IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

In re:

DCA OUTDOOR, INC., et al.,

Debtors.

Case No. 25-50053-11
Chapter 11
Chief Judge Cynthia A. Norton

OFFICIAL COMMITTEE OF UNSECURED CREDITORS of DCA OUTDOOR, INC., et al., on behalf of the Debtors' Estates,

Plaintiff,

vs.

Adv. Proc. No. ___________

LEWIS RICE LLC, a Missouri Limited Liability Company and LARRY E. PARRES, Individually.

Defendants.

COMPLAINT

INTRODUCTION

1. This adversary proceeding arises from one of the most egregious breakdowns of professional duty that a debtor-in-possession's counsel can commit: treating the company's founder and principal as the client, rather than the bankruptcy estate, while the enterprise was in financial freefall. Lewis Rice LLC and its responsible attorneys converted what should have been

independent, fiduciary-driven legal representation into a personal protection operation for Tory Schwope—at the direct expense of the Debtors' estates and their unsecured creditors.

2. From the first day of these Chapter 11 cases, Lewis Rice's lead partner Larry Parres made clear who he considered his actual client. When Frontier Farm Credit demanded a Chief Restructuring Officer ("CRO") as a condition of DIP financing, Parres wrote in all capitals: "DEAL BREAKER—WE ARE NOT GOING TO PUT A CRO IN PLACE—NOT HAPPENING SO REMOVE IT COMPLETELY." Lewis Rice Partner John Hall then explained to Tory Schwope that if a CRO were appointed, Schwope would "have no control to do anything."

3. The very day after a CRO was nevertheless appointed by the Court, Parres admonished his Lewis Rice colleagues to ensure that "Tory remains our client" and that Schwope must agree with all CRO decisions before Lewis Rice would act. Parres blind-copied Schwope on this internal communication. Schwope wrote back: "Thanks, pal." Parres replied: "I have your back . . . we will continue to bust our ass for you. Don't let us down."

4. This was not zealous advocacy. It was a betrayal of the estate. Counsel for a debtor-in-possession owes heightened fiduciary duties to the estate, its creditors, and its statutory beneficiaries—not to the principal whose interests are adverse. By subordinating the estates' interests to Schwope's personal agenda to maintain control, Lewis Rice abandoned its professional obligations, destroyed estate value, and caused substantial harm to the estates it was duty-bound to protect.

5. The Official Committee of Unsecured Creditors (the "Committee"), having obtained derivative standing to pursue claims on behalf of the estates, brings this action to recover the damages caused by Lewis Rice's malpractice, breaches of fiduciary duty, negligence, and related misconduct.

JURISDICTION AND VENUE

6. This adversary proceeding is brought pursuant to Federal Rule of Bankruptcy Procedure 7001 et seq. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (B), and (O).

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

8. This adversary proceeding is related to Case No. 25-50053-11, pending before this Court.

PARTIES

9. Plaintiff, the Committee, was appointed by the United States Trustee on March 10, 2025, pursuant to 11 U.S.C. § 1102 in the above-captioned jointly administered Chapter 11 cases. The Committee brings this action derivatively on behalf of the Debtors.

10. Defendant Lewis Rice LLC is a Missouri limited liability company and law firm with its principal place of business at 600 Washington Avenue, Suite 2500, St. Louis, Missouri 63101. Lewis Rice was retained as bankruptcy counsel to the Debtors and Debtors-in-Possession pursuant to 11 U.S.C. § 327, and was approved by this Court in that capacity from the Petition Date through the termination of its engagement in October 2025. Lewis Rice sought fees totaling approximately $1,536,092.40 inclusive of expenses for its services.

11. Defendant Larry E. Parres ("Parres") is an attorney licensed to practice law in Missouri and a partner of Lewis Rice. Parres served as lead bankruptcy counsel for the Debtors and was the primary attorney responsible for the representation. He is identified in the Fee Application as billing $809.50 per hour and is responsible for approximately $553,542.75—or 37%—of all billing.

12. "Lewis Rice," as used herein, refers to Lewis Rice LLC, its attorneys, agents, and Parres.

FACTUAL ALLEGATIONS

A. The Debtors and Their Financial Distress

13. DCA Outdoor, Inc. ("DCA Outdoor") was formed as a management company for its affiliated entities[1] (collectively, "Debtors"). Debtors operated a group of nursery, tree farm, plant distribution, and retail garden enterprises across multiple states, including Missouri, Indiana, Illinois, Kansas, Kentucky, and Oregon.

