, 421 (2014). Here, §§ 327, 330, and 503(b)(2) govern the
15 award of compensation to a debtor's attorney, while an allowance of an administrative expense
16 under § 503(b)(1) applies more generically. The cases cited by WCS support this analysis.

17 In *Milwaukee Engraving* a law firm filed chapter 11 on behalf of the debtor and applied to
18 be counsel of record. 219 F.3d at 636. The U.S. Trustee objected and twenty days after the filing
19 the bankruptcy court concluded that the application could not be approved, as the firm represented
20 an adverse interest to the estate. *Id.* The firm then filed its application for fees for the period it
21 provided services. While the bankruptcy court was cognizant of Seventh Circuit case law that

22
23 ⁴¹ Or on the bases of §§ 503(b)(3)(D) and (4) which were raised for the first time in Dorsey's Reply at p. 4.

1 concluded that “[b]y making express provision for employment under § 327, payment under § 330,
2 and priority under § 503(b)(2), the Code logically forecloses the possibility of treating §
3 503(b)(1)(A) as authority to pay (or give priority to) claims that do not meet its substantive
4 requirements,” the court nonetheless approved the fees under § 503(b)(1)(A), concluding the
5 equities justified payment. *Id.* at 636-637. The district court affirmed the award, but *Milwaukee*
6 *Engraving* reversed. In reaching its decision, the Seventh Circuit noted that “[b]ankruptcy courts
7 are not authorized in the name of equity to make wholesale substitution of underlying law ... but
8 are limited to what the Bankruptcy Code itself provides.” *Id.* at 637 (quoting *Raleigh v. Illinois*
9 *Department of Revenue*, 530 U.S. 15, 24-25 (2000)). It also observed that “[s]tatutes directly
10 addressing a subject prevail over silences and implications of other provisions.” *Id.* at 636. The
11 Seventh Circuit ultimately concluded that:

12 it would vitiate the limitations of § 327 if a bankruptcy court could deny an
13 application under that section and order the estate to pay for the legal services
14 anyway. Moreover, the structure of § 503(b) strongly implies that professionals
15 eligible for compensation must receive it under § 503(b)(2)—which depends on
16 authorization under § 330 or § 1103(a) (and thus on approval under § 327). One
17 might as well erase § 503(b)(2) from the statute if attorneys may stake their claims
18 under § 503(b)(1)(A) even when ineligible under §§ 327, 330, and 503(b)(2).

16 *Id.*

17 *Milwaukee Engraving* is not alone in this observation. The facts of *Weibel*, are similar to
18 those of *Milwaukee Engraving*. In *Weibel*, the bankruptcy court found that counsel was not
19 disinterested and denied its application to be retained as counsel under § 327. Thereafter, counsel
20 applied for approval of its fees and costs for the period up to the court’s ruling. The bankruptcy
21 court denied the fees, initially finding it had no discretion because counsel was never appointed
22 under § 327, but later on reconsideration concluded it did have discretion, but that exercising its
23

1 discretion was not warranted. 176 B.R. at 211.⁴²

2 On appeal, counsel argued that it was entitled to compensation under §§ 327 and 330, based
3 on quantum meruit, and based on benefit to the estate under § 503(b)(1).⁴³ Addressing the last
4 argument, the panel disagreed, writing:

5 If compensation cannot be awarded under Section 503(b)(2), then the
6 question is whether it can be awarded under Section 503(b)(1). McCutchen argues
7 that it can. However, such an interpretation of Section 503 renders Section
8 503(b)(2), as well as Section 327, “nugatory.” See *F/S Airlease II, Inc. v. Simon*,
9 844 F.2d 99, 109 (3rd Cir. 1988). Indeed, the language behind both Sections is
10 remarkably similar. Section 503(b)(2) essentially incorporates the language of
11 Section 330, that reasonable compensation can be allowed for “actual, necessary
12 services rendered by” the attorney based on the nature, extent and value of such
13 services. Section 503(b)(1) provides for payment, as administrative claims, of “the
14 actual, necessary costs and expenses of preserving the estate, including wages,
15 salaries, or commissions for services rendered after the commencement of the
16 case.”

17 For an attorney, the test for receiving compensation would appear nearly
18 identical under both Sections. It is reasonable then, to construe Section 503(b)(2),
19 with its specific reference to compensation to professionals under Section 330, as
20 the only part of Section 503(b) under which such professionals can receive
21 compensation.

22 *Id.* at 213. See, also, *Surrey Inv. Services, Inc. v. Smith*, 418 B.R. 140, 148–49 (M.D.N.C. 2009)
23 (“to apply section 503(b)(1)(A) to professional compensation would render section 503(b)(2)
superfluous and avoid the requirements and purposes of section 327”); *In re First Magnus
Financial Corp.*, No. BAP.AZ-08-1160-PADMO, 2009 WL 7809001, at *6 (B.A.P. 9th Cir. Feb.

24 ⁴² Interestingly, for its conclusion that it had discretion, the bankruptcy court relied on *Matter of Grabill Corp.*, 983
25 F.2d 773 (7th Cir. 1993), the same case that the lower court in *Milwaukee Engraving* relied on and that the Seventh
26 Circuit criticized as containing only dicta on the issue of compensation without the benefit of any legal analysis from
27 the litigants. *Milwaukee Engraving* at 637-638.

