

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

*In re:*

COMPREHENSIVE CLINICAL  
DEVELOPMENT, INC.,

CASE NO.: 13-17273-JKO

COMPREHENSIVE CLINICAL  
DEVELOPMENT NW, INC.,

CASE NO.: 13-17282-JKO

Debtors. /

Chapter 11  
(Pending Joint Administration)

**DEBTOR'S EMERGENCY APPLICATION FOR APPROVAL, ON AN INTERIM  
AND FINAL BASIS, OF EMPLOYMENT OF ROBERT P. CHARBONNEAU, ESQ.  
JACQUELINE CALDERIN, ESQ. AND EHRENSTEIN CHARBONNEAU CALDERIN  
AS GENERAL BANKRUPTCY COUNSEL FOR THE DEBTOR-IN-POSSESSION,  
NUNC PRO TUNC TO THE PETITION DATE**

**(Emergency Hearing Requested)**

**Statement of Exigent Circumstances**

Without general bankruptcy counsel, the Debtor is technically unable to proceed with this case. ECC will play an integral role in the first 21 days of this Chapter 11 case. Among other things, the Debtor will need ECC's assistance in stabilizing business operations, negotiating with key creditor constituencies, and addressing issues related to the "first day" hearing and related orders.

**COMPREHENSIVE CLINICAL DEVELOPMENT, INC. ("CCD") and  
COMPREHENSIVE CLINICAL DEVELOPMENT NW, INC. ("CCDNW", together with CCD,  
the "Debtors", and each a "Debtor"), the above-captioned debtor-in-possession, by and through  
proposed undersigned counsel, pursuant to Section 327(a) of Title 11 of the United States Code (the  
"Bankruptcy Code"), Rules 2104(a), 2016, and 6003 of the Federal Rules of Bankruptcy Procedure  
(the "Bankruptcy Rules"), and Rules 2014-1 and 2016-1 of the Local Rules for the United States  
Bankruptcy Court for the Southern District of Florida (the "Local Rules"), files this application (the**

**EHRENSTEIN CHARBONNEAU CALDERIN**

501 Brickell Key Drive • Suite 300 • Miami, FL 33131 • T. 305.722.2002 • F. 305.722.2001 • [www.ecclegal.com](http://www.ecclegal.com)

“Application”) seeking an Order of the Court authorizing,, on an interim and final basis, the employment of Robert Charbonneau, Jacqueline Calderin, and the law firm of Ehrenstein Charbonneau Calderin as counsel to the Debtor *nunc pro tunc* to the Petition Date in this case and states:

### **JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334.
2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding as defined in 28 U.S.C. §§157(b)(2)(A).
4. The statutory predicates in support of the relief requested herein are Section 327 of the Bankruptcy Code, Rules 2104(a), 2016, and 6003 of the Bankruptcy Rules and Local Rules 2014-1 and 2016-1.

### **BACKGROUND**

5. On March 29, 2013 (the “Petition Date”), each Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
6. The Debtors are managing their affairs as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
7. No trustee, examiner, or statutory committee has been appointed in this case.
8. For a detailed description of the Debtors, their operations, and assets and liabilities the Debtor respectfully refers the Court and parties-in-interest to the Consolidated Case Management Summary and First Day Declaration of James D. Utterback.

### **RELIEF REQUESTED**

9. The Debtors desire to employ Robert Charbonneau, Jacqueline Calderin, and the law firm of Ehrenstein Charbonneau Calderin (collectively, “ECC”) as their general restructuring and

bankruptcy counsel in connection with these Chapter 11 cases. Accordingly, the Debtors respectfully requests the entry of an interim order pursuant to Section 327(a) of the Bankruptcy Code followed by the entry of a final order to be entered at a hearing to be held twenty-one (21) days later authorizing the employment and retention of ECC as general bankruptcy counsel under a general retainer to perform the legal services that will be necessary during this Chapter 11 case as more fully described below.

10. Attached as **Exhibit “A”** to this Application is the Declaration of Jacqueline Calderin (the “Calderin Declaration”, which demonstrates that ECC disinterested and has no interested adverse to the estate.

