

**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)
)	

**APPLICATION OF DANIEL T. MCMURRAY, PATIENT CARE OMBUDSMAN
SEEKING AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT
OF KLEHR HARRISON HARVEY BRANZBURG LLP AS HIS DELAWARE
CO-COUNSEL EFFECTIVE *NUNC PRO TUNC* TO OCTOBER 25, 2021**

Daniel T. McMurray (“**the Ombudsman**”) files this application (this “**Application**”) for the entry of an order (the “**Order**”), substantially in the form attached hereto as **Exhibit A**, authorizing him to retain and employ Klehr Harrison Harvey Branzburg LLP (“**Klehr Harrison**”) as his Delaware co-counsel effective *nunc pro tunc* to the date of his appointment as the Patient Care Ombudsman herein, October 25, 2021 to make sure, among other things, that he complies with all Delaware rules, procedures and practices relating to any activities in the Delaware courts. In support of this Application, the Ombudsman submits the declaration of Raymond H. Lemisch, a partner at Klehr Harrison (the “**Lemisch Declaration**”), which is attached hereto as **Exhibit B**. In further support of this Application, the Ombudsman respectfully states as follows.

¹ 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, for which the Debtors have requested joint administration. 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’ proposed 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.

BACKGROUND

1. 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**”).

2. The Chapter 11 Cases are being jointly administered.

3. 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.

4. 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].

5. No trustee or examiner has been appointed in the Chapter 11 Cases.

6. Additional information regarding the Debtors and the Chapter 11 Cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of the 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**”).

7. On October 20, 2021, this Court entered an Order directing the appointment of a patient care ombudsman under Section 333 of the Bankruptcy Code (the “**Appointment Order**”) [D.I. 91].

8. On October 25, 2021, the Office of the United States Trustee for this district filed a notice of appointment of the Ombudsman (the “**Notice**,”) [D.I. 112].

9. The Ombudsman is a Senior Managing Director of Focus Management Group USA, Inc., which specializes, *inter alia*, in the management and turnaround of distressed health

care businesses. Although the Ombudsman has vast experience in the health care field, the Ombudsman is not an attorney and requires the assistance of bankruptcy counsel.

JURISDICTION AND VENUE

10. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). The ombudsman confirms his consent, pursuant to Bankruptcy Rule 7008 and Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this motion to the extent 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.

11. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The statutory bases for the relief requested herein are sections 105(a), 327(a), 328(a), and 330 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rules 2014-1 and 2016-1.

RELIEF REQUESTED

13. By this Application, the Ombudsman desires to retain and employ Klehr Harrison as his Delaware co-counsel in this case *nunc pro tunc* to the date of appointment of the Ombudsman, October 25, 2021. The Ombudsman has determined that Klehr Harrison has the resources and experience necessary to represent him, as described hereinafter. Klehr Harrison’s attorneys have substantial experience with complex reorganization cases and health care cases and have vast experience in the Delaware courts. Given the nature of these cases, including

the specific duties required under section 333 of the Bankruptcy Code, as discussed hereinafter, the Ombudsman believes that retention of Klehr Harrison is appropriate and necessary.

KLEHR HARRISON'S QUALIFICATIONS

14. The Ombudsman seeks to retain Klehr Harrison because of Klehr Harrison's recognized expertise and extensive experience and knowledge in complex bankruptcy proceedings and its knowledge of Delaware court rules, practices and procedures.

15. Klehr Harrison has been actively involved in major chapter 11 cases including, among others: *In re Quorum Health Corporation*, Case No. 20-10766 (KBO) (Bankr. D. Del April 7, 2020 in which Klehr Harrison represented the Patient Care Ombudsman); *April In re Clover Technologies Group, LLC*, Case No. 19-12680 (KBO) (Bankr. D. Del. Dec. 16, 2019); *In re Anna Holdings LLC*, Case No. 19-12551 (CSS) (Bankr. D. Del. Dec. 1, 2019); *In re Charming Charlie Holdings Inc.*, Case No. 19-11534 (CSS) (Bankr. D. Del. July 11, 2019); *In re RUI Holding Corp.*, Case No. 19-11509 (JTD) (Del. July 7, 2019); *In re 1515-GEEnergy Holding Co. LLC, et al.*, No. 19-10303 (LSS) (Bankr. D. Del. February 14, 2019); *In re VER Technologies HoldCo, LLC, et al.*, No. 18-10834 (KG) (Bankr. D. Del. April 5, 2018); *In re Charming Charlie Holdings, Inc., et al.*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 11, 2017); *In re Limited Stores Company, LLC, et al.*, No. 17-10124 (KJC) (Bankr. D. Del. Feb. 14, 2017); *In re Aspect Software Parent, Inc., et al.*, No. 16-10597 (MFW) (Bankr. D. Del. May 23, 2016); *In re Samson Resource Corporation, et al.*, No. 15-11934 (CSS) (Bankr. D. Del. Nov. 24, 2015); *In re Tactical Intermediate Holdings, Inc., et al.*, No. 14-11659 (KG) (Bankr. D. Del. July 8, 2014); *In re Edgenet, Inc., et al.*, No. 14-10066 (BLS) (Bankr. D. Del. Jan. 14, 2014); *In re Physiotherapy Holdings, Inc., et al.*, No. 13-12965 (KG) (Bankr. D. Del. Nov. 12, 2013); *In re EWGS Intermediary, LLC, et al.*, No. 13-12876 (MFW) (Bankr. D. Del. Nov. 4, 2013); *In re Life Uniform Holding Corp. et al.*, No. 13-11391 (KJC) (Bankr. D. Del. May 29, 2013); *In re Conexant Systems, Inc., et al.*, No. 13-10367 (MFW) (Bankr. D. Del.

