SO ORDERED.
SIGNED this 18th day of December, 2024

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

Suzanne H. Bauknight
CHIEF UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

CARICO CONSTRUCTION, INC.

Debtor

Case No. 3:24-bk-31122-SHB
Chapter 7

MEMORANDUM AND ORDER ON MOTION TO COMPROMISE AND APPLICATION TO EMPLOY COUNSEL FOR SPECIAL PURPOSE

Before the Court are related matters filed by F. Scott Milligan, Chapter 7 Trustee ("Trustee"), on October 16, 2024: (1) the Motion to Compromise ("Compromise Motion") [Doc. 29], asking the Court to approve a settlement between the Trustee and creditor Al Blankenship Enterprises, LLC ("ABE") to resolve two pending state-court lawsuits that were removed by the Trustee from Knox County Chancery Court to this Court ("Removed Actions"); and (2) the Application to Employ Counsel for Special Purpose ("Employment Application") [Doc. 30], seeking approval to employ ABE's state-court counsel to represent the estate and ABE against co-defendant/cross-defendant 9600, LLC in the Removed Actions. On November 4, 2024, 9600, LLC filed its opposition to both matters [Doc. 35]. At the hearing held November 7, 2024,

the Court directed the Trustee to brief the conflict-of-interest issues raised through the opposition [Doc. 37], which he filed jointly with ABE on November 22, 2024 (the "Joint Brief") [Doc. 42]. These matters are now ripe for adjudication.

I. FACTUAL BACKGROUND

Debtor filed the Voluntary Petition commencing this Chapter 7 bankruptcy case on June 28, 2024, and the Trustee was duly appointed. On October 18, 2024, the Trustee initiated two adversary proceedings by filing Notices of Removal to effect removal from the Knox County Chancery Court of the following civil actions filed by subcontractors associated with a project between Debtor, acting as general contractor, and 9600, LLC for the construction of a storage facility and other improvements on real property owned by 9600, LLC: (1) *DRS Electric, LLC v. Carico Construction, Inc., et al*., Case No. 206264-1, also naming 9600, LLC, Home Federal Bank of Tennessee, and Investor's Trust Company as defendants ("DRS Lawsuit"[1]); and (2) *Al Blankenship Enterprises, LLC v. Carico Construction, Inc., et al.*, Case No. 209016-2, also naming 9600, LLC as a defendant ("ABE Lawsuit") [Doc. 29 at ¶ 2; Doc. 32; Doc. 33].

Debtor's claims against 9600, LLC in the DRS Lawsuit include breach of contract, unjust enrichment, violation of the Tennessee Prompt Pay Act, and enforcement of materialman's and mechanic's liens, for which Debtor asserts a claim of $528,584.37. [Doc. 29 at ¶ 2; Doc. 32-1; Doc. 42 at 1-2.] 9600, LLC's claims against Debtor include breach of contract, "bad faith attorneys' fees" under the Tennessee Prompt Pay Act, defective construction, breach of warranty, negligent supervision and negligent misrepresentation, and violations of the Tennessee Consumer Protection Act, seeking damages of not less than $350,000.00. [Doc. 32-2; Doc. 35 at 2.]

[1] Although DRS Electric, LLC voluntarily dismissed its claims in the DRS Lawsuit, crossclaims between Debtor and 9600, LLC relating to the parties' contracts remain pending.

The ABE Lawsuit, which names Debtor and 9600, LLC, as defendants, alleges claims of breach of contract, violation of the Tennessee Consumer Protection Act, and unjust enrichment/quantum meruit for which ABE seeks actual damages of $324,614.05, together with statutory damages, attorneys' fees, interest, and costs. [Doc. 33-1.] The Compromise Motion seeks Court authority to settle the ABE Lawsuit under Federal Rule of Bankruptcy Procedure 9019(a).

