

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

In re:)	Chapter 11
)	
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , ¹)	Case No. 21-11336 (KBO)
)	
Debtors.)	Jointly Administered
)	
)	Obj. Deadline: 11/16/21 at 4:00 p.m. (ET)
)	Hrg. Date: 11/23/21 at 10:00 a.m. (ET)

**MOTION OF DEBTORS FOR ENTRY OF ORDER
AUTHORIZING THE EMPLOYMENT AND PAYMENT OF
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

Gulf Coast Health Care, LLC (“**Gulf Coast**”) and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby move (the “**Motion**”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), granting the relief described below. In support thereof, the Debtors respectfully represent as follows:

RELIEF REQUESTED

1. By the Motion, the Debtors respectfully request entry of the Proposed Order permitting the continued use of services of certain professionals employed in the ordinary course of the Debtors' business (each, an "**OCP**" and, collectively, the "**OCPs**") to provide the Debtors with services in matters unrelated to the administration of the Chapter 11 Cases (as defined below) without the filing of formal applications for employment and compensation for each OCP under Bankruptcy Code sections 327 and 328. The Debtors seek to employ the OCPs on terms

The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, which cases are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

substantially similar to those in effect before the Petition Date, though subject to the conditions described herein. The Debtors represent that (a) they wish to employ the OCPs for the day-to-day operation of the Debtors' businesses, *nunc pro tunc* to the Petition Date, (b) the fees charged and expenses incurred by the OCPs will be minimized, and (c) the OCPs will not perform substantial services related to the administration or prosecution of the Chapter 11 Cases without the Court's authorization. A preliminary list of the Debtors' current OCPs is attached as **Exhibit 1** to the Proposed Order. Other OCPs have been and may be employed by the Debtors from time to time.

JURISDICTION AND VENUE

2. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The legal predicates for the relief requested herein are sections 105(a), 327, 330, and 331 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

4. The Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with the Motion in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

BACKGROUND

I. The Chapter 11 Cases

5. On October 14, 2021 (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Chapter 11 Cases are being jointly administered for procedural purposes only.

6. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. On October 25, 2021, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “**Committee**”) pursuant to Bankruptcy Code section 1102(a) [Docket No. 111]. No trustee or examiner has been appointed in the Chapter 11 Cases.

8. Additional information regarding the Debtors and these Chapter 11 Cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of these Chapter 11 Cases, is set forth in the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 16] (the “**First Day Declaration**”).

II. Employment and Compensation Procedures

9. For administrative efficiency, the Debtors seek to retain and employ the OCPs without having to file separate formal retention and compensation applications for each of the OCPs pursuant to Bankruptcy Code sections 327 and 328. It would be unduly burdensome to apply separately to this Court for approval of the retention of each OCP. Similarly, it would be burdensome to apply separately for such OCPs’ compensation and reimbursement for expenses. Moreover, certain of the OCPs may be unfamiliar with the compensation process employed in a bankruptcy case and might be less inclined to work for the Debtors if forced to adhere to such

requirements in order to be compensated for services rendered. Therefore, the Debtors request that the Court excuse the OCPs from filing separate retention and compensation applications and propose that the following procedures govern the employment and compensation of the OCPs (the “**OCP Procedures**”):

- (a) Before the Debtors may compensate any OCP, the Debtors must first file with the Court and serve upon (i) proposed counsel to the Debtors, McDermott Will & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, IL 60606, Attn: Daniel M. Simon and Emily C. Keil and 1007 North Orange Street, 10th Floor, Wilmington, DE 19801, Attn: David R. Hurst; (ii) proposed counsel to the Committee, Greenberg Traurig LLP, 77 West Wacker Drive, Suite 3100, Chicago, IL 60601 (Attn: Nancy A. Peterman) and Terminus 200, 3333 Piedmont Road NE, Suite 2500, Atlanta, GA 30305 (Attn: David B. Kurzweil); (iii) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 Attn: Joseph J. McMahon, Jr.; and (iv) parties entitled to notice in the Chapter 11 Cases pursuant to Local Rule 2002-1(b) (collectively, the “**Notice Parties**”) a Declaration of Ordinary Course Professional (the “**OCP Declaration**”), substantially in the form attached as Exhibit 2 to the Proposed Order. The OCP Declaration will be filed on or before the later of (x) sixty (60) days after the Petition Date or (y) thirty (30) days after an OCP’s commencement of postpetition services.
- (b) The Notice Parties will have ten (10) days after service of each OCP Declaration (the “**Objection Deadline**”) to object to the Debtors’ employment and compensation of such OCP. Any objecting party will serve any such objection upon each of the Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be consensually resolved within ten (10) days of its receipt by the Debtors, the objection will be scheduled for a hearing before the Court at the next regularly-scheduled omnibus hearing date or such other date otherwise agreeable to the parties thereto. If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular OCP, the Debtors will be authorized to employ and compensate such OCP in accordance with the OCP Procedures.
- (c) After retention in accordance with the procedures set forth above, each OCP may present to the Debtors a monthly invoice setting forth in reasonable detail the nature of the services rendered by such OCP for the applicable monthly period and calculated in accordance with such OCP’s standard billing rates (without prejudice to the Debtors’ right to dispute any invoice). The Debtors will be authorized to pay, without the requirement of further Court approval, 100% of the postpetition fees

charged and expenses incurred by such OCP; *provided* that the fees charged by an OCP, excluding costs, do not exceed \$15,000 per month on average over a rolling three-month period (the “**Average Monthly Cap**”).