Feb. 28, 2013); *In re TMP Directional Marketing LLC, et al.*, No. 11-13835 (MFW) (Bankr. D. Del. Dec. 5, 2011); *In re Appleseeds Intermediate Holdings LLC, et al.*, No. 11-10160 (KG) (Bankr. D. Del. Jan. 19, 2011); *In re North American Petroleum Corp., et al.*, No. 10-11707 (CSS) (Bankr. D. Del. June 21, 2010); *In re Atrium Corporation, et al.*, No. 10-10150 (BLS) (Bankr. D. Del. Jan. 10, 2010); *In re Drug Fair Group, Inc., et al.*, No. 09-10897 (BLS) (Bankr. D. Del. March 18, 2009); *In re Muzak Holdings, LLC, et al.*, No. 09-10422 (KJC) (Bankr. D. Del. Feb. 10, 2009); *In re Jevic Holding Corp., et al.*, No. 08-11006 (BLS) (Bankr. D. Del. May 20, 2008).²

SERVICES TO BE PROVIDED

16. Subject to further order of the Court, the Ombudsman requests the retention and employment of Klehr Harrison to render the following legal services, using its best efforts not to duplicate the services provided by other counsel to the Ombudsman, among others, as directed by the Ombudsman:

- (a) providing legal advice regarding the Local Rules, practices, precedent, regulations, and procedures and providing substantive and strategic advice on how to accomplish the Ombudsman's goals in connection with his duties in these cases, bearing in mind that the Court relies on Delaware co-counsel such as Klehr Harrison to be involved in all aspects of each bankruptcy proceeding;
- (b) appearing in Court, depositions, and at any meeting with the U.S. Trustee and any meeting at any given time on behalf of the Ombudsman as his Delaware co-counsel;
- (c) performing various services in connection with the Ombudsman's duties in these cases, including, without limitation, (i) preparing certificates of no objection, certifications of counsel, notices of fee applications and hearings, (ii) monitoring the docket for filings and coordinating with the Ombudsman's counsel, Neubert Pepe & Monteith. P.C. ("**NPM**") on pending matters that need responses, (iii) preparing and maintaining critical dates memoranda to monitor pending applications, motions, hearing dates and other matters and the deadlines associated with the same impacting the

² Because of the voluminous nature of the orders cited in this Application, they are not attached to this Application. Copies of these orders are available upon request to proposed counsel.

Ombudsman, (iv) generally prepare and/or assist in preparation, and file on behalf of the Ombudsman all necessary motions, notices, applications, answers, orders, reports and papers in support of positions taken by the Ombudsman, and (v) handling inquiries and calls from creditors and counsel to interested parties regarding pending matters relating to the Ombudsman's duties and coordinating with NPM on any necessary responses;

- (d) reviewing, commenting and/or preparing drafts of documents and other materials, and ensuring compliance with the Local Rules, to be filed with the Court as co-counsel to the Ombudsman and/or served on parties or third parties in these chapter 11 cases.
- (e) representing the Ombudsman in coordination with NPM in any proceeding or hearing in this Court and in any action in other courts where the rights of the patients generally may be litigated or affected as a result of those cases
- (f) performing all other services assigned by the Ombudsman, in consultation with NPM, to Klehr Harrison as co-counsel to the Ombudsman, and to the extent that Klehr Harrison determines that such services fall outside of the scope of services historically or generally performed by Klehr Harrison as co-counsel in a bankruptcy proceeding, Klehr Harrison will file a supplemental declaration.