11. Prior to commencement of these Chapter 11 cases, the Debtors sought the services of ECC principally with respect to advice regarding restructuring matters in general, and in preparation for and potential commencement and prosecution of Chapter 11 cases for the Debtors. The Debtors believe that the continued representation by their pre-petition restructuring counsel, ECC, is critical to the Debtors’ efforts to restructure its business because ECC has extensive experience and expertise in complex commercial reorganization cases and has become very familiar with the Debtors’ business, legal, and financial affairs. Accordingly, ECC is well-suited to guide the Debtors through the Chapter 11 process.

**A. Services to be Provided**

12. The services of ECC are necessary to enable the Debtors to execute faithfully their respective duties as a debtor-in-possession. Subject to order of this Court, ECC will be required to render, among others, the following services to each of the Debtors:

- a) advise with respect to its powers and duties as debtor and Debtor-in-possession in the continued management and operation of its business and properties;

- b) attend meetings and negotiate with representatives of creditors and other parties-in-interest and advise and consult on the conduct of the case, including all of the legal and administrative requirements of operating in Chapter 11;
- c) advise the Debtor in connection with any contemplated sales of assets or business combinations, including the negotiation of sales promotion, liquidation, stock purchase, merger or joint venture agreements, formulate and implement bidding procedures, evaluate competing offers, draft appropriate corporate documents with respect to the proposed sales, and counsel the Debtor in connection with the closing of such sales;
- d) advise the Debtor in connection with post-petition financing and cash collateral arrangements, provide advice and counsel with respect to prepetition financing arrangements, and provide advice to the Debtor in connection with the emergence financing and capital structure, and negotiate and draft documents relating thereto;
- e) advise the Debtor on matters relating to the evaluation of the assumption, rejection or assignment of unexpired leases and executory contracts;
- f) provide advice to the Debtor with respect to legal issues arising in or relating to the Debtor's ordinary course of business including attendance at senior management meetings, meetings with the Debtor's financial and turnaround advisors and meetings of the board of directors, and advice on employee, workers' compensation, employee benefits, labor, tax, insurance, securities, corporate, business operation, contracts, joint ventures, real property, press/public affairs and regulatory matters;
- g) take all necessary action to protect and preserve the Debtor's estates, including the prosecution of actions on their behalf, the defense of any actions commenced against the estate, negotiations concerning all litigation in which the Debtor may be involved and objections to claims filed against the estate;
- h) prepare on behalf of the Debtor all motions, applications, answers, orders, reports and papers necessary to the administration of the estates;
- i) negotiate and prepare on the Debtor's behalf a plan of reorganization, disclosure statement and all related agreements and/or documents, and take any necessary action on behalf of the Debtor to obtain confirmation of such plan;
- j) attend meetings with third parties and participate in negotiations with respect to the above matters;
- k) appear before this Court, any appellate courts, and the U.S. Trustee, and protect the interests of the Debtor's estate before such courts and the U.S. Trustee; and

- l) perform all other necessary legal services and provide all other necessary legal advice to the Debtor in connection with this Chapter 11 case.
13. ECC is willing to act on behalf of the Debtor as set forth above.

**B. Terms of Retention**

14. ECC was engaged by CCD prior to the Petition Date and in connection with said engagement paid ECC security retainers for fees and costs totaling \$45,564.00. (the “Prepetition Security Retainer”). Although ECC’s prepetition fees and expenses exceed the amount of the Prepetition Security Retainer, ECC shall waive the balance of any prepetition unpaid fees and costs.

15. On the Petition Date, CCD remitted to ECC the sum of \$75,000.00 as payment of the bankruptcy retainers for CCD (\$50,000.00) and CCDNW (\$25,000) (collectively, the “Bankruptcy Retainer”).

16. ECC intends to apply to the Court for allowance of compensation for professional services rendered and reimbursement of charges and disbursements incurred in this Chapter 11 case in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and the orders of this Court, including but not limited to the filing fees associated with this Chapter 11 cases, which were advanced by ECC after the Debtors’ petition was filed. ECC will seek compensation for the services of each attorney and paraprofessionals acting on behalf of each Debtor in these cases at the then-current rate charged for such services.

17. Consistent with the firm’s policy with respect to its other clients, ECC will continue to charge the Debtors for all other services provided and for other charges and disbursements incurred in the rendition of services. These charges and disbursements include, among other things, costs for telephone charges, photocopying, travel, computerized research, messengers, couriers, postage, witness fees and other fees related to trials and hearings.