14. Tory Schwope ("Schwope") was the founder, principal, officer, manager, and key decision-maker of the Debtors. He owned and controlled the entire enterprise. None of the Debtors have a board of directors.

15. In the years preceding the bankruptcy filings, Schwope fired or drove out multiple Chief Financial Officers and financial advisors who provided accurate but unwelcome advice: the Debtors' business model was unsustainable and required significant restructuring, including asset sales and downsizing.

16. Frontier Farm Credit, FLCA and Frontier Farm Credit, PCA (together, "Frontier") had a lending relationship with the Debtors dating back to 2005. As of the Petition Date, the outstanding obligations under the Frontier Facility exceeded approximately $95 million.

[1] The other Debtors in these Chapter 11 cases are as follows, with the last four digits of their respective EINs: Anna Evergreen, LLC (2226); Brehob Nurseries, LLC (3791); Colonial Farms, LLC (3736); Colonial Gardens Developments, LLC (2413); Colonial Gardens, LLC (9612); DCA Land Holding Company, LLC (4280); DCA Land Illinois, LLC (1397); DCA Land Indiana, LLC (4848); DCA Land Kansas, LLC (8049); DCA Land Kentucky, LLC (4280); DCA Land Missouri, LLC (6728); DCA Land Oregon, LLC (6830); KAT Nurseries, LLC (4682); PlantRight Supply, LLC (3464); Schwope Brothers Tree Farm, LLC (6725); Schwope Brothers West Coast, LLC (2354); Utopian Plants Indiana, LLC (8385); Utopian Transport, LLC (3456); Utopian Trees, Inc. (3868) (together with DCA Outdoor, Inc., the "Debtors").

Beginning in 2023 and into 2024, Frontier repeatedly communicated to the Debtors that urgent course correction was necessary.

17. The Debtors suffered from, among other problems: poor financial projections and significant underperformance against budgets; repeated liquidity crises; deficient financial reporting controls; an inability to accurately track and allocate costs; dubious and inaccurate inventory valuation; and self-dealing by Schwope for his personal benefit.

18. Frontier began preparations for the appointment of a state court receiver in late 2024 and early 2025 to effectuate the asset sales and operational downsizing that advisors had long recommended.

B. Lewis Rice's Engagement and Initial Conduct

19. Lewis Rice was engaged to represent the Debtors in connection with a potential loan restructuring with Frontier even before the bankruptcy filings. From the outset, however, Lewis Rice considered Schwope personally—not the Debtors or their estates—as its client.

20. On February 20, 2025, lead Debtor DCA Outdoor, Inc. filed its voluntary Chapter 11 petition. The remaining Debtors filed the following day. The cases were filed as a defensive maneuver to prevent Frontier's receivership actions—without a financial advisor in place, without any semblance of an exit plan, and without any strategy reasonably designed to maximize estate value.

21. Lewis Rice was approved by this Court as bankruptcy counsel to the Debtors pursuant to 11 U.S.C. § 327. In the Declaration of Larry Parres submitted in support of Lewis Rice's retention [Doc. 37], Parres represented that "LR will not represent present or future clients of the Firm on matters adverse to Debtors in this chapter 11 case." As detailed below, that representation was false or became false.

C. Lewis Rice Treated Schwope—Not the Estates—as Its Client

22. Before the Petition Date, when Frontier conditioned DIP financing on the appointment of a Chief Restructuring Officer to provide independent oversight, Parres wrote in all capital letters: "DEAL BREAKER—WE ARE NOT GOING TO PUT A CRO IN PLACE—NOT HAPPENING SO REMOVE IT COMPLETELY." He explained to Schwope that appointment of a CRO meant Schwope would "have no control to do anything." The sole reason to oppose a CRO—a mechanism universally understood to protect estate creditors—was to protect Schwope's personal control, not the estates' interests.

23. Despite Lewis Rice's opposition, the parties ultimately agreed to the appointment of Juanita Schwartzkopf of Focus Management Group ("FMG") as CRO with blocking powers and monitoring or consultation authority.

24. The reason for the opposition to the appointment of a full-fledged CRO was simple: it would lead to Schwope's loss of absolute control.