In performance of his statutory duties, the Trustee examined all assets and, after reviewing the pleadings in the Removed Actions as well as communicating with the parties and their respective counsel, determined that Debtor's claims against 9600, LLC "have merit and are worth pursuing." [Doc. 29 at ¶ 5.] However, because the prepetition litigation "essentially depleted" Debtor's assets, "the bankruptcy estate lacks funds to pay counsel to prosecute the claims . . . [and] prepetition counsel is not willing to continue working for the estate on a contingent fee basis." [*Id*. at ¶¶ 4, 5.] The Trustee asserts that absent the agreement with ABE, including employment of HD&C, the estate will have no ability to pursue or liquidate its claims, resulting in no distribution to unsecured creditors. [*Id.* at ¶ 10.]

Thus, to pursue the claims against 9600, LLC, the Trustee seeks approval of a compromise with ABE to resolve all disputes between Debtor, the estate, and ABE, including ABE's claim for $324,614.05 for work performed but not paid by Debtor and offsets and defenses that Debtor and/or the bankruptcy estate could raise. [*Id.* at ¶ 7; Doc. 42 at 4.] Specifically, the Settlement and Joint Litigation Agreement (the "Agreement") executed by ABE and the Trustee [Doc. 30-3] provides that ABE will release the bankruptcy estate from ABE's rights that were or could have been raised by ABE in either of the Removed Actions, "regardless of whether known or unknown, now existing or arising at a later date." [*Id.* at ¶ 4.a.] Likewise,

the Trustee on behalf of the bankruptcy estate proposes to release ABE (and any "successors, members, attorneys, agents, officers, employees, and affiliates") from any and all rights and remedies against ABE that were or could have been raised by Debtor in either of the Removed Actions, regardless of whether known or unknown, now existing or arising at a later date." [*Id.* at ¶ 4.b.]

The compromise is contingent on the Trustee obtaining permission from the Court for ABE's state-court counsel, Hodges, Doughty & Carson, PLLC ("HD&C"), to serve as special counsel to pursue the estate's claims against 9600, LLC. [Doc. 29 at ¶ 8; Doc. 30-3 at ¶ 7.] Central to the Agreement, ABE will not pursue any distribution from the bankruptcy estate and its claim may be paid only from any recovery against 9600, LLC. [Doc. 30-3 at ¶¶ 4, 6.] Further, ABE will pay the attorneys' fees and expenses of special counsel to pursue both the estate's and ABE's claims against 9600, LLC. [Doc. 29 at ¶ 8; Doc. 30-3 at ¶ 5.] Under the proposed compromise, the estate will assume no risk or obligation for litigating the claims against 9600, LLC because ABE will assume sole responsibility for attorneys' fees and costs, subject to reimbursement from any recovery after Court approval. [Doc. 30-3 at ¶¶ 4, 7.] That is, if the litigation against 9600, LLC is successful, any recovery, regardless of whether such recovery is from ABE's or the estate's claims, will be disbursed as follows: (1) to ABE for reimbursement of attorneys' fees and expenses it pays to special counsel, subject to Court approval; (2) to the bankruptcy estate in the amount of 30% of any recovery net of any approved special counsel compensation; and (3) to ABE in the remaining amount of 70% of any recovery from 9600, LLC net of any approved special counsel compensation. [*Id.* at ¶ 6.] Finally, and crucially, "the Trustee will remain the sole decision maker on behalf of the [b]ankruptcy [e]state

so far as it relates to the direction, settlement, and trial of the [b]ankruptcy [e]state's claims against [9600, LLC]." [*Id.* at ¶ 5.]

Although 9600, LLC opposes both motions, the focus of its opposition is the Employment Application as it appears that the primary objection of 9600, LLC to the Compromise Motion is the provision that authorizes HD&C to act as special counsel for the estate. [Doc. 35.] 9600, LLC argues that HD&C should not be allowed to concurrently represent the bankruptcy estate and ABE under Tennessee Rule of Professional Conduct 1.7 and the Bankruptcy Code because (1) Debtor and ABE are in direct conflict because HD&C represents interests that are adverse to Debtor's, making HD&C not a "disinterested person" as defined by 11 U.S.C. § 101(14)(C) as it relates to 11 U.S.C. § 327(a) and (2) the proposed representation creates a non-waivable actual conflict of interest [*Id*. at 4-11.] 9600, LLC argues that if any attorneys currently representing one of Debtor's creditors should be appointed as special counsel, *its* legal counsel should be appointed. [*Id*. at 1, 11-12.]

