

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

In re:

MEDLEY LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 (KBO)

Re: Docket No. 87, 119, 167

**SECOND SUPPLEMENTAL DECLARATION OF MARK D. SHERRILL IN SUPPORT
OF THE DEBTOR'S APPLICATION FOR AN ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF EVERSHEDES SUTHERLAND (US) LLP AS
SPECIAL COUNSEL FOR THE DEBTOR EFFECTIVE AS OF THE PETITION DATE**

Pursuant to 28 U.S.C. § 1746, I, Mark D. Sherrill, declares as follows:

1. I am a Partner at the firm of Eversheds Sutherland (US) LLP ("Eversheds"), which maintains offices for the practice of law at, among other places, 1000 Louisiana Street, Suite 3700, Houston, TX 77002. I am an attorney at law, duly admitted in good standing to practice in the State of Texas, the Commonwealth of Virginia, the District of Columbia, and the State of Ohio.

2. I am duly authorized to execute this supplemental declaration (the "Second Supplemental Declaration") on behalf of Eversheds. I am familiar with the matters set forth herein and, if called as a witness, I could and would testify thereto. Unless otherwise stated in this Supplemental Declaration, I have personal knowledge of the facts hereinafter set forth. To the extent that any information disclosed herein requires amendment or modification upon Eversheds' completion of further analysis or additional creditor information becomes available to Eversheds, a further supplemental declaration will be submitted to the Court.

3. I am filing this Second Supplemental Declaration to supplement the disclosures that were included in my original declaration, dated April 6, 2021 (the "Original Declaration"), filed with the *Application of the Debtor for an Order Authorizing the Retention and Employment*

¹ The last four digits of the Debtor's taxpayer identification number are 7343. The Debtor's principal executive office is located at 280 Park Avenue, 6th Floor East, New York, New York 10017.



of Eversheds Sutherland (US) LLP as Special Counsel for the Debtor Effective as of the Petition Date [Docket No. 87] (the “Application”) in accordance with Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and also the *Supplemental Declaration of Mark D. Sherrill in Support of the Debtor’s Application for an Order Authorizing the Retention and Employment of Eversheds Sutherland (US) LLP* [Docket No. 119] (the “Supplemental Declaration”), dated April 26, 2021.

4. On May 17, 2021, the Court entered its *Order Granting Debtor’s Application for an Order Authorizing the Retention and Employment of Eversheds Sutherland (US) LLP as Special Counsel for the Debtor Effective as of the Petition Date* [Docket No. 167] (the “Retention Order”).

5. Except as otherwise indicated herein, all facts stated in this Second Supplemental Declaration are based on my personal knowledge of Eversheds’ operations and finances, information learned from my review of relevant documents, and information supplied to me by Eversheds’ partners or employees. If called upon to testify, I could and would testify on that basis.

ADDITIONAL DISCLOSURES

6. As described in the Application and as approved in the Retention Order, the “Scope of Services” to be provided by Eversheds was legal services concerning “securities law and related litigation and regulatory matters.” Application, ¶ 9.

7. The Application further provided that the work done by Eversheds was being paid out of an insurance policy (the “Policy”) issued by Berkshire Hathaway (the “Insurer”). The Application stated:

Subject to any applicable limits ... under the Policy, Eversheds anticipates that it will continue to be compensated by the Insurer and will not need to charge the Debtor for its legal services... In the event that the Insurer’s payments exceed the Policy Limits, and subject to this Court’s approval, Eversheds would charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date such services are rendered, subject to Bankruptcy Code sections 328, 330, and 331.

Application, ¶¶ 10-11.

8. In recent weeks, the Debtor has asked Eversheds to perform new tasks that were not contemplated at the time of filing the Application. The new tasks include making routine filings under the Securities Exchange Act of 1934, and providing the Debtor and its Board with advice related to those same issues under securities law (generally, the “Regulatory Filings”).

9. The Regulatory Filings fall within the Scope of Services provided in the Application.

10. The Regulatory Filing work is, however, outside of the scope of work that Eversheds anticipated doing at the time of the Application and it does not qualify for payment out of the insurance Policy. Accordingly, the Debtor and Eversheds intend for Eversheds to charge for the Regulatory Filings work on an hourly basis in a manner consistent with its ordinary and customary rates. Eversheds will apply for compensation and reimbursement of expenses in accordance with the procedures set forth in Bankruptcy Code sections 330 and 331, the applicable Bankruptcy Rules, and the applicable Local Rules. Eversheds intends to make a reasonable effort to comply with the U.S. Trustee’s requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013*.

11. To be clear, the reason for these supplementary disclosures is (a) the Application indicated that Eversheds would seek payment from the bankruptcy estate after the Insurer’s payments exceeded its Policy Limits, and (b) because the Regulatory Filings are outside of the scope of what can be paid by the insurance Policy, Eversheds now intends to seek payment from the bankruptcy estate for the Regulatory Filings work, even though the Insurer’s payments have not exceeded the Policy Limits.

12. I continue to reserve the right to supplement Eversheds’ disclosures in the event that Eversheds learns of any additional connections that require disclosure. If any new material,

relevant facts, or relationships are discovered or arise, Eversheds will promptly file another supplemental declaration pursuant to Bankruptcy Rule 2014.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: July 26, 2021

/s/ Mark D. Sherrill
Mark D. Sherrill
Partner
Eversheds Sutherland (US) LLP