25. In February 2025, Lewis Rice partner John Hall ("Hall") emailed Schwope explaining that the appointment of a receiver would mean he would have "no control to do anything."

26. On March 11, 2025—the very day the Court appointed Schwartzkopf as CRO—Parres circulated an internal email admonishing Lewis Rice colleagues that "Tory remains our client so please make sure he agrees with all Juanita decisions before we act." Parres blind copied Schwope on the message. Schwope replied to Parres directly: "Thanks, pal." Parres responded: "I have your back . . . we will continue to bust our ass for you. Don't let us down."

27. Schwope responded that very same evening with personal praise for Parres' and Lewis Rice's efforts to protect his control:

From: Tory Schwope <tory@dcaoutdoor.com>
Date: March 11, 2025 at 7:06:33 PM CDT
To: "Parres, Larry E." <lparres@lewisrice.com>
Subject: RE: [EXTERNAL] Re: Focus

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Thank you for are your help pal! We would have been toast if you hadn't dug in so hard. I know we have a long way to get out of this mess, but at least I have a chance now.

Tory

28. In a May 8, 2025, to Samantha Schwope, Parres once again revealed Lewis Rice's allegiance to Tory:

From: Parres, Larry E. <LParres@lewisrice.com>
Sent: Thursday, May 8, 2025 10:13 AM
To: Samantha Schwope <samantha@dcaoutdoor.com>

about:blank?windowId=SecondaryReadingPane11 1/2

12/30/25, 4:56 PM RE: Please let Tory know that I told Focus to start being a cheerleader--he is down on them as he doesn't think they are being posi…

Subject: Please let Tory know that I told Focus to start being a cheerleader--he is down on them as he doesn't think they are being positive

29. Parres went on to write the following about Focus and Schwartzkopf:

From Parres, Larry E. </O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BE8B617BB67E4F4B8CD1030C7B2BA574-LARRY E. PA>
Date Thu 5/8/2025 10:30 AM
To Samantha Schwope <samantha@dcaoutdoor.com>

I will continue to get in their grill—they are being bad way too much money to say anything but positive things—have a great day

30. This correspondence—the lead attorney of court-approved estate counsel pledging personal allegiance to the very principal whose interests were adverse to the estate—is direct evidence that Lewis Rice had abandoned its duties to the Debtors' estates and their creditors.

31. It is clear that Schwope wanted one thing—to hold onto his complete and unabandoned ownership of all Debtors. In fact, his plan was to purchase the assets of Debtors out of bankruptcy at a severe discount while at the same time jettisoning massive amounts of debt.

32. In particular, Schwope told his colleagues that he wanted "an *Everde* deal," referring to a bankruptcy matter where a Texas farmer was able to eliminate his debts to Frontier and others and then bought the estate assets for much less than the debt.

33. Schwope told his management team and others that purchasing the Estate assets at a considerable discount would amount to "the biggest payday" of his life.

34. This was clearly Schwope's intent all along and, upon information and belief, Lewis Rice was aware, or should have been aware of this fact, because it is diametrically opposed to the best interests of the estate and creditors.

35. Lewis Rice's fee records confirm this misalignment: approximately 64.2% of Lewis Rice's total billed time was spent on matters that primarily benefited Schwope rather than the estates. Lewis Rice spent approximately only 3.4% of its total time on matters that could be characterized as strategies reasonably designed to maximize estate value, such as asset analysis (approximately 1%), asset disposition (less than 1 hour in total), and plan of reorganization (approximately 2.4%).

36. Simply put, despite the passing of months and the receipt of hundreds of thousands of dollars in legal fees since the commencement of this bankruptcy, Lewis Rice made zero progress toward formulating an exit plan through either asset sales, equity transactions, refinancing, or a combination thereof.

37. Indeed, Lewis Rice internal emails reveal that attorney fees were very much at the forefront of their actions:

> **To:** Drapekin, Steven C.[SDrapekin@lewisrice.com]; Hall, John J.[jhall@lewisrice.com]
> **From:** Parres, Larry E.
> **Sent:** 2025-03-12T00:18:06Z
> **Importance:** Normal
> **Subject:** Fwd: [EXTERNAL] Re: Focus
> **Received:** 2025-03-12T00:18:10Z
>
> Great work guys and know you client appreciates your efforts not to mention Lewis rice appreciates the revenues.
> Sent from my iPhone

D. Lewis Rice Obstructed Access to Critical Financial Information

38. Throughout the case, Frontier and the Committee repeatedly sought access to the Debtors' basic financial records, including inventory and accounting data, which were critical to understanding the estates' financial condition and evaluating reorganization options.