18. ECC has agreed to accept as compensation such sums as may be allowed by the Court on the basis, among others, of the professional time spent, the rates charged for such services, the necessity of such services to the administration of the estate, the reasonableness of the time within which the services were performed in relation to the results achieved, and the complexity, importance and nature of the problems, issues or tasks addressed in this case.

19. Other than as set forth herein and in the *Calderin Declaration*, no arrangement is proposed between the Debtors and ECC for compensation to be paid in this case, and no agreement or understanding exists between ECC and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case.

20. No previous request for the relief sought in this Application has been made to this Court or any other Court.

#### **BASIS FOR RELIEF REQUESTED**

21. Continued representation of the Debtors by its restructuring counsel, ECC, is critical to the success of the Debtors' reorganization efforts because ECC is and has become very familiar with the Debtors' business, financial and legal affairs.

22. The Debtors have selected ECC as its attorneys because of ECC's experience with and knowledge of the Debtors and its business, as well as its extensive experience, knowledge and expertise in the field of debtors' and creditors' rights and business reorganizations under Chapter 11 of the Bankruptcy Code.

23. The Debtors desire to employ ECC under a general retainer because of the extensive legal services that will be required in connection with its Chapter 11 case and the firm's familiarity with the business of the Debtor.

**DISINTERESTEDNESS OF PROFESSIONALS**

24. Except as set forth in the *Calderin Declaration*, to the best of the Debtors' knowledge, the shareholders, counsel and associates of ECC: (a) do not have any connection with the Debtor, its affiliates, their creditors, the U.S. Trustee, any person employed in the office of the U.S. Trustee, or any other party in interest, or their respective attorneys and accountants; (b) are disinterested persons, as that term is defined in Section 101(14) of the Bankruptcy Code; and (c) do not hold or represent any interest adverse to the Debtor's estate.

25. More specifically, as set forth in the *Calderin Declaration*:

- a) Neither ECC nor any attorney at the firm holds or represents an interest adverse to the Debtors' estates.
- b) Neither ECC nor any attorney at ECC is or was a creditor, an equity holder, or an insider of the Debtors, except that ECC previously rendered legal services to the Debtors for which it was compensated.
- c) Neither ECC nor any attorney at ECC is or was, within two years before the Petition Date, a director, officer or employee of either Debtor.
- d) ECC does not have an interest materially adverse to the interests of the Debtors' estate or of any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the Debtors, or for any other reason.

**REQUEST FOR INTERIM RELIEF**

26. Section 327(a) of the Bankruptcy Code provides that a debtor, subject to Court approval:

[M]ay employ one or more attorneys, accountants, appraisers auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]'s duties under this title.

11 U.S.C. § 327(a).

27. Bankruptcy Rule 2014(a) requires that an application for retention include

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

28. Pursuant to the Bankruptcy Rule 6003, the court may grant relief regarding an application pursuant to Bankruptcy Rule 2014 to retain a professional within 21 days after the filing of the petition to the extent the relief is necessary to avoid immediate and irreparable harm. Bankruptcy Rule 6003, however, does not expressly forbid courts from entering interim orders approving professional retentions during the first 21 days of a chapter 11 cases. *See, e.g., First NLC Fin. Servs, LLC*, Case No. 08-10632 (Bankr. S.D. Fla. Jan. 28, 2008); *In re TOUSA, Inc., et al.*, Case No. 08-10928-BKC-JKO (Bankr. S.D. Fla. Jan. 31, 2008)(approving interim retentions of financial advisor and legal counsel on interim basis within first 20 days of chapter 11 case).

29. First, according to the Advisory Committee note to Bankruptcy Rule 6003, the standard employed in Bankruptcy Rule 6003 is taken from Bankruptcy Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of Bankruptcy Rule 6003. Bankruptcy Rules 4001(b)(2) and (c)(2) are well understood and are the model for numerous first-day motions, such as obtaining credit and seeking use of cash collateral. That process is well established: if the court is so disposed, the partial relief is granted for the interim before the final hearing can be conducted. Later, after further opportunity for other parties in interest to consider the application and to object, the court, if so disposed will grant the balance of the relief requested.



30. Second, Bankruptcy Rule 6003 is entitled “Interim and Final Relief Immediately Following the Commencement of the Case....” Thus, the very title of the Bankruptcy Rule contemplates that relief may be granted on an interim basis.

