

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

In re	:	
	:	Chapter 11
HOSPITAL FOR SPECIAL SURGERY, LLC	:	
<i>Db</i> a ONECORE HEALTH,	:	Case No. 24-12862-JDL
	:	
Debtor.	:	

DEBTOR’S REPLY TO 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

Hospital for Special Surgery, LLC *dba* OneCore Health (“OneCore” or the “Debtor”) its replies (this “Reply”) to the *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* [Dkt. No. 68] (the “Objection”) to provide further cause for this Court to grant Debtor’s Application. In summary, Crowe & Dunlevy (“Crowe”) does not hold or represent an interest adverse to the estate and is disinterested; therefore, its employment is authorized and necessary under section 327(a) of the Bankruptcy Code. To guard against the appearance of conflict and to prevent potential conflicts from becoming actual conflicts in this Chapter 11 Case, Debtor has retained a chief restructuring officer and has requested that the Court approve its employment and retention of conflicts counsel. Accordingly, no valid basis exists under binding case law for the UST to maintain its Objection to the Application.



Facts Relevant to the Relief Requested

1. OneCore filed its Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on October 7, 2024 (“Petition Date”).

2. On the Petition Date, Debtor also sought this Court’s approval for retention of Crowe & Dunlevy as counsel for Debtor and Debtor in Possession (“Employment Application”) [Dkt. No. 2]¹. Attached to the Employment Application was Crowe & Dunlevy’s Declaration of Disinterestedness. (the “Original Declaration”).² In the Original Declaration, Crowe disclosed that it currently represents Solara Surgical Partners, LLC on matters unrelated to OneCore. Crowe further disclosed that Debtor would engage Conflicts Counsel with respect to Solara Surgical Partners, LLC. Debtor has sought to retain George Law Firm (“George”) as conflicts counsel. *See Debtor’s Application to Employ George* [Dkt. No. 73] (the “George Application”).

3. On the Petition Date, Debtor sought the employment of Carrie McEntire (“McEntire”) as financial advisor and Chief Restructuring Officer (“CRO”) of the Debtor. [Dkt No. 19]. On October 23, 2024, this Court approved Debtor’s employment of McEntire. [Dkt. No. 74].

4. Debtor filed the George Application on October 22, 2024.

5. It is also undersigned counsel’s understanding that Solara Surgical Partners, LLC has retained or is in the process of retaining independent counsel in this case and that those discussions began well in advance of the Petition Date.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Employment Application.

² The Declaration was supplemented on October 15, 2024 [Dkt. No. 61] and October 18, 2024 [Dkt. No. 62]. (Dkt. Nos. 61 and 62 are referred to as the “Supplemental Declarations”).

6. UST's Limited Response requested to "more fully discuss Crowe & Dunlevy's connection with Solara, and "identify any actual or potential conflicts of interest raised by that connection.

7. Upon receipt of the Limited Response, undersigned counsel immediately called UST's office and inquired as to what information the UST's office needed. Undersigned counsel then immediately set about gathering that information. The UST's requests and Crowe's responses are as follows:

a. *A general description of the type of work Crowe & Dunlevy is currently handling for Solara: (i) on an as needed basis, occasional general corporate assistance by the corporate and business practice group of Crowe & Dunlevy; and (ii) completion of the wind down of a long-closed business which is awaiting the resolution of litigation in which Solara is not a party. Neither matter concerns or involves OneCore or a claim in this bankruptcy case.*

b. *The percentage of fee revenue paid to Crowe & Dunlevy by Solara Surgical Partners, LLC on all matters divided by total fee revenue from January 1, 2023, to present: 0.000691.*

c. *The percentage of fee revenue paid to Crowe & Dunlevy by OneCore on all matters (excluding preparation of the bankruptcy matter) divided by total fee revenue from January 1, 2023, to present: 0.0000818.*

8. *Other important considerations that distinguish Crowe & Dunlevy's employment in this matter from In re Git-N-Go Inc., 321 B.R. 54 (Bankr N.D. Okla. 2004):*

a. Proposed counsel in *Git-N-Go* did not ensure that Debtor retained a CRO or conflicts counsel.

b. Proposed counsel in *Git-N-Go* not only attempted to represent a non-debtor parent company and the debtor simultaneously, it attempted to restructure both companies, advised on transactions that benefitted the parent company at the expense of its subsidiary, and represented another significant creditor. To compare *Git-N-Go* to this Chapter 11 Case is to compare apples to oranges.

c. Solara cannot and does not control Crowe's representation in this case, either as a matter of fact or of imputation. Crowe takes its direction from the CRO and is not financially beholden in any way to Solara.

d. There are no issues of characterization of debt and equity that might "foster a situation where continued representation of [Solara] would 'color and influence' legal advice from counsel. (See Limited Response at page 4, paragraph 24). This is further underscored by Debtor's employment of the CRO and Debtor's intended employment of