39. Lewis Rice systematically obstructed and delayed the production of this information. An April 9, 2025, email from Parres reveals that he knew the financial information would reveal the truth: that Frontier was deeply undersecured and that the Debtors had no viable reorganization path without substantial asset sales—a path Schwope refused to accept. Parres wrote that providing appraisal information to Frontier "is going to kill us" and that his "stomach is hurting." He added: "We need to push back if I recall what you told me." Lewis Rice then proceeded to file boilerplate objections to the Committee's discovery requests, which multiple senior partners spent 73 hours and over $50,000 to produce.

40. This obstruction was not zealous advocacy—it was suppression of material information from parties entitled to receive it, for the purpose of concealing Schwope's true financial position and preserving his control.

E. Lewis Rice Pursued a Futile DIP Financing Strategy

41. Lewis Rice spent 53.1 hours and $35,815.95 in estate funds pursuing alternative third-party DIP financing that Lewis Rice knew, or reasonably should have known, had no reasonable prospect of being approved given the significantly overstated collateral values. This venture ultimately resulted in withdrawal of the DIP financing motion after substantial estate resources were consumed with nothing to show for it. Lewis Rice is responsible for causing the estates to incur approximately $204,623.90 in fees related to this category of services.

F. Lewis Rice Opposed the Appointment of a Chapter 11 Trustee

42. As it became clear through the summer of 2025 that Schwope was unwilling to implement any meaningful restructuring strategy, Frontier and the Committee made multiple entreaties to Lewis Rice to install appropriate corporate governance controls, including the establishment of a board of directors, as a less drastic alternative to a trustee. Lewis Rice rebuffed all such proposals, leaving no alternative but the request for appointment of a Trustee.

43. On August 25, 2025, Frontier and the Committee jointly filed their Motion to Direct Appointment of a Chapter 11 Trustee [Doc. 348], documenting in extensive detail the Debtors' incompetence, mismanagement, and lack of any exit strategy.

44. Rather than acknowledging the legitimacy of the Trustee Motion and counseling its client to accept appropriate oversight—as its fiduciary obligations required—Lewis Rice doubled down and vigorously contested the Motion. Lewis Rice spent 263.5 hours and approximately $183,524.75 of estate funds fighting the Chapter 11 trustee request. This was nearly 4.5 times more time than Lewis Rice spent on the entire subject of plan formulation.

45. Ultimately, Lewis Rice withdrew its challenge and the parties stipulated to the appointment of Brent King as a CRO with all the powers of a trustee. The litigation was entirely

unnecessary and served no purpose other than prolonging Schwope's control at the expense of the estates.

G. Lewis Rice's Representation of VHTF and the Unexecuted Lease

46. Valley Hill Tree Farm, LLC ("VHTF") is a wholly-owned non-debtor affiliate of Schwope. At or around the time of the bankruptcy filing, VHTF was initially listed in certain filings as a debtor company. Lewis Rice thereafter removed references to VHTF as a debtor without disclosing to this Court or any party in interest that Lewis Rice was simultaneously representing VHTF in other matters—in direct violation of Bankruptcy Rule 2014 and Parres' representations in his retention declaration.

47. DCA Land Kentucky, LLC ("DCA Kentucky"), one of the Debtors, used certain Kentucky real property that VHTF also claimed an interest in. As of at least March 16, 2025, Lewis Rice was aware that there was no written lease between DCA Kentucky and VHTF. Debtors' corporate representative Samantha Schwope confirmed under oath at deposition that no written lease existed.

48. Despite the absence of any authorization from the Debtors or the newly installed CRO Brent King, Lewis Rice provided Schwope with a copy of an unexecuted lease between VHTF and DCA Kentucky (the "Unexecuted Lease") on or about October 2, 2025. Schwope—whom Lewis Rice knew had been terminated from the Debtors and had a strong personal incentive to manufacture evidence—thereafter purported to locate a "signed" copy of the Unexecuted Lease and presented it to King in response to an eviction proceeding.

