

# Eastern District of California

Sacramento, California

1. <u>18-21107</u> -E-11 TBG-1	LAURELS MEDICAL SERVICES Stephan Brown	CONTINUED MOTION TO EMPLOY STEPHAN M. BROWN AS ATTORNEY 3-8-18 <a href="#">[15]</a>
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**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

- Page 1 of 5 -

Debtor in Possession argues that Counsel's appointment and retention is necessary to enable Debtor in Possession to faithfully execute its duties and to implement the restructuring and reorganization of Debtor in Possession. The Bankruptcy Group P.C. will provide legal advice to Debtor in Possession and act to preserve the bankruptcy estate of Debtor.

Stephan Brown, a shareholder in The Bankruptcy Group P.C., testifies that he conducted a conflicts check and that The Bankruptcy Group P.C. is a "disinterested person" under 11 U.S.C. § 101(14). Stephan Brown testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Debtor in Possession notes that the following individuals may be involved with this case as part of the employment of Counsel:

- A. Edward Smith, Senior Attorney;
- B. Stephan Brown, Attorney;
- C. Eric Welch, Legal Administrator;
- D. Brenda Guy, CPA;
- E. Daniel Griffin, Attorney; and
- F. Law clerks, paralegals, and administrative staff.

### **MARCH 22, 2018 HEARING**

At the hearing, counsel explained that the Schedules needed to be amended and additional information disclosed concerning assets of the Estate and operation of the business. Dckt. 30. The court continued the hearing to 10:30 a.m. on April 19, 2018, to afford counsel time to amend the Schedules and Statement of Financial Affairs and to demonstrate there being a financial reason for Debtor in Possession to operate the Estate and the ability of counsel to represent Debtor in Possession. Dckt. 32.

### **DEBTOR IN POSSESSION'S SUPPLEMENTAL PLEADING**

Debtor in Possession filed a Supplemental Pleading on April 4, 2018. Dckt. 36. Debtor in Possession discloses that The Bankruptcy Group negotiated pre-petition with the Internal Revenue Service and other creditors to avoid filing a bankruptcy case, but has not otherwise represented Debtor in Possession, its creditors, equity security holders, the U.S. Trustee, or other parties in interest.

## **APRIL 19, 2018 HEARING**

At the hearing, the parties requested that the hearing be continued to allow Debtor in Possession's Counsel and the U.S. Trustee to address an outstanding issue in light of the Supplemental Pleading filed. Dckt. 57. The court continued the hearing to 10:30 a.m. on May 10, 2018. *Id.*

## **U.S. TRUSTEE'S OBJECTION**

Tracy Hope Davis ("the U.S. Trustee") filed an Objection on May 4, 2018. Dckt. 68. The U.S. Trustee opposes employment on the ground that the Motion and supplements do not adequately disclose The Bankruptcy Group's connections with Debtor in Possession. The U.S. Trustee argues that the firm's disclosures have been vague and inconsistent and have not disclosed whether The Bankruptcy Group was Debtor's creditor when the case was filed.

The U.S. Trustee argues that it has received documents and that documents have been filed on the docket in this case showing that pre-petition amounts paid to The Bankruptcy Group range from \$10,000 to \$12,500 to \$14,717—all of which have been stated after the initial hearing on this Motion. The U.S. Trustee argues that the inconsistencies provided are not a full and candid disclosure required to satisfy 11 U.S.C. § 327.

## **APPLICABLE LAW**

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

## **DISCUSSION**

At the hearing, Debtor in Possession stated unequivocally that The Bankruptcy Group was paid \$**xxxx.xx** pre-petition, that there is a \$**0.00** balance due, and that The Bankruptcy Group is waiving \$**xxxx.xx** of any claim against the Estate that it may have.

Taking into account the court's indication that this case appears to exist solely to pass money through to MYGORIDE, Inc., and to pay \$4,000.00 per month to the CFO, Secretary, and 20% shareholder of Debtor, Debtor in Possession amended the Petition and Schedules lists numerous creditors to be paid through this case. *See* Dckt. 40, 41.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Stephan Brown and others in The Bankruptcy Group P.C. as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the court's order. The court does not approve any specific the hourly rate for any persons authorized to be employed. FN.1.

FN.1. The Motion seeks authorization to employ "Counsel." The court notes that a member of proposed counsel's firm is listed as being a "CPA." The court has authorized the employment of counsel by Debtor in Possession, not a "CPA," bookkeeper, or other non-counsel professional.

As Counsel well knows, being authorized to be employed does not mean the same as having the right to be paid for whatever Counsel bills. Not only the work done and hourly rate, but also whether the services were reasonably necessary and consistent with representing the fiduciary Debtor in Possession (who stands in the place of a bankruptcy trustee) will be considered.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by Laurels Medical Services ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED that the Motion to Employ is granted, and Debtor in Possession is authorized to employ Stephan Brown, of The Bankruptcy Group P.C., as Counsel for Debtor in Possession on the terms and conditions as set forth in the court's order.~~

~~IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this Order or in a subsequent order of this court.~~

~~IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.~~

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~~IT IS FURTHER ORDERED~~ that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.