

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:)
) Chapter 11
CHURCH STREET HEALTH MANAGEMENT, LLC,)
 et al.¹) Case No. 12-01573
)
 Debtors) (Joint Administration Pending)

**EXPEDITED APPLICATION OF DEBTORS PURSUANT TO 11 U.S.C. § 327(E)
AND FED. R. BANKR. P. 2014(A) FOR AUTHORITY TO EMPLOY AND
RETAIN FOLEY HOAG LLP AS DEBTORS' SPECIAL LITIGATION
COUNSEL *NUNC PRO TUNC* TO THE PETITION DATE**

TO THE HONORABLE UNITED
STATES BANKRUPTCY JUDGE:

Church Street Health Management, LLC (“CSHM”) and its affiliated debtors, as debtors in possession (collectively, the “Debtors”), as and for their expedited application (the “Application”)² for the relief requested herein, respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Application under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these proceedings and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. Commencing on February 20, 2012 and concluding in the early morning hours of

¹ The Debtors (with the last four digits of each Debtor’s federal tax identification number and chapter 11 case number), are: Church Street Health Management, LLC (2335; Case No. 12-01573), Small Smiles Holding Company, LLC (4993; Case No. 12-01574), FORBA NY, LLC (8013; Case No. 12-01575), FORBA Services, Inc. (6506; Case No. 12-01577), EEHC, Inc. (4973; Case No. 12-01576).

² The Debtors requested expedited relief on this Motion as more fully set forth in that certain *Second Expedited Motion to Shorten Notice and Set Expedited Hearing for Certain Motions* filed contemporaneously herewith, which motion supports the request for relief by this Motion and which is incorporated herein by reference.

February 21, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”).

3. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No creditors’ committee has yet been appointed in these cases by the United States Trustee. Further, no trustee or examiner has been requested or appointed in any of the Debtors’ chapter 11 cases.

5. Concurrently with the filing of this Application, the Debtors filed a motion with this Court seeking the joint administration of their chapter 11 cases for procedural purposes only.

FACTUAL BACKGROUND

6. The factual background relating to the Debtors’ commencement of these chapter 11 cases is set forth in detail in the Affidavit of Martin J. McGahan, the Chief Restructuring Officer of CSHM, in Support of Chapter 11 Petitions and First Day Pleadings (the “First Day Affidavit”)³ filed contemporaneously herewith. The First Day Affidavit supports the request for relief by this Application and is incorporated herein by reference.

RELIEF REQUESTED

7. By this Application, the Debtors hereby move this Court, pursuant to section 327(e) of the Bankruptcy Code and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order, substantially in the form annexed hereto (the “Order”), authorizing the Debtors to employ Foley Hoag LLP (the “Firm” or “Foley Hoag”), whose business offices are located at 155 Seaport Boulevard, Boston Massachusetts 02210, as

³ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the First Day Affidavit.

their special litigation counsel effective as the date the Debtors filed their respective chapter 11 cases. In support of this Application, the Debtors submit the declaration of Kenneth S. Leonetti, dated February 20, 2012 (the “Declaration”), filed concurrently herewith.

RETENTION OF THE FIRM

A. The Qualifications of the Firm and Background of its Retention

8. The Debtors seek Court approval to retain the Firm, effective *nunc pro tunc* as of the Petition Date in accordance with section 327(e) of the Bankruptcy Code, at the expense of the Debtors’ estates, to serve as their special litigation counsel and to provide legal services with respect to representing the Debtors in connection with certain tort and insurance recovery litigation pending and threatened against the Debtors that will likely need to be resolved in connection with these Chapter 11 cases. As set forth more fully in the First Day Affidavit, beginning in March 2010, and continuing to the present, approximately 11 lawsuits on behalf of over 100 plaintiffs have been filed against CSHM and certain of the Dental Centers, primarily in three states, Ohio, New York and Oklahoma (the “Patient Litigations”). The plaintiffs’ attorneys in those cases have told the Company that they represent more than 1,000 former patients and have requested the charts of those patients, presumably in an effort to file additional lawsuits against CSHM and the Dental Centers.