49. This conduct—providing a confidential business record of Lewis Rice's own client to an adverse party, without client authorization—constitutes a breach of Lewis Rice's fiduciary

duties of loyalty and confidentiality. To the extent Lewis Rice's actions facilitated or assisted Schwope's alleged fraud on the estate, Lewis Rice is also liable for aiding and abetting.

50. An adversary proceeding has been filed against VHTF, *DCA Outdoor, Inc. et al. v. Valley Hill Tree Farm*, LLC, No. 26-5001, seeking declarations as to the unexecuted lease and the ownership of tree inventory. Lewis Rice's conduct is directly at issue in that adversary.

51. The filing of the adversary proceeding has also cost the Estate tens of thousands of dollars in legal fees for counsel in Kentucky.

H. Coaching a Professional to Misrepresent Pre-Petition Claims

52. BerganKDV, Creative Planning LLC ("Bergan") was retained as an estate professional. Lewis Rice represented to this Court, the United States Trustee, and other parties in interest that Bergan had waived its pre-petition fees as a condition of its retention as a "disinterested" professional under 11 U.S.C. § 327.

53. Internal Lewis Rice records, submitted to this Court in connection with the Bergan Dispute, reveal that Lewis Rice identified and considered the problem of Bergan's pre-petition claim and apparently directed Bergan to move the pre-petition amount into post-petition work on a spreadsheet—an arrangement that Lewis Rice's own internal analysis described as "transparently an attempt to pay [a] prepetition claim." The United States Trustee confirmed it would not have consented to Bergan's employment but for Lewis Rice's representation that Bergan had waived its pre-petition fees.

I. Disclosure of Confidential Information to Schwope's Personal Bankruptcy Counsel

54. Following Lewis Rice's termination as Debtors' counsel, Lewis Rice continued to owe professional obligations to the Debtors as former counsel, including duties of confidentiality. Records produced in connection with the Contested Fee Matter reveal that Brown & Ruprecht,

PC—specifically attorney Frank Wendt—served as Schwope's personal bankruptcy counsel and communicated with Lewis Rice after its termination, obtaining documents and information from Lewis Rice for use in representing Schwope personally.

J. Resulting Damages

55. The damages caused by Lewis Rice's misconduct include, without limitation: (a) fees paid or payable to Lewis Rice for services that were unnecessary, duplicative, or performed for the benefit of Schwope rather than the estates—approximately $1,536,092.40 in total fees and expenses sought, plus the professional fees of the Committee and the fees and expenses of FMG; (b) diminution in estate value resulting from Lewis Rice's failure to develop and pursue any strategy to maximize value during the critical first seven months of the case; (c) the loss of inventory and other assets associated with the VHTF matter; and (d) attorney fees and costs incurred by the Committee in investigating, prosecuting, and remedying Lewis Rice's misconduct.

CLAIMS FOR RELIEF

Count I – Legal Malpractice (Against All Defendants)

56. Plaintiff realleges and incorporates by reference all preceding paragraphs.

57. Lewis Rice undertook to represent the Debtors as counsel to debtors-in-possession in these Chapter 11 proceedings. An attorney-client relationship existed between Lewis Rice and each of the Debtors.

58. As attorneys representing debtors-in-possession, Lewis Rice and its individual attorneys owed the Debtors and their estates a duty to exercise the degree of care, skill, and diligence that reasonably competent bankruptcy attorneys in the same or similar circumstances would exercise. This duty was heightened given Lewis Rice's role as counsel to a debtor-in-possession with fiduciary duties to the estate.

59. Lewis Rice breached its duty of care by, among other things: (a) treating Schwope rather than the Debtors and their estates as its client; (b) opposing the appointment of a CRO for the purpose of preserving Schwope's personal control; (c) failing to develop or pursue any strategy reasonably designed to maximize the value of the estates; (d) obstructing access to critical financial information by creditors entitled to receive it; (e) pursuing a third-party DIP financing strategy Lewis Rice knew had no reasonable prospect of success; (f) contesting the appointment of a Chapter 11 trustee rather than counseling the Debtors to accept appropriate oversight; (g) providing confidential Debtor documents to a terminated employee (Schwope) without authorization; (h) representing adverse non-debtor party VHTF without disclosure; and (i) potentially coaching a proposed estate professional to misrepresent a pre-petition claim.