As directed by the Court, the Joint Brief addresses the matters at issue: whether the Compromise Motion satisfies the requirements of Federal Rule of Bankruptcy Procedure 9019(a); whether the Employment Application should be approved; and whether 9600, LLC's Opposition should be sustained or denied.

II. ANALYSIS

A. Compromise Motion

Unquestionably, "the law favors compromise and not litigation for its own sake." *Hindelang v. Mid-State Aftermarket Body Parts Inc.* (*In re MQVP, Inc.*), 477 F. App'x 310, 312 (6th Cir. 2012) (citations, brackets, and internal quotation marks omitted). To accomplish this goal under the Bankruptcy Code, "[o]n the trustee's motion and after notice [to all creditors, the

United States Trustee, the debtor, all indenture trustees as provided in Rule 2002, and any other entity the court designates] and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). "The very purpose of such a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims." *Id.* at 312 (quoting *Bard v. Sicherman* (*In re Bard*), 49 F. App'x 528, 530 (6th Cir. Oct. 15, 2002) (citation omitted)). Accordingly, a trustee's settlement "must represent the interests of the bankruptcy estate and its creditors, and is reviewed under 'the business judgment rule.'" *In re Woodbury*, 629 B.R. 239, 243 (Bankr. E.D. Mich. 2021) (citation omitted).

Although the Trustee is afforded some amount of deference to his decision to settle a claim, the court may not simply "rubber stamp the agreement or merely rely upon the trustee's word that the settlement is reasonable." *In re MQVP, Inc*., 477 F. App'x at 313. "In determining whether to approve a settlement, the bankruptcy court must 'apprise itself of the underlying facts and . . . make an independent judgment as to whether the compromise is fair and equitable.'" *Bush v. Nathan* (*In re Bush*), No. 19-2131, 2021 WL 1327226, at *2 (6th Cir. Jan. 12, 2021) (quoting *Reynolds v. Comm'r*, 861 F.2d 469, 473 (6th Cir. 1988)). Nonetheless, the court is not required to conduct a mini-trial on the proposed settlement, and the bankruptcy court's decision enjoys "significant discretion." *Rankin v. Brian Lavan & Assocs., P.C.* (*In re Rankin*), 438 F. App'x 420, 426 (6th Cir. 2011).

The Court's obligation has been summarized by the Supreme Court:

> There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained,

> and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson (In re TMT Trailer Ferry, Inc.), 390 U.S. 414, 424-25 (1968). The Supreme Court's summary has been distilled to the following factors:

> (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of creditors and a proper deference to their reasonable views in the premises.

In re Bush, 2021 WL 1327226, at *2 (quoting *In re Bard*, 49 F. App'x at 530).

In the Joint Brief, the Trustee focuses on the third and fourth factors concerning the expense of litigation and the interests of unsecured creditors, arguing that without the settlement, there are no assets available to pursue the litigation or to distribute to unsecured creditors and that the only means by which either can be accomplished is the proposed settlement with ABE. On the other side, 9600, LLC opposes the settlement between the Trustee and ABE because they will join together to pursue the estate's claims against 9600, LLC and will utilize HD&C to do so.

The Court agrees with the Trustee that the third and fourth factors are paramount.[2] Reviewing those factors, the Court concludes that the settlement is fair and equitable. The Trustee has evaluated[3] all aspects of the Removed Actions and has determined that the estate's

[2] As to the first factor, the Court notes that Debtor and the Trustee acknowledge that ABE's material and labor provided to the project at issue were structurally sound. Debtor asserts that it did not pay ABE because 9600, LLC did not pay Debtor, which triggered the pay-when-paid or pay-if-paid clauses in ABE's subcontract with Debtor. [Doc. 30-3 at ¶¶ O-Q.] The second factor – likely difficulties for collection – is irrelevant in the context of the proposed compromise of ABE's claims against Debtor, for which Debtor has alleged only defenses and an offset.