- (d) In the event that the fees charged and invoiced by any OCP exceed the Average Monthly Cap set forth in clause (c) above, such OCP will be required to seek this Court’s approval of all postpetition fees and expenses in accordance with Bankruptcy Code sections 330 and 331, the Bankruptcy Rules, the Local Rules, and the Court’s orders (including those governing interim compensation of professionals).
- (e) Beginning with the fiscal quarter ending December 31, 2021, within thirty (30) days following the end of each fiscal quarter, the Debtors will file with the Court and serve upon the Notice Parties a statement that will include: (i) the name of each OCP; (ii) the amount paid as compensation for services rendered and reimbursement of expenses incurred by each OCP during the previous quarter; and (iii) a general description of the services rendered by each OCP during the previous quarter. The Debtors will continue to file such statements through the earlier of the dismissal or conversion of the Chapter 11 Cases or the confirmation of a chapter 11 plan.
- (f) The Debtors reserve the right to supplement the list of OCPs in **Exhibit 1** to the Proposed Order from time to time, in their discretion, as necessary to add or remove OCPs without the need for further Court approval. In such event, the Debtors will file a supplemental list of OCPs with the Court and serve it on the Notice Parties. The Notice Parties will have ten (10) days after service of a supplemental list (the “**Supplemental List Objection Deadline**”) to object to the Debtors’ employment and compensation of any professionals on a supplemental list. If no objection is received from any of the Notice Parties by the Supplemental List Objection Deadline, the Debtors will be authorized to employ and compensate each additional OCP on such supplemental list in accordance with the OCP Procedures set forth above.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

10. Although some OCPs would continue to provide services to the Debtors even if the Court required all OCPs to submit formal applications for employment and compensation, other OCPs might discontinue their services. If the expertise and continuity of service of an OCP were lost, the Debtors would incur unnecessary expenses to replace the OCP with other professionals that lack that OCP’s expertise and experience with the Debtors. The OCP

Procedures will allow the Debtors to avoid any disruption in the professional services required in connection with the operation of the Debtors' businesses and, therefore, the Debtors submit that the OCP Procedures are in the best interests of their estates.

11. The OCPs will not be involved in the administration of the Chapter 11 Cases. Rather, the OCPs will provide professional services in connection with the Debtors' businesses, *i.e.*, services that the OCPs performed for the Debtors before the Petition Date. Therefore, the Debtors do not believe that the OCPs are "professionals," the employment of which the Court must approve under Bankruptcy Code section 327. *See, e.g., In re First Merchs. Acceptance Corp.*, No. 97-1500 JJF, 1997 WL 873551, at *3 (D. Del. Dec. 15, 1997) (discerning six factors for determining whether someone is a "professional," as the term is used in Bankruptcy Code section 327); *In re Argus Grp. 1700, Inc.*, 199 B.R. 525, 534 n.18 (Bankr. E.D. Pa. 1996) ("[T]he term 'professional person' is a 'term of art reserved for those persons who play an intimate role in the reorganization of a debtor's estate.'") (quoting *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986)); *Elstead v. Nolden (In re That's Entm't Mktg. Grp., Inc.)*, 168 B.R. 226, 230 (N.D. Cal. 1994) ("A person's status as a 'professional' is not determinative; the inquiry focuses on that person's duties. 'If the duties involved are central to the administration of the estate, such duties are professional in nature.'") (quoting *In re Sieling Assocs. Ltd. P'ship*, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991)).

12. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested herein to avoid any controversy regarding the Debtors' employment and compensation of the OCPs during the Chapter 11 Cases. Notwithstanding the relief requested in the Motion and any OCP's inclusion on **Exhibit 1** to the Proposed Order, the Debtors will seek the Court's

leave before employing a professional involved in the actual administration of the Chapter 11 Cases.

13. The Debtors thus submit that granting the relief requested herein is appropriate in the Chapter 11 Cases.

NOTICE

14. The Debtors will provide notice of the Motion to: (a) the U.S. Trustee; (b) proposed counsel to the Committee; (c) the Internal Revenue Service; (d) the Securities and Exchange Commission; (e) the United States Attorney for the District of Delaware; (f) the Centers for Medicare & Medicaid Services; (g) counsel for the Omega Entities; (h) counsel for New Ark Capital, LLC; (i) counsel for Barrow Street Capital LLC and its affiliates; (j) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings); and (k) all parties entitled to notice pursuant to Local Rule 2002-1(b). The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

15. No previous request for the relief sought herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
November 2, 2021

MCDERMOTT WILL & EMERY LLP

/s/ David R. Hurst

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