60. But for Lewis Rice's malpractice, the estates would have been in a substantially better position. Earlier and appropriate restructuring advice, transparent financial reporting, and strategies aimed at maximizing estate value rather than preserving Schwope's control would have preserved significant estate assets and reduced the costs and losses that creditors ultimately suffered.

61. As a direct and proximate result of Lewis Rice's malpractice, the Debtors' estates and their creditors have suffered damages in an amount to be determined at trial.

Count II – Breach of Fiduciary Duty
(Against All Defendants)

62. Plaintiff realleges and incorporates by reference all preceding paragraphs. As court-approved professionals retained under 11 U.S.C. § 327, Lewis Rice and its individual attorneys owed fiduciary duties of loyalty, care, and good faith to the Debtors' estates and their creditors.

These duties required Lewis Rice to act at all times in the best interests of the estates, not in the personal interests of Schwope.

63. Lewis Rice breached its fiduciary duties by the conduct described herein, including without limitation: (a) treating Schwope as its client and taking direction from him in preference to the best interests of the estates; (b) expressly pledging to Schwope that Lewis Rice had "his back" and would act as his personal protector; (c) actively opposing mechanisms—the CRO, governance structures, and the Chapter 11 trustee—that were designed to protect creditors and the estate; (d) spending 64.2% of its time on matters benefiting Schwope while spending less than 4% on strategies to maximize estate value; (e) suppressing truthful financial information that would have led to earlier and less costly restructuring; and (f) taking actions after termination—providing the Unexecuted Lease to Schwope—that potentially facilitated fraud on the estate.

64. Lewis Rice's breaches of fiduciary duty were willful, knowing, and/or reckless. Lewis Rice's own internal communications demonstrate that its senior partners were fully aware they were prioritizing Schwope's interests over the estates' interests.

65. As a direct and proximate result of Lewis Rice's breaches of fiduciary duty, the Debtors' estates and their creditors have suffered damages in an amount to be determined at trial. Because Lewis Rice's conduct was willful, knowing, and reckless, Plaintiff is entitled to an award of punitive damages.

Count III – Negligence
(Against All Defendants)

66. Plaintiff realleges and incorporates by reference all preceding paragraphs.

67. Lewis Rice owed a duty of care to the Debtors' estates as court-approved professionals. The scope of this duty encompassed all aspects of Lewis Rice's professional

engagement, including the advice it gave, the strategy it pursued, the manner in which it staffed the engagement, and the care it exercised in handling confidential client information.

68. Lewis Rice breached this duty through its overall failure to exercise reasonable professional care, including by (a) staffing all aspects of the engagement with senior partners billing at $688.50–$809.50 per hour where less expensive attorneys or paralegals could have been used; (b) incurring duplicative fees across multiple senior partners for the same tasks; (c) failing to conduct any meaningful analysis of asset disposition options despite such analysis being central to the estates' administration; (d) allowing the cases to languish for seven months without any viable exit plan; and (e) failing to adequately supervise junior attorneys and staff.

69. As a direct and proximate result of Lewis Rice's negligence, the Debtors' estates and their creditors suffered damages in an amount to be proven at trial.

Count IV – Breach of Duty of Loyalty
(Against All Defendants)

70. Plaintiff realleges and incorporates by reference all preceding paragraphs.

71. Lewis Rice owed an undivided duty of loyalty to the Debtors' estates. This duty required Lewis Rice to act solely in the interests of the estates, to avoid conflicts of interest, and to disclose any actual or potential conflicts.

72. Lewis Rice breached its duty of loyalty by: (a) simultaneously representing Schwope and VHTF in their personal capacities and interests adverse to those of the estates, without disclosure or consent; (b) communicating confidential Debtor information to Schwope's personal bankruptcy counsel without authorization; (c) providing the Unexecuted Lease to Schwope without authorization; and (d) placing Schwope's personal interests in control ahead of the estates' interests throughout the representation.

73. These conflicts of interest were material, undisclosed, and resulted in direct harm to the estates. Lewis Rice's failure to remain disinterested disqualifies it from any compensation under 11 U.S.C. §§ 327, 328(c), and 330, and renders it liable for disgorgement of all fees received and for the damages caused by these conflicts.