[3] The Trustee's evaluation included testimony from the meeting of creditors, consultations with Debtor's state-court counsel and bankruptcy counsel, discussions with the principal of 9600, LLC, and his own reading of the pleadings and documents of record in the DRS Lawsuit. [Doc. 42 at 3-4.]

only significant asset is a potential recovery against 9600, LLC in the DRS Lawsuit for unpaid contract amounts that exceed $500,000.00. The Court finds convincing the Trustee's argument that without approval of the Compromise Motion, the estate has insufficient assets to pursue any action against 9600, LLC. The proposed compromise will cost the estate nothing and could result in significant recovery by the estate for distribution to unsecured creditors from either the DRS Lawsuit or the ABE Lawsuit because the Agreement confers on the bankruptcy estate an interest in any recovery against 9600, LLC under the ABE Lawsuit. The mutual releases between the Trustee and ABE – which cover not only the claims raised in the Removed Actions but also claims that were and could have been raised in those suits, including existing and future claims, known and unknown – mean that the estate will not incur any risk or disadvantage under the terms of the settlement. The Court cannot see the downside to the compromise (so long as the joint representation by HD&C is not inappropriate, which will be addressed below). On the other hand, disapproval of the compromise will leave the estate without remedy to pursue its claims against 9600, LLC, which would kill any possibility of distribution to any of Debtor's unsecured creditors.

B. Employment Application

The Bankruptcy Code authorizes a trustee to employ special counsel "if in the best interest of the estate, and if such 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). Furthermore, "a person is not disqualified for employment . . . solely because of such person's employment by or representation of a creditor, unless there is an objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an *actual* conflict of interest." 11 U.S.C. § 327(c) (emphasis added). The

Bankruptcy Code does not define "actual conflict of interest" for purposes of § 327(c), which "has been given meaning largely through a case-by-case evaluation of particular situations arising in the bankruptcy context." *In re BH & P, Inc.*, 949 F.2d 1300, 1315 (3d Cir. 1991).

A number of bankruptcy courts within the Sixth Circuit have utilized the definition for interests adverse to the estate: "(1) to possess . . . an 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 Licking River Mining, LLC*, 562 B.R. 351, 357 (Bankr. E.D. Ky. 2016); *see also In re Campbell*, No. 18-33552(1)(11), 2019 WL 2866745 (Bankr. W.D. Ky. July 2, 2019). Generally, "[a]n actual conflict of interest is 'an active competition between two interests, in which one interest can only be served at the expense of the other.'" *In re Midway Motor Sales, Inc.*, 355 B.R. 26, 33 (Bankr. N.D. Ohio 2006) (quoting *In re BH & P, Inc.*, 949 F.2d at 1515). "Courts have been accorded considerable latitude in using their judgment and discretion in determining whether an actual conflict exists 'in light of the particular facts of each case.'" *In re M & P Collections, Inc.*, 599 B.R. 7, 11 (Bankr. W.D. Ky. 2019) (quoting *In re BH & P, Inc.*, 103 B.R. 556, 563 (Bankr. D.N.J. 1989), *aff'd in pertinent part*, 119 B.R. 35 (D.N.J. 1990)).