31. Interim relief is clearly justified and appropriate in the context of this Application.

32. It is well recognized in this district and others that a corporation must be represented by counsel to appear in court because it is merely an artificial entity that can only act through its agents and thus may not appear pro se. *See, e.g., Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985) (“Corporations and partnerships, both of which are fictional legal persons, obviously cannot appear for themselves personally . . . they must be represented by licensed counsel.”); *see also In re K.M.A., Inc.*, 652 F.2d 398, 399 (5th Cir. 1981) (“The law is clear that a corporation as a fictional legal person can only be represented by licensed counsel.”); *Jones v. Niagara Frontier Transp. Authority*, 722 F.2d 20, 22 (2d Cir. 1983) (“[I]t is established that a corporation, which is an artificial entity that can only act through agents, cannot proceed pro se.”). This requirement is further established by Local Rule 1074-1, which provides that “[c]orporations, partnerships, trusts and other non-individual parties may appear and be heard only through counsel permitted to practice in the Court pursuant to Local Rule 2090-1.”

33. Accordingly, without general bankruptcy counsel, the Debtor is technically unable to proceed with this case. ECC will play an integral role in the first 21 days of this chapter 11 case. Among other things, the Debtor will need ECC’s assistance in stabilizing business operations, negotiating with key creditor constituencies, addressing issues related to the “first day” hearing and related orders, constructing a business plan and plan of reorganization and defining the Debtor’s path post-restructuring.

34. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support entry of an order, authorizing the Debtor to retain and employ ECC on an interim basis and to compensate ECC for any services rendered during that interim period in accordance with the Bankruptcy Code and the interim compensation procedures that may be established in this case. This interim form of relief ensures the availability of ECC's full resources to the Debtor during a critical period in this case, while preserving the ability of all parties-in-interest, including the U.S. Trustee, to object to this application on a final basis.

**WHEREFORE**, the Debtors respectfully request that the Court enter an order: (i) authorizing the Debtors' retention of Robert P. Charbonneau and Jacqueline Calderin and the law firm of Ehrenstein Charbonneau Calderin on an interim basis upon the terms outlined in this Application *nunc pro tunc* to the Petition Date; (ii) setting a final hearing on this Application at least twenty-one (21) days from the date of the Interim order; and (iii) granting such other and further relief as is just and proper.

Dated: March 29, 2013

Respectfully Submitted,

EHRENSTEIN CHARBONNEAU CALDERIN  
Proposed Counsel for Comprehensive Clinical Development, Inc. and  
Comprehensive Clinical Development NW, Inc.  
501 Brickell Key Drive, Suite 300  
Miami, FL 33131  
T.305.722.2002  
www.ecclegal.com

By: /s/Jacqueline Calderin  
Jacqueline Calderin, Esq.  
Florida Bar No.: 134414  
jc@ecclegal.com



*Ehrenstein Charbonneau Calderin as Attorneys for the Debtors in Possession*  
(the “Application”).

4. In preparing this Declaration, I reviewed (i) lists of all of the creditors and interested parties of the Debtors<sup>1</sup> as provided by the Petition; and (ii) results of UCC searches performed in respect of the Debtors. I compared the information obtained with the information contained in our law firm’s client and adverse party conflict check index system. The facts stated in this Affidavit as to the relationship between other lawyers in our law firm and the Debtors, the Debtors’ creditors, the United States Trustee, other persons employed by the Office of the United States Trustee, and those persons and entities who are defined as disinterested persons in Section 101(14) of the Bankruptcy Code are based on the results of my review of our firm’s conflict check index system. Specifically, I have caused to be conducted (i) a computer search of our firm’s records in respect of all of the names generated by the searches conducted and referenced in this paragraph 4(i) and (ii) and (ii) disseminated a written request for information to all of the attorneys in our firm regarding connections to the Debtor and the creditors of the Debtor. Based upon a search of the firm’s records as described above, our firm does not represent any entity in a matter which would constitute a conflict of interest or impair the disinterestedness of ECC as required by Fed. R. Bank. P. 2014.