Count V – Aiding and Abetting Breach of Fiduciary Duty
(Against All Defendants)

74. Plaintiff realleges and incorporates by reference all preceding paragraphs.

75. Schwope, as the sole officer, manager, director, and controlling person of each of the Debtors, owed fiduciary duties to the Debtors and their estates. Schwope breached those duties by, among other things, refusing to right-size the businesses, refusing to cooperate with restructuring efforts, engaging in self-dealing transactions, and potentially orchestrating the fraudulent signed lease in the VHTF matter.

76. Lewis Rice had actual knowledge of Schwope's fiduciary duties to the Debtors' estates and of Schwope's ongoing breaches of those duties. Lewis Rice's own internal communications reflect awareness that Schwope was acting contrary to the interests of the estates, that the inventory and real estate values were overstated, and that Schwope refused to acknowledge this reality.

77. Notwithstanding this knowledge, Lewis Rice actively participated in and substantially assisted Schwope's breaches by: (a) opposing governance structures that would have checked Schwope's self-dealing; (b) obstructing disclosure of financial information that would have revealed the extent of Schwope's mismanagement; (c) fighting the appointment of a Chapter 11 trustee to preserve Schwope's control; and (d) providing Schwope with the Unexecuted Lease after his termination.

78. As a direct and proximate result of Lewis Rice's aiding and abetting of Schwope's breaches of fiduciary duty, the Debtors' estates and their creditors have suffered damages in an amount to be proven at trial.

Count VI – Unjust Enrichment
(Against Lewis Rice LLC)

79. Plaintiff realleges and incorporates by reference all preceding paragraphs.

80. Lewis Rice LLC claimed fees and expense reimbursements from the Debtors' estates totaling approximately $1,536,092.40 (combining first and second interim awards and amounts sought in the Fee Application), including approximately $863,817.13 already awarded on an interim basis.

81. These amounts were paid from estate assets that belonged to the Debtors' creditors. Because Lewis Rice LLC was not disinterested, represented interests adverse to the estates, and breached its fiduciary duties, it was not entitled to receive these funds.

82. It would be inequitable and unjust to allow Lewis Rice LLC to retain fees paid for services that were rendered not for the benefit of the estates but for the personal benefit of Schwope, services that were unnecessary and duplicative, and services that actively harmed the estates.

83. Plaintiff is entitled to recovery of all sums unjustly received by Lewis Rice in an amount to be proven at trial.

Count VII – Equitable Disgorgement
(Against All Defendants)

84. Plaintiff realleges and incorporates by reference all preceding paragraphs.

85. As a result of the misconduct described herein, Lewis Rice and its individual attorneys received fees and expense reimbursements to which they were not entitled.

Disgorgement of these sums—including all amounts previously awarded on an interim basis—is necessary to prevent unjust enrichment and to remedy the harms caused by Lewis Rice's fiduciary breaches and professional misconduct.

86. Pursuant to 11 U.S.C. § 327 and 330, and this Court's equitable powers under 11 U.S.C. § 105(a), Plaintiff is entitled to an order directing the disgorgement of all fees and expenses paid to Lewis Rice, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in Plaintiff's favor and against Defendants as follows:

A. Awarding compensatory damages against all Defendants, jointly and severally, in an amount to be proven at trial, for all losses suffered by the Debtors' estates as a result of Lewis Rice's malpractice, breach of fiduciary duty, negligence, breach of the duty of loyalty, and aiding and abetting, including without limitation: diminution in estate value; unnecessary fees and expenses paid to Lewis Rice; litigation costs incurred as a result of Lewis Rice's obstruction, bad faith, and improper advice; and all other direct, indirect, and consequential damages;

B. Awarding punitive damages against all Defendants for their willful, knowing, and reckless breaches of fiduciary duty and related misconduct, in an amount sufficient to deter such conduct;

C. Ordering Lewis Rice to disgorge all fees and expense reimbursements received from the Debtors' estates, including all amounts awarded on a first and second interim basis, in an amount to be proven at trial;

D. Denying Lewis Rice's Final Fee Application [Doc. 628] in its entirety, or in the alternative, substantially reducing all amounts awarded therein;

E. Awarding Plaintiff its attorneys' fees and costs incurred in investigating, prosecuting, and remedying Lewis Rice's misconduct, to the extent permitted by law and equity;

F. Awarding pre- and post-judgment interest at the maximum lawful rate; and

G. Awarding such other and further relief as this Court deems just and equitable.

Respectfully submitted,

POSPISIL SWIFT LLC

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