Applying these principles, the Court finds that there is no actual conflict of interest between the estate and ABE because all potential competing interests will be resolved by the Court's approval of the Compromise Motion. As noted, the Trustee and ABE propose a complete mutual release of claims that were or could have been brought in either lawsuit, including those that might arise, for example, by 9600, LLC asserting that its claims against Debtor (now, the bankruptcy estate) are the fault of ABE or vice versa. Simply, under the terms of the settlement,

there will be no further dispute between Debtor and ABE.[4] Instead, the estate and ABE will pursue their respective concurrent claims against 9600, LLC. ABE will pay HD&C for all fees, and only if there is a recovery against 9600, LLC will the estate be required to reimburse ABE for the fees and expenses that the Court approves as "necessary, reasonable legal fees and expenses expended in pursuit of the recovery." [Doc. 30-3 at ¶ 6.a.] Thus, under the terms of the settlement, there are no adverse or conflicting interests between the estate and ABE, which are aligned against 9600, LLC. The Trustee will retain sole discretion as decision-maker over the estate's claim against 9600, LLC. Also, although ABE retains the right to give notice to the Trustee and HD&C that it is no longer feasible for it to bear the litigation costs, the releases and waivers of the settlement will remain effective, and the Trustee may continue pursuit of recovery against 9600, LLC with other counsel, with any recovery accruing solely to the benefit of the bankruptcy estate. [*Id.* at ¶ 9.]

In its Opposition, 9600, LLC argues that the terms of the proposed employment violate Tennessee Rule of Professional Conduct 1.7 because there is "inherent adversity" between the estate and ABE that cannot be overcome even by waiver of the parties. Rule 1.7 provides for concurrent representation as follows:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> > (1) the representation of one client will be directly adverse to another client; or
> >
> > (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

[4] The "limited release" in the proposed compromise reserves and retains only the rights in the Agreement between the Trustee (on behalf of the bankruptcy estate) and ABE. [Doc. 30-3 at ¶ 4.]

> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent, confirmed in writing.

Tenn. Sup. Ct. R. 8, RPC 1.7.

Because the settlement resolves all disputes between Debtor and ABE, HD&C will not be representing adversaries. Instead, under the Agreement, HD&C will be employed to jointly represent Debtor and ABE in their claims against 9600, LLC, not for any claims against each other because all such claims have been released, and both parties have waived in writing any potential conflicts of interest that could remain. [Doc. 30-3 at ¶ 8; Doc. 42 at 9-10 n.2.]

9600, LLC also argues that the Court should deny the Employment Application under the reasoning of *Auday v. Wetseal Retail, Inc.*, No. 1:10-CV-260, 2013 WL 2457717 (E.D. Tenn. June 6, 2013). There, Debtor's former employer objected to joint representation of the Chapter 7 trustee and the debtor in the debtor's prepetition employment discrimination suit. The bankruptcy court had authorized the employment of the debtor's prepetition employment counsel as special counsel for the bankruptcy estate, but the district court found that the trustee could not be represented concurrently by the debtor's counsel because such "representation [might] lead to a potential or actual conflict of interest." *Id.* at *1.

The Court finds *Auday* inapposite. There, the parties agreed that the concurrent representation "could result in a potential or actual conflict of interest." *Id.* at *9. The crucial distinction between *Auday* and this case is that counsel there likely would have been conflicted

in his loyalty to each client in settlement discussions because the chapter 7 trustee would be motivated to settle for less than the debtor wanted. That is, the court found that "it [w]as certainly possible that [the] [d]efendant could make an offer that would satisfy the amount [the debtor] owed to [her] creditors," which "would satisfy the creditors and avoid the risk of an adverse jury verdict," but "if the case went to trial it [was] possible that recovery could be even greater, and any excess sum would go to [the debtor] and [her] [c]ounsel." *Id.* at *10. Thus, counsel would not only have a personal interest in maximizing recovery to the detriment of the estate, but counsel also might have been "pulled in different directions given its respective duties owed to each client." *Id.* The Court acknowledges that when a chapter 7 trustee takes over a prepetition action by the debtor that could result in surplus recovery, there may be inherent, unwaivable conflicts with concurrent representation of the trustee and the debtor. *See In re Mercury*, 280 B.R. 35 (Bankr. S.D.N.Y. 2002), *cited with approval in Auday*, 2013 WL 2457717 at *11. Such a concern does not exist here.