9. In addition, CSHM and the Dental Centers are beneficiaries of certain Dentists Liability Policies (the “Policies”) issued by National Fire Insurance Company of Pittsburgh, PA (“National Union”). The Company tendered to National Union the Patient Litigations for defense and indemnity under the Policies. National Union denied coverage, and, among other actions, commenced a lawsuit in 2010 against the Company in the United States District Court for the Middle District of Tennessee seeking rescission and reformation of the Policies (the

“Coverage Litigation”). The Company filed counterclaims against National Union, alleging bad faith refusal to honor the Policies and violation of the Tennessee Consumer Protection Act. The Company also brought a third party complaint against its insurance broker, Affinity Insurance Services, Inc., for negligence, negligent misrepresentation and violation of the Tennessee Consumer Protection Act. Upon joint request by all the parties, the Coverage Litigation has been administratively closed, although such action was without prejudice and any party to that litigation has a right to petition the District Court to reopen the Coverage Litigation on 30 days’ written notice to the other parties.

10. The Debtors desire to retain the Firm because of its particular expertise in the area of insurance, tort and bankruptcy-related litigation matters. Specifically, the Debtors seek to engage the Firm with respect to advising the Debtors on the claims subject of the Patient Litigations, the claims and issues subject of the Coverage Litigation, and how these various claims and potential liabilities might be resolved in connection with these Chapter 11 cases. The Firm was engaged pre-petition by CSHM to advise it on these matters and is already familiar with the Debtors’ businesses, its insurance policies, the background of the Patient and Coverage Litigations, and other potential litigation claims. The Firm possesses the skill and expertise necessary to represent the Debtors in these matters. Therefore, the Debtors believe that the Firm’s retention is in the best interests of the estates.

B. The Legal Services to be Provided by the Firm for the Debtors

11. The Firm’s services are necessary to enable the Debtors to execute their duties as debtors-in-possession. Subject to further order of this Court, and without being exclusive, the Debtors propose to engage the Firm to render the following types of legal services to the Debtors:

- a. Advise the Debtors with respect to any claims, defenses, preparations, strategy and settlement regarding the Patient Litigations, the Coverage Litigation and related matters;
- b. Prepare on behalf of the Debtors all necessary and appropriate non-bankruptcy motions, applications, answers, orders, memoranda, reports, and other documents which may be required;
- c. Advise and represent the Debtor in all related discovery, pre-trial and trial matters, and Debtors in any hearing related to these matters;
- d. Perform the range of services historically provided to Debtors by the Firm and normally associated with matters as the Company's special litigation counsel;
- e. Assist the Debtors and lead bankruptcy counsel in any Chapter 11-specific work insofar as such concerns the Patient Litigations, the Coverage Litigation or related matters, including negotiation, formulation and/or confirmation of a Chapter 11 plan; and
- f. Render such other advice and services as the Debtors may require in connection with the Patient Litigations, the Coverage Litigation or related matters that may arise during the pendency of the Cases.

12. The Firm's proposed retention is for the discrete matters referenced above, and the Firm will not be rendering other services typically performed by a debtor's bankruptcy counsel. By delineating the Firm's role, the Debtors have ensured there will be no duplication of services.

C. Section 327 and Rule 2014 Disclosures

13. The Firm was formally retained by the Debtors to act as special litigation counsel in connection with these Chapter 11 filings approximately six weeks prior to the Petition Date. At around the same time, CSHM also retained the Firm to assist it with a discrete issue involving an inquiry by the Commonwealth of Massachusetts.

14. As set out in the Declaration, while the Firm does represent certain entities that are creditors of the Debtors, it does not, to the best of its knowledge, represent any of the parties which are or may be listed as creditors or parties on the matrices filed in these cases in any matters related to the Debtors, these cases or the subject matter of the Firm's representation. Thus, the Firm does not represent or hold any interest adverse to the Debtors or the estate with respect to the matters on which it is to be employed, and can be engaged as special counsel pursuant to 11 U.S.C. § 327(e).

15. Except as set forth in the Declaration, to the best of the Debtors' knowledge and based upon the Declaration, the Firm has no connection with the Debtors, the Debtors' directors and executive management, the Debtors' other professionals, the Debtors' equity holders, the Debtors' primary secured creditors, the Debtors' largest unsecured creditors, any United States Bankruptcy Judge in this District, to the United States Trustee for this District or any employee thereof such as would disqualify the Firm from representing the Debtors.

