

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

In re:	)	Chapter 11
	)	
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11336 (KBO)
	)	
	)	(Jointly Administered)
	)	
Debtors.	)	<b>Obj Deadline: 11/29/21 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: 12/2/21 at 10:00 a.m. (ET)</b>

**APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
OF GULF COAST HEALTH CARE, LLC, ET AL. FOR ENTRY OF AN ORDER  
AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING,  
INC. AS FINANCIAL ADVISOR *NUNC PRO TUNC* TO OCTOBER 28, 2021**

The Official Committee of Unsecured Creditors (the “Committee”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby moves the Court for entry of an order, substantially in the form attached hereto as Exhibit A, under sections 328 and 1103 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 Procedures of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the employment and retention of the consulting firm of FTI Consulting, Inc., together with its wholly owned subsidiaries (“FTI”), as financial advisor to the Committee. In support of this application (the “Application”), the Committee respectfully states as follows:

## **Jurisdiction and Venue**

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C.

<sup>1</sup> There are 62 Debtors in these chapter 11 cases (the “Chapter 11 Cases”). A complete list of the Debtors and the last four digits of their federal tax identification numbers can be found on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The Debtors’ corporate headquarters and service address is 9511 Holsberry Lane, Suite B11, Pensacola, FL 32534.

§ 1408. The statutory predicates for the relief sought in this Application are Bankruptcy Code sections 328 and 1103. This Application is a core proceeding pursuant to 28 U.S.C. 157.

### **Background**

2. On October 14, 2021 (the “Petition Date”), the Debtors filed with this Court their voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Pursuant to Bankruptcy Code sections 1107 and 1108, the Debtors are continuing to operate their businesses and manage their properties and assets as debtors in possession.

3. On October 25, 2021, the Office of the United States Trustee held a meeting to appoint the Committee pursuant to Bankruptcy Code section 1102. On October 27, 2021, the Committee selected Greenberg Traurig, LLP as its counsel, and on October 28, 2021, the Committee selected FTI as its financial advisor. The Committee consists of the following five members: (a) Omnicare, Inc.; (b) Medline Industries LP; (c) Gordon Food Service; (d) Elite Medical Staffing; and (e) Vista Clinical Diagnostics, LLC.

### **Relief Requested**

4. By this Application, the Committee seeks to employ and retain FTI pursuant to Bankruptcy Code sections 328(a) and 1103(a) to perform financial advisory services for the Committee in these Chapter 11 Cases, *nunc pro tunc* to October 28, 2021.

### **The Retention of FTI is Warranted**

5. The Committee is familiar with the professional standing and reputation of FTI. The Committee understands and recognizes that FTI has a wealth of experience in providing financial advisory services in restructurings and reorganizations and enjoys an excellent reputation for services it has rendered in chapter 11 cases on behalf of debtors and creditors throughout the United States. FTI’s services are necessary to enable the Committee to assess and monitor the

efforts of the Debtors and their professional advisors to maximize the value of their estates and reorganize successfully. Further, FTI is well qualified and able to represent the Committee in a cost-effective, efficient, and timely manner.

### **Scope of Services**

6. FTI will provide such financial advisory services to the Committee and its legal advisor as they deem appropriate and feasible to advise the Committee in the course of these Chapter 11 Cases, including, but not limited to, the following:

- Assistance in the review of financial related disclosures required by the Court, including the Schedules of Assets and Liabilities, the Statement of Financial Affairs, and Monthly Operating Reports;
- Assistance in the preparation of analyses required to assess any proposed Debtor-In-Possession (“DIP”) financing or use of cash collateral;
- Assistance with the assessment and monitoring of the Debtors’ short-term cash flow, liquidity, and operating results;
- Assistance with the review of the Debtors’ proposed key employee retention and other employee benefit programs;
- Assistance with the review of the Debtors’ analysis of core business assets and the potential disposition or liquidation of non-core assets;
- Assistance with the review of the Debtors’ cost-benefit analysis with respect to the affirmation or rejection of various executory contracts and leases;
- Assistance with the review of the Debtors’ identification of potential cost savings, including overhead and operating expense reductions and efficiency improvements;
- Assistance with review of any tax issues associated with, but not limited to, claims/stock trading, preservation of net operating losses, refunds due to the Debtors, plans of reorganization, and asset sales;
- Assistance in the review of the claims reconciliation and estimation process;
- Assistance in the review of other financial information prepared by the Debtors, including, but not limited to, cash flow projections and budgets, business plans, cash receipts and disbursement analysis, asset and liability analysis, and the economic analysis of proposed transactions for which Court approval is sought;
- Attendance at meetings and assistance in discussions with the Debtors, potential investors, banks, other secured lenders, the Committee, any other official committees organized in these chapter 11 proceedings, the U.S. Trustee, other parties in interest, and the foregoing parties’ respective professionals, as requested;
- Assistance in the review or preparation of information and analysis necessary for the confirmation of a plan and related disclosure statement in these chapter 11 proceedings;
- Assistance in the evaluation and analysis of avoidance actions, including fraudulent and preferential transfers;

- Assistance in the prosecution of Committee responses or objections to the Debtors' motions, including attendance at depositions and provision of expert reports or testimony on case issues as required by the Committee; and
- Render other general business consulting or other assistance consistent with the role of a financial advisor the Committee or its counsel may deem necessary and not duplicative of services provided by other professionals in this proceeding.