George. Debtor and Crowe have taken extensive steps to avoid even the appearance of improper influence.

e. George will be responsible for advising Debtor concerning administration of Solara's prepetition claim. George will also be responsible for evaluating claims, if any, held by Debtor against Solara. Thus, Debtor's Board Resolution authorizing the filing of the Voluntary Petition also authorized the hiring and retention of George and Crowe.

f. A successful restructuring in this case does not depend on Solara's claim in this case. Debtor will either reach an agreement with the \$15 million prepetition judgment creditor and other claimants or it will not - which is why, at the first day hearing, the Court was informed that a sale, pursuant to section 363 of the Bankruptcy Code, may occur. That is not a secret to this Court. As a result, this case or the success of this case does not implicate or concern the satisfaction of Solara's claim or claims against Solara.

g. In this Chapter 11 Case, Debtor paid the to professionals. In *Git-N-Go*, proposed counsel's retainer was paid by the parent company.

h. All existing client representations that Crowe disclosed in the Original and Supplemental Declarations on the Petition Date concern matters that are unrelated to OneCore. In stark contrast, proposed counsel in *Git-N-Go* disclosed its intent to represent Git-N-Go and multiple creditors in representations related to the debtor-in-possession.

Arguments and Authorities

9. Debtor and Crowe carefully followed the guidance set forth by this Court in *In re Kretchmar*, 577 B.R. 397 (Bankr.W.D.Okla. 2017). Crowe has made fulsome disclosures and has insulated itself from even the appearance of a conflict. Likewise, Debtor, by employing counsel, conflicts counsel, and a CRO, has diligently worked with its professionals to ensure that its professionals avoid even the appearance of an adverse interest.

10. In prior instances wherein debtors took one or more of the steps which Debtor comprehensively utilized in this Chapter 11 Case, professionals' employment was authorized without any objection. *See, e.g., In re GMX Resources, Inc.*, Case No. 13-11256 [Dkt. No. 247]; *In re White Star Petroleum Holdings, LLC*, Case No. 19-12521 [Dkt. No. 247].

11. Appropriately, Debtor has sought early appointment of conflicts counsel. *See e.g., In re J&M Dev. Of Cass County*, No. 04-41065, 2004 WL 1146451, *3 (Bankr. W.D. Mo. 2004) (citing *In re BH&P, Inc.*, 103 B.R. 556 (Bankr. N.J. 1989)) (holding that problems associated with conflicts can be avoided if conflicts counsel is employed from the "outset"). Numerous courts

have recognized the utility of retaining conflicts counsel. *See, e.g., In re Boy Scouts of Am.*, 2021 WL 1820574 (D. Del. May 6, 2021) (recognizing the effectiveness of the retention of discrete matters for which debtor's counsel would otherwise be disqualified under § 327(a)).

12. There is no risk that, by providing limited, unrelated representation of Solara, Crowe holds or even could, at a later date, develop an interest that is materially adverse to the debtor or the debtor-in-possession. After all, the CRO, in concert with George, shall handle any matters where there is a potential for Debtor and Solara to be adverse. There is no active competition between Solara and OneCore where their interests are aligned in support of restructuring the Debtor's financial affairs. Lastly, Debtor's impartiality and detached judgment is on full display through the identification, full disclosure, and employment and retention of conflicts counsel and a CRO. *See In re Granite Partners, L.P.*, 219 B.R. 22, 33 (Bankr. S.D.N.Y. 1998) (“[T]he professional has a disabling conflict if it has either a meaningful incentive to act contrary to the best interests of the estate and its sundry creditors—an incentive sufficient to place those parties at more than acceptable risk—or the reasonable perception of one.” (internal citation and quotation marks omitted)). No such incentive exists here. Crowe is disinterested.

13. Furthermore, the Limited Objection is foreclosed by the plain language of Section 327(c) which prohibits disqualification of Crowe, where no conflict of interest exists, solely because of its employment on unrelated matters by a creditor. 11 U.S.C. § 327 (c); *see also, In re Interwest Business Credit*, 23 F.3d 311, 317 (10th Cir. 1994) (“subsection (c) addresses the situation where dual representation of a creditor and debtor is the *only* reason advanced for disqualification and the professional is otherwise qualified.”)(Emphasis in original).

14. Debtor intends for this Reply to address all questions or concerns raised by UST. If UST has additional questions, Debtor will endeavor to address them promptly.

Conclusion

For the reasons cited above, Crowe & Dunlevy qualifies for employment pursuant to sections 327 and 328 of the Bankruptcy Code and rules 2104 and 2106 of the Federal Rules of Bankruptcy Procedure, and requests entry of the Proposed Order.

Dated: October 24, 2024

Respectfully submitted,

ONECORE

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