16. Prior to the Petition Date, the Firm received a retainer from CSHM's general operating account as follows: \$100,000.00 on January 23, 2012; \$67,250.04 on February 3, 2012; and \$37,419.06 on February 17, 2012 (the "Retainer"). The Firm received payments on account its work for the Debtors by billing against the Retainer as follows: \$39,859.44 on January 24, 2012; \$5,556.63 on January 27, 2012; \$27,390.60 on January 30, 2012; \$17,537.71 on February 9, 2012; \$12,296.56 on February 16, 2012; and \$7,584.79 on February 17, 2012 (collectively, the "Payments"). As of the Petition Date, the Retainer held by the Firm, after application of the Payments, was \$94,443.37. In addition to the relief requested hereunder, the Debtor requests that the Firm be permitted to charge against the Retainer its fees and expenses for work done by the Firm in the period of time between its last payment and the Petition Date.

17. There are no arrangements between the Firm and any other entity for the sharing of compensation received or to be received in connection with the Debtors' cases, except insofar as such compensation may be shared among the partners, counsel, and associates of the Firm.

18. Under section 327(e) of the Bankruptcy Code, a debtor in possession is authorized to employ an attorney that has represented a debtor, if it is in the best interest of the estate, and if the attorney does not "represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." 11 U.S.C. §327(e). Section 1107(b) of the Bankruptcy Code modifies sections 101(14) and 327(e) of the Bankruptcy Code in cases under chapter 11 of the Bankruptcy Code, providing that "a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. §1107(b).

PROFESSIONAL COMPENSATION

19. The Firm has agreed to provide the Debtors a 10% discount off its standard hourly rates on account of all attorneys and paraprofessionals who work on this engagement. Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and this Court's rules, the Debtors propose to pay the Firm its customary hourly rates (less 10%) in effect from time to time and to reimburse the Firm according to its customary reimbursement policies. The Firm's hourly rates are subject to periodic adjustments to reflect economic and other conditions.

20. The Foley Hoag attorneys expected to be primarily responsible for the Firm's work for the Debtors, and their respective hourly rates at which they will charge the Debtors, are as follows: Kenneth S. Leonetti, partner (\$589.50); James Dillon, partner (\$616.50); and Martin

C. Pentz, partner (\$652.50). It is anticipated that Mr. Leonetti will be the lead attorney for the Firm in this representation and will incur the most time. The Firm will use other attorneys and paraprofessionals during the course of the cases that it and the Debtors deem appropriate. The Firm charges for associate time at the current standard rate of between \$320 and \$525 per hour, and for paralegal time at the rate of between \$150 to \$250 per hour, all of which will be subject to the 10% negotiated discount.

21. It is the Firm's policy to charge its clients in all areas of practice for all direct expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, conference call and telecopier toll and other charges, express mail charges, special or hand delivery charges, document retrieval, photocopying charges, travel expenses, expenses for "working meals," computerized research, transcription costs, as well as non-ordinary overhead expenses such as secretarial and other overtime. The Firm will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to the Firm's other clients and within the guidelines of the Local Rules of this Court.

22. It is contemplated that the Firm will seek monthly compensation, and at least interim compensation, during the cases as permitted by the Court, sections 330 and 331 of the Bankruptcy Code, and Bankruptcy Rule 2016. The Firm understands that its compensation in the cases is subject to the prior approval of this Court. No compensation will be paid except in compliance with any procedures hereafter approved by further order of this Court or upon application to and approval by this Court after notice and a hearing in accordance with sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, and Local Bankruptcy Rule 2016-1.

NOTICE

23. Notice of this Application has been given to the following parties or, in lieu thereof, to their counsel, if known, via telephone, e-mail, facsimile, overnight courier, or hand delivery: (a) the Office of the United States Trustee for the Middle District of Tennessee; (b) the Debtors' prepetition secured lenders and counsel to the administrative agent for the Debtors' prepetition secured lenders; (c) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; and (d) the Debtors' proposed debtor in possession lenders and their counsel. As this Application is seeking first-day relief, notice hereof and any order entered hereon will be served on all parties required by L.R. 2081-1. Due to the urgency of the circumstances surrounding this Application and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Application is required.

24. No previous application for relief sought herein has been made to this or any other Court.

[remainder of page left intentionally blank]

WHEREFORE, the Debtors respectfully request that this Court grant this Application and approve the employment of Foley Hoag LLP as special litigation counsel, effective as of the Petition Date, to render services as described above, with compensation to be paid by the Estates as administrative expenses in such amount as this Court may hereafter determine and allow.

Dated: February 20 , 2012
Nashville, Tennessee

CHURCH STREET HEALTH MANAGEMENT, LLC
(on behalf of itself and its affiliated Debtors and Debtors
in Possession)

By: /s/ Tore Nelson
Name: Tore Nelson
Title: Chief Executive Officer