**FTI's Eligibility for Employment**

7. FTI has informed the Committee that, except as may be set forth in the Declaration of Clifford A. Zucker (the "Zucker Declaration"), attached hereto as Exhibit B, it (i) has no connection with the Debtors, their creditors, their equity security holders, other parties in interest or their respective attorneys or accountants, the U.S. Trustee or any person employed in the office of the U.S. Trustee, or any United States Bankruptcy Judge of the District of Delaware in any matter related to the Debtors and their estates, (ii) does not hold any interest adverse to the Debtors' estates, and (iii) believes it is a "disinterested person" as defined in Bankruptcy Code section 101(14).

8. To the best of the Committee's knowledge and based upon the Zucker Declaration, FTI's connections with the Debtors, creditors, any other party in interest, or their respective attorneys are disclosed on Exhibit B to the Zucker Declaration. FTI has not provided, and will not provide, any professional services to the Debtors, any of the creditors, other parties-in-interest, or their respective attorneys and accountants with regard to any matter related to these Chapter 11 Cases.

9. FTI will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new material facts or relationships are discovered, FTI will supplement its disclosure to the Court.

10. FTI has agreed not to share with any person or firm the compensation to be paid for professional services rendered in connection with these cases.

11. Based on the foregoing, FTI believes it is eligible to represent the Committee under Bankruptcy Code section 1103(b).

### **Terms of Retention**

12. FTI is not owed any amounts with respect to pre-petition fees and expenses.

13. The Committee understands that FTI intends to apply to the Court for allowances of compensation and reimbursement of expenses for its financial advisory services in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court, and guidelines established by the United States Trustee.

14. FTI seeks to be compensated on an hourly fee basis, plus reimbursement of actual and necessary expenses incurred by FTI.

15. The customary hourly rates, subject to periodic adjustments, charged by FTI professionals anticipated to be assigned to these cases are as follows:

#### **United States**

	<u>Per Hour (USD)</u>
Senior Managing Directors	\$950 - 1,295
Directors / Senior Directors / Managing Directors	715 - 935
Consultants/Senior Consultants	385 - 680
Administrative / Paraprofessionals	155 - 290

16. On a monthly basis, FTI will provide hours expended at a summarized level that includes the total number of hours worked by professional and the total number of hours spent by task category. For each task category, FTI will provide an explanation of the type of work performed.

17. FTI understands that interim and final fee awards are subject to approval by this Court.

### Indemnification

18. In addition to the foregoing, and as a material part of the consideration for the agreement of FTI to furnish services to the Committee pursuant to the terms of this Application, FTI believes that the following indemnification terms are customary and reasonable for financial advisors in other chapter 11 cases:

- a. subject to the provisions of subparagraphs (b) and (c) below and approval of the Court, the Debtors are authorized to indemnify, and shall indemnify, FTI for any claims arising from, related to, or in connection with FTI's engagement under this Application, but not for any claim arising from, related to, or in connection with FTI's post-petition performance of any other services other than those in connection with the engagement, unless such post-petition services and indemnification therefore are approved by this Court; and
- b. the Debtors shall have no obligation to indemnify FTI for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from FTI's gross negligence, willful misconduct or fraud unless the Court determines that indemnification would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003), or (ii) settled prior to a judicial determination as to FTI's gross negligence, willful misconduct or fraud, but determined by this Court, after notice and a hearing, to be a claim or expense for which FTI is not entitled to receive indemnity under the terms of this Application; and
- c. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these Chapter 11 Cases, FTI believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtors may not pay any such amounts to FTI before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by FTI for indemnification, and not as a provision limiting the duration of the Debtors' obligation to indemnify FTI.

19. The Committee believes that indemnification is customary and reasonable for financial advisors in chapter 11 proceedings. *See, e.g., In re Medley LLC*, Case No. 21-10526-KBO (Bankr. D. Del. June 4, 2021) [ECF 193]; *see also In re Joan & David Halpern, Inc.*, 248 B.R. 43 (Bankr. S.D.N.Y. 2000).

**No Prior Request**

20. No prior Application for the relief requested herein has been made to this or any other Court.

**Notice**

21. Notice of this Application was provided to: (a) the Office of United States Trustee; (b) the Debtors; (c) counsel to the Debtors; (d) counsel for Omega Healthcare Investors, Inc.; (e) counsel for New Ark Capital, LLC; (f) counsel for Barrow Street Capital LLC and its affiliates; (g) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings); and (h) any party requesting notice pursuant to Bankruptcy Rule 2002 at the time of service. The Committee submits that, given the nature of the relief requested, no further notice is necessary.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Committee respectfully requests that the Court enter an order, substantially in the form attached hereto, authorizing the Committee to employ and retain FTI as financial advisors for the Committee for the purposes set forth above, nunc pro tunc to October 28, 2021, and grant such further relief as is just and proper.

Dated: November 11, 2021

**THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF GULF COAST  
HEALTH CARE, LLC, *ET AL.***

/s/ Karen Dailey

Karen Dailey, solely in her capacity as Chair of the Official Committee of Unsecured Creditors of Gulf Coast Health Care, LLC, *et al.*, and not in any other capacity.