28 ⁴³ The § 327 argument was made under the prior version of the Code section, which is discussed by the Supreme Court
29 in *Lamie* and not at issue here. The quantum meruit theory was rejected by the panel in that it had previously held that
30 “the Bankruptcy Code and Federal Rules of Bankruptcy Procedure operate to preclude fee awards for services
31 performed on behalf of a bankruptcy estate based upon state law theories not provided for by the Code.” *Weibel*, 176
32 B.R. at 211.

1 24, 2009) (quoting from *Weibel*, 176 B.R. at 213: “The Panel has held that, because § 503(b)(2)
2 specifically provides for allowance of administrative expenses consisting of ‘compensation and
3 reimbursement awarded under section 330(a)[,]’ ‘[i]t is reasonable then, to construe Section
4 503(b)(2) ... as the only part of Section 503(b) under which such professionals can receive
5 compensation.’”); and *In re Blurton*, 334 B.R. 602, 606–07 (Bankr. W.D. Tenn. 2005) (“Nowhere
6 in [*Lamie*] did the Supreme Court mention the possibility of payment of attorneys fees under §
7 503(b)(1). Surely if that were an available avenue, the Court would have addressed it in its
8 discussion of the issue.”)

9 Hence, while the equities here may favor Dorsey more than in the cited cases, the Court is
10 persuaded that allowing the fees under § 503(b)(1) would improperly circumvent more specific
11 provisions of the Code that do not allow for such fees.⁴⁴ Accordingly, the fees will not be allowed
12 under this theory.

13 V. CONCLUSION

14 Because this Court agrees with the analysis in *NIR West Coast* and is not persuaded by the
15 other theories advanced by Dorsey, the Application is denied. As it is denying the Application in
16 its entirety, the Court need not address the parties’ arguments reading the timeliness of the
17 Application or the detailed objections to specific time entries.⁴⁵

18 ⁴⁴ Any suggestion that Dorsey was representing the equity holders entitling it to fees under § 503(b)(3)(D) and (b)(4)
19 – and it is not clear that either party is actually arguing this – is factually incorrect as Dorsey specifically appeared on
20 behalf of the Debtor and, of course, only the Debtor had the right to pursue a plan. Further, Dorsey seems to argue in
21 its Reply that because the Subchapter V Trustee with expanded powers requested its assistance and its work benefitted
22 the estate, its fees should be approved under § 503(b). However, such work does not fit neatly under any provision of
23 § 503(b). Moreover, the Subchapter V Trustee certainly knew how to seek approval of Dorsey as special counsel for
the estate – but did so only with respect to the Adversary. And as WCS points out, the Court’s order approving such
appointment specifically limited the start date of such appointment to the date of the application, which was not filed
until August 22, 2024. *Dkt. No. 646*.

⁴⁵ WCS’s Motion to Strike Declarations of Katie McNally, Melissa Scott, and James E. Cross (*Dkt. No. 889*) that
sought to strike the declaration of the Subchapter V Trustee to the extent it supported the Application is also deemed
moot.

1 Based on the foregoing,

2 **IT IS HEREBY ORDERED** denying the Application.

3
4 **DATED AND SIGNED ABOVE.**

5
6
7
8 Copy of the foregoing emailed
9 this 29th day of July, 2025 to:

10 Isaac M. Gabriel
11 Alissa Brice Castaneda
12 Michael Galen
13 DORSEY & WHITE LLP
14 2398 E. Camelback Rd., Ste. 760
15 Phoenix, AZ 85016
16 Email: gabriel.isaac@dorsey.com,
17 Email: Castaneda.alissa@dorsey.com,
18 Email: galen.michael@dorsey.com
19 Attorneys for Debtor

20 Benjamin W. Reeves
21 James G. Florentine
22 SNELL & WILMER, L.L.P.
23 One E. Washington St., Ste. 2700
Phoenix, AZ 85004
Email: breeves@swlaw.com,
Email: jflorentine@swlaw.com
Attorneys for Wound Care Specialists, LLC and RENU LLC
David Weitman
Christopher A. Brown
K&L GATES LLP
1717 Main Street, Ste. 2800
Dallas, TX 75201
Email: david.weitman@klgates.com,
Email: chris.brown@klgates.com
Attorneys for Wound Care Specialists, LLC and RENU LLC

1 Michael W. Carmel
MICHAEL W. CARMEL, LTD.
2 80 E. Columbus, Avenue
Phoenix, AZ 85012
3 Email: michael@mcarmellaw.com
Attorney for Subchapter V Trustee

4
5 James E. Cross
CROSS LAW FIRM, PLC
PO BOX 45469
6 Phoenix, AZ 85064
Email: jcross@crosslawaz.com
7 Subchapter V Trustee

8 Patty Chan
OFFICE OF THE U.S. TRUSTEE
9 230 North First Avenue, Suite 204
Phoenix, AZ 85003
10 Email: patty.chan@usdoj.gov
Attorney for U.S. Trustee

11
12 By: /s/Annette J. Franchello
Judicial Assistant

13
14
15
16
17
18
19
20
21
22
23