

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

In re:

HOSPITAL FOR SPECIAL SURGERY, LLC,
Debtor.

Case No. 24-12862 JDL
Chapter 11

**UNITED STATES TRUSTEE’S LIMITED OBJECTION TO DEBTOR’S CORRECTED
APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF CROWE & DUNLEVY AS COUNSEL TO DEBTOR AND
DEBTOR IN POSSESSION EFFECTIVE AS OF THE PETITION DATE
AND NOTICE OF OPPORTUNITY FOR HEARING**

Ilene J. Lashinsky, United States Trustee for Region 20 (the “UST”), files this limited objection to Debtor’s corrected request to employ Crowe & Dunlevy as its general bankruptcy counsel [Doc. 20] (the “**Application**”).

A. Facts.

1. 28 U.S.C. § 586(a)(3)(I) directs the UST to monitor, review, and comment upon applications to employ professionals filed under 11 U.S.C. § 327.

2. Debtor filed its Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on October 7, 2024. [Doc. 1.]

3. Debtor filed the Application also on October 7, 2024. [Doc. 20.]

4. Attached to the Application as Exhibit 2 is the *Declaration of William H. Hoch* [Doc. 2, p. 17 – 25] (the “**Hoch Declaration**”).

5. The Hoch Declaration was supplemented once on October 15, 2024 [Doc. 61], and again on October 18, 2024 [Doc. 62]. References to the Hoch Declaration below shall relate to Doc. 62.



6. The Hoch Declaration lists “[t]he current clients of Crowe & Dunlevy for whom the firm currently represents in matters unrelated to this case...” These parties are then defined as the “Conflict Creditors”. [Doc. 62, p. 7, ¶ 16.]

7. One of the Conflict Creditors is Solara Surgical Partners, LLC (“**Solara**”).

8. Solara owns 54.24% of Debtor and is its majority equity owner. [Doc. 58.]

9. Solara is disclosed on Debtor’s List of Creditors Who Have the 20 Largest Unsecured Claims as being owed \$1,211,297.86. Other than Debtor’s \$15,000,000.00 judgment debt, Solara holds Debtor’s largest unsecured claim. [Doc. 1, p. 7 – 9.]

10. Solara was paid \$622,248.09 in the 90 days before bankruptcy. [Doc. 1, p. 110]

11. The Hoch Declaration states that conflicts counsel will be hired to deal with matters pertaining to the Conflict Creditors. [Doc. 62, p. 7, ¶ 16.]

12. To date, Debtor has not yet sought to retain conflicts counsel.

B. Standards for Bankruptcy Rule 2014 and 2016 disclosure.

13. Section 327(a) of the Bankruptcy Code permits a debtor in possession to employ professionals to represent the estate with court approval. It states in pertinent part:

Except as otherwise provided in this section, the trustee, with the court’s approval, may 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 trustee in carrying out the trustee’s duties under this title.

11 U.S.C. § 327(a).

14. Thus, the Bankruptcy Code and Federal Rules of Bankruptcy Procedure require that professionals seeking to represent a Debtor in Possession disclose their connections to parties in the case and satisfy conflict-of-interest standards.

15. The reason for broad disclosure is simple: “The decision as to what facts may be relevant should not be left up to the professional, ‘whose judgment may be clouded by the benefits of potential employment.’” *In re Fibermark Inc.*, No. 04-10463, 2006 WL 723495 at *8 (Bankr. D. Vt. March 11, 2006) (quoting *In re Lee*, 94 B.R. 172, 177 (Bankr. C.D. Cal. 1988)).

16. It is not for the applicant to decide what is “material” in relation to connections and conflicts; that determination is for the Court and parties in interest to decide. See, *In re EWC, Inc.*, 138 B.R. 276, 279-80 (Bankr. W.D. Okla. 1992); see *Interwest Bus. Equip., Inc. v. United States Trustee (In re Interwest Bus. Equip., Inc.)*, 23 F.3d 311, 318 (10th Cir. 1994); *Jensen v. United States Trustee (In re Smitty’s Truck Stop, Inc.)*, 210 B.R. 844 (10th Cir. BAP 1997).

17. Moreover, professionals may not place the burden on the court or other parties to “ferret out pertinent information from other sources.” *In re Saturley*, 131 B.R. 509, 517 (Bankr. D. Me. 1991). See also *In re BH & P Inc.*, 949 F.2d 1300, 1317-18 (3d Cir. 1991).

18. Rule 2014 does not define “connection,” and § 327 (a) of the Code does not define “adverse interest.”

19. At least one court has defined “hold or represent an adverse interest” as (1) to possess or assert any economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate. *In re Project Orange Assocs., LLC*, 431 B.R. 363, 370 (Bankr. S.D.N.Y. 2010).

20. An actual conflict of interest has been defined as “an active competition between two interests, in which one interest can only be served at the expense of the other” (see *In re Am. Printers & Lithographers*, 148 B.R. 862, 866 (Bankr. N.D. Ill. 1992)).

21. Whether adverse interests exist is determined on a case-by-case basis (see *In re BH & P, Inc.*, 949 F.2d 1300, 1315-16 (3d Cir. 1998)).

C. Crow & Dunlevy should more fully disclose its relationship with Solara.

22. Here, Debtor's proposed counsel Crowe Dunlevy concurrently represents Solara, Debtor's majority owner and largest non-judgment unsecured creditor.

23. The Hoch Declaration does not compare the length of engagements Debtor and Solara have had with Crow Dunlevy, the percentage of pre-bankruptcy annual revenue it received from these entities, the recency of non-bankruptcy work performed for each, or other pertinent information.

24. To ensure itself that no actual conflict exists, the Court should be more fully apprised Crowe Dunlevy's relationship with Solara. See, e.g., *In re Git-N-Go Inc.*, 321 B.R. 54 (Bankr. N.D. Okla. 2004) (disqualifying counsel for debtor that also represented debtor's holding company and its largest unsecured creditor, because possible issues of characterization of debt and equity or other matters could foster a situation where continued representation of holding company would "color and influence" legal advice from counsel.)

D. Requested relief.

25. The UST requests that the Court deny the Application until such time as it is amended to (i) more fully discuss Crowe Dunlevy's connection with Solara (ii) and identify any actual or potential conflicts raised by that connection.

26. The UST reserves all rights and arguments to further object based upon newly developed facts or other issues brought up in the amended filing.

Respectfully submitted,

ILENE J. LASHINSKY
UNITED STATES TRUSTEE

s/ Jeffrey E. Tate

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