PROFESSIONAL COMPENSATION

17. Klehr Harrison intends to apply for compensation for professional services rendered on an hourly basis and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the Court. The hourly rates and corresponding rate structure Klehr Harrison will use in these chapter 11 cases are the same as the hourly rates and corresponding rate structure that Klehr Harrison uses in other restructuring matters, as well as similar complex corporate, securities, and litigation matters whether in court or otherwise, regardless of whether a fee application is required. These rates and the rate structure reflect that such restructuring and other complex

matters typically are national in scope and involve great complexity, high stakes, and severe time pressures.

18. Klehr Harrison's current hourly rates for matters related to these chapter 11 cases range as follows:

Billing Category	Range of Hourly Rates
Partners	\$400.00 to \$840.00
Counsel	\$360.00 to \$500.00
Associates	\$285.00 to \$425.00
Paralegals	\$205.00 to \$295.00

19. Klehr Harrison's hourly rates are set at a level designed to compensate Klehr Harrison fairly for the work of its attorneys and paraprofessionals and to cover fixed and routine expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions.³

20. The rate structure provided by Klehr Harrison is appropriate and not significantly different from (a) the rates that Klehr Harrison charges for other similar types of representations or (b) the rates that other comparable counsel would charge to do work substantially similar to the work Klehr Harrison will perform in these chapter 11 cases.

21. It is Klehr Harrison's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is also Klehr Harrison's policy to charge its clients only the amount actually incurred by Klehr Harrison in connection with such items. Examples of such expenses include postage, overnight mail, courier delivery,

³ As set forth in the Order, Klehr Harrison will provide ten business days' notice to the Ombudsman, Debtors, the U.S. Trustee, and any official committee before implementing any periodic increases, and shall file such notice with the Court.

transportation, overtime expenses, computer-assisted legal research, photocopying, airfare, meals, and lodging.

22. To ensure compliance with all applicable deadlines in these chapter 11 cases, from time to time Klehr Harrison utilizes the services of overtime secretaries. Klehr Harrison charges fees for these services, which permits Klehr Harrison to bill for overtime secretarial charges that arise out of business necessity. In addition, Klehr Harrison professionals also may charge their overtime meals and overtime transportation consistent with their standard practices.

23. Klehr Harrison currently charges \$0.15 per page for standard duplication in its offices in the United States. Notwithstanding the foregoing and consistent with the Local Rules, Klehr Harrison will charge no more than \$0.10 per page for standard duplication services in these chapter 11 cases. Klehr Harrison does not charge its clients for incoming facsimile transmissions. Klehr Harrison has negotiated a discounted rate for Westlaw computer-assisted legal research. Computer-assisted legal research is used whenever the researcher determines that using Westlaw is more cost-effective than using traditional (non-computer-assisted legal research) techniques.

24. Pursuant to Bankruptcy Rule 2016(b), Klehr Harrison has neither shared nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the partners, associates, and contract attorneys associated with Klehr Harrison or (b) any compensation another person or party has received or may receive.

KLEHR HARRISON DISINTERESTEDNESS

25. To the best of the Ombudsman's knowledge and as disclosed herein and in the Lemisch Declaration, (a) Klehr Harrison is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Ombudsman and (b) Klehr Harrison has no

connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed in the Lemisch Declaration.

26. Klehr Harrison will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Klehr Harrison will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

SUPPORTING AUTHORITY

27. The retention of counsel is essential to a patient care ombudsman's proper discharge of his duties. The debtors may be in a period of transition, and certainly have many obligations during the chapter 11 process. A debtor's attention and resources are split many ways, which can lead to circumstance where some of the debtors' programs or facilities could be closed, especially if the reorganization is delayed or encounters impediments. Chapter 11 debtors also, as Chapter 11 debtors, frequently have encountered and may still be encountering financial difficulties. Generally speaking, and not implicating the debtors in these cases in particular, whenever financial conditions dictate that a debtor seek reorganization or cease doing business, there is concern whether ongoing patient care is being compromised. Should any such decline occur, then it would be necessary for the Ombudsman to report to the Court and possibly to engage in motion practice. Pre-existing retention of counsel is necessary for the Ombudsman to discharge these responsibilities in a full and timely matter.

28. Counsel also has an important role to play in connection with a patient care ombudsman's periodic reports. Review by counsel of drafts of the reports can assure that the patient care ombudsman does not violate patient privacy, especially in an ombudsman's discussion in the report of his review of patient records or his interviews with patients. Counsel

is also necessary in order properly to meet the technical requirements for 14-day notice of issuance of the reports, as mandated by Rule 2015.1(a), to comply with the requirements of the Appointment Order, section 333 of the Bankruptcy Code and applicable non-bankruptcy law and to assure the accuracy of references in the reports to legal matters and court proceedings.