5. ECC’s client and adverse party conflicts check system is comprised of records regularly maintained in the course of business of the firm, and it is the regular practice of the firm to make and maintain these records. It reflects entries that are noted in the system at the time. The information becomes known by persons whose regular duties include recording and

---

<sup>1</sup> All capitalized terms not expressly defined herein shall bear the meaning ascribed to them in the Application.

maintaining this information. I regularly use and rely upon the information contained in the system in the performance of my duties with the law firm and in my practice of law.

6. Other than as set forth in this declaration, ECC neither holds nor represents any interest adverse to the Debtors and is a “disinterested person” within the scope and meaning of Section 101 (14) of the Bankruptcy Code.

7. Neither I nor ECC has or will represent any other entity in connection with this case, and neither I nor ECC will accept any fee from any other party or parties in this case, unless otherwise authorized by the Court.

8. ECC is not a creditor of, and asserts no prepetition claim against, the Debtors.

9. The professional fees and costs incurred by ECC in the course of its representation of the Trustee in this case shall be subject in all respects to the application and notice requirements of 11 U.S.C. §§ 327, 330 and 331 and Fed. R. Bankr. P. 2014 and 2016, except where modified by this Court.

10. ECC was engaged by Comprehensive Clinical Development, Inc. prior to the Petition Date and in connection with said engagement paid ECC security retainers for fees and costs totaling \$45,564.00 for pre-petition legal services (the “Prepetition Security Retainer”). Although ECC’s prepetition fees and expenses exceed the amount of the Prepetition Security Retainer, ECC shall waive the balance of any prepetition unpaid fees and costs.

11. In connection with filing and prosecuting these Chapter 11 cases, on the Petition Date, Comprehensive Clinical Development, Inc. paid ECC the sum of \$50,000.00 and Comprehensive Clinical Development NW, Inc. paid ECC the sum of \$25,000.00 (collectively, the “Bankruptcy Retainer”). The Bankruptcy Retainer is held in trust by ECC and is to be applied to fees and costs during the pendency of these Chapter 11 cases.

12. ECC will apply the Bankruptcy Retainer to its periodic billings subject to interim and final applications for compensation and approval by the Court, and if appropriate, ECC may make an application for an award of additional compensation. The Debtors, subject to Court approval, shall be responsible for all fees and expenses incurred by ECC.

13. The hourly rates for attorneys at ECC, range from \$175.00 to \$485.00. My current hourly rate is \$410.00. The hourly rates for the para-professionals at ECC range from \$90.00 to \$160.00. ECC typically adjusts its hourly rates annually on January 1st.

14. There is no agreement of any nature, other than the shareholder agreement of our firm, as to the sharing of any compensation to be paid to the firm. No promises have been received by ECC nor any member, or associate thereof as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code.

15. No attorney in the firm has any other interest, direct or indirect, that may be affected by the proposed representation.

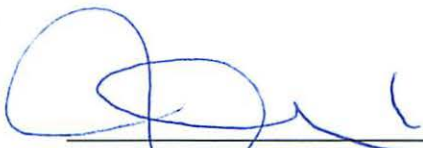
16. Except as forth herein, no attorney in our firm has had or presently has any material connection with the captioned Debtors, the Debtors' creditors, any other party in interest or their respective attorneys and accountants, the United States Trustee (except as described in the following paragraph), or any person employed in the Office of the United States trustee, on any matters in which the firm is to be engaged, except that I, our law firm, and our attorneys (i) may have appeared in the past, and may appear in the future, in other cases in which one or more of said parties may be involved; and (ii) may represent or may have represented certain of the Debtor's creditors in matters unrelated to this case.

17. I am a panel trustee for the United States Trustee Program in the Southern District of Florida, Miami Division. However, neither I nor ECC believes that this relationship with the

Office of the United States Trustee creates a conflict of interest or an appearance of impropriety. Based upon a search of the firm's records as described above, our firm does not represent any entity in a matter which would constitute a conflict of interest or impair the disinterestedness of ECC.

18. This concludes my Declaration.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
JACQUELINE CALDERIN, Esq.  
Florida Bar No:134414

**SWORN TO AND SUBSCRIBED** before me this 29<sup>th</sup> day of March 2013.



NOTARY PUBLIC, STATE OF FLORIDA  
AT LARGE

NOTARY PUBLIC, STATE OF FLORIDA

Print Name: Eileen Cala

Commission No. EE116480

My Commission Expires: JULY 28, 2015