29. Experienced bankruptcy counsel is necessary in order to monitor these cases so that the Ombudsman will be apprised of developments that can either directly affect patient care (for example, a stay relief or reclamation motion seeking leave to repossess essential medical equipment) or can indirectly affect patient care (for example, developments that impact upon the debtors' financial condition and/or cash position and the debtors' consequent ability to provide adequate care).

30. Many courts, including this Court, have approved the engagement of professionals by patient care ombudsmen pursuant to Sections 330 and 333 of the Bankruptcy Code. See In re New York Westchester Square Medical Center, Chapter 11 Case No. 06-13050 (SMB) (Bankr. S.D.N.Y., February 26, 2007); Atlantic Health Services, Inc., Chapter 11 Case No. 06-10356 (PM) (Bankr. D. Md., March 11, 2006); In re Sound Shore Medical Center of Westchester, Chapter 11 Case No. 13-22840 (RDD) (Bankr. S.D.N.Y., August 9, 2013); In re Renaissance Hospital – Grand Prairie, Inc., 399 B.R. 442 (Bankr. N.D. TX 2008); In re Primecare Nevada, Inc., Chapter 11 Case No. 13-20348 (LED) (Bankr. D. Nev., Aug. 4, 2014); In re Upland Surgical Institute, Chapter 11 Case No. 06-11298 (Bankr. S.D. Cal.); In re Brotman Medical Center Inc., Case No. 07-19705 (Bankr. C.D. Cal.); In re Meridian Behavioral Health, LLC, Case No. 11-10860 (Bankr. S.D.N.Y.); In re Christ Hospital, Case No. 12-12906 (Bankr. D.N.J.); In re ICL Holding Company, Inc., et al., Case No. 12-13319

(Bankr. D. Del.); In re Horizon Health Center, Inc., Case No. 13-26348 (Bankr. D.N.J.); In re Fairmont General Hospital, Inc., et al., Case No. 13-01054 (Bankr. N.D. W.Va.); In re Curae Health, Inc., Case No. 18-05665 (Bankr. M.D. Tenn.) and In re ADPT DFW Holdings LLC, et al., Case No. 17-31432 (Bankr. N. D. TX). For amplification, the Ombudsman respectfully refers the Court to the discussion in In re Synergy Hematology-Oncology Medical Associates, Inc., 2010 WL 28537 (Bankr. C.D. Cal. 2010).

31. Other authority exists to grant this Application and approve the retention of professionals by the Ombudsman. The appointment of a patient care ombudsman is analogous to the appointment of an examiner, and, in many cases, courts have routinely authorized examiners to employ professionals notwithstanding the absence of express authorization in the Bankruptcy Code for such employment, pursuant to Section 105. See, e.g., In re Enron, Case No. 01-16034 (Bankr. S.D.N.Y. 2001); (allowed examiner to retain professionals); In re Southmark Corp., 113 B.R. 280, 283 (Bankr. N.D. Tx 1990) (allowing examiner to retain professionals); In re Tighe Mercantile, Inc., 62 B.R. 995, 1000 (Bankr. S.D. Cal. 1986) ("This Court holds that in appropriate circumstances, a bankruptcy court may rely on § 105(a) to authorize examiners to employ professional persons."). See Synergy, supra, authorizing counsel for an ombudsman after a discussion of several of the cases cited in this paragraph.

32. The Ombudsman submits that for all the reasons stated above and in the Lemisch Declaration, the retention and employment of Klehr Harrison as Delaware co-counsel to the Ombudsman is warranted. Further, as stated in the Lemisch Declaration, Klehr Harrison is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates or the Ombudsman and has no connection to the Debtors, their creditors, or

other parties in interest, or to the Ombudsman except as may be disclosed in the Lemisch Declaration.

NOTICE

33. The Ombudsman will provide notice of this application to 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 Ombudsman submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

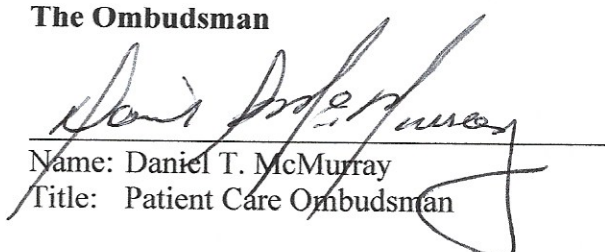
34. No prior request for the relief sought in this Application has been made to this or any other court.

WHEREFORE, the Ombudsman respectfully requests that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

Respectfully Submitted,

Dated: November 19, 2021

The Ombudsman


Name: Daniel T. McMurray

Title: Patient Care Ombudsman