Numerous cases illustrate that the joint representation proposed here is not barred by either the Code or the Rules of Professional Conduct when there remains no dispute between the settling creditor and the debtor or the bankruptcy estate. Indeed, "[e]ven absent such a settlement, courts in similar cases regularly permit a chapter 7 trustee to retain a creditor's attorney as his own to pursue claims designed to augment the debtor's estate." *Goodwin v. Carickhoff* (*In re Decade, S.A.C., LLC*), Bankr. No. 18-11668 (CSS), C.A. No. 18-1880-MN, 2020 WL 564903, at *7 (D. Del. Feb. 5, 2020) (citing *Stoumbos v. Kilimnik*, 988 F.2d 949 (9th Cir. 1993) (rejecting appeal from bankruptcy court order approving retention of creditor's lawyer as special counsel to chapter 7 trustee because, among other things, the interests of the creditor and the trustee are aligned in trying to increase the size of the debtor's estate); *Bank Brussels*

Lambert v. Coan (*In re AroChem Corp.*), 176 F.3d 610 (2d Cir. 1999) (affirming order approving retention of creditor's lawyer as special counsel to chapter 7 trustee where counsel had previously represented creditor in action against other creditor because the clients' interests were fully aligned in pursuing recovery against the objecting creditor); *In re Midway Motor Sales, Inc.*, 355 B.R. at 32-34 (granting chapter 7 trustee's motion to retain as special counsel law firm that represented an unsecured creditor and separate secured creditor where the interests of the creditors and the trustee were aligned in maximizing the value of the estate); *In re RPC Corp.*, 114 B.R. 116 (M.D.N.C. 1990) (approving retention as special counsel to chapter 7 trustee of law firm that was also representing one creditor in action against another, where the purpose of retention was to investigate and file claims against same creditor law firm was already pursuing for its other client).

As noted in *Decade, S.A.C.*, the "Code itself clarifies that a professional is not disqualified from employment solely because the professional represents the trustee and a creditor." *Id.* at *8. 9600, LLC relies on §§ 327(a) and 101(14)(C) to argue that the joint representation is prohibited by law. [Doc. 35 at 8.] Such reliance is misplaced because employment of special counsel is governed by subsection (c) as an express exception to subsection (a), and subsection (c) does not require disinterestedness but only the absence of an actual conflict. *See In re Midway Motor Sales, Inc.*, 355 B.R. at 32-33 (noting that "courts within the Sixth Circuit have found that 'where a trustee seeks to appoint counsel only as "special counsel" for a specific matter, there need only be no conflict between the trustee and counsel's creditor client with respect to the specific matter itself' . . . [so that] when the interest for which special counsel is retained and the interest of the estate are identical, there is no conflict of interest and the representation may be approved") (citations omitted)); *Johnson v. Richter, Miller*

& Finn (*In re Johnson*), 312 B.R. 810, 820 (E.D. Va. 2004) ("Thus, where a trustee employs a professional who represents a creditor, the stringent two-pronged test set forth in § 327(a) does not apply."). Subsection (c)'s prohibition of employment if there is an actual conflict of interest, however, does not apply here because the interests of the Trustee acting on behalf of the bankruptcy estate and ABE are aligned.

Because the Court concludes that there is no actual conflict of interest or any other bar to the employment of HD&C to represent the Trustee and ABE in the Removed Actions, the Employment Application will be approved.[5]

III. ORDER

For the forgoing reasons, the Court directs the following:

1. The "Opposition to Motion to Compromise [Doc. 29], Opposition to Application to Employ Counsel for Special Purpose [Doc. 30], and 9600, LLC's Application to Employ Counsel for Special Purpose" filed on November 4, 2024 [Doc. 35[6]], is OVERRULED.

2. The Application to Employ Counsel for Special Purpose filed by F. Scott Milligan, Chapter 7 Trustee, on October 16, 2024 [Doc. 30], is APPROVED.

3. The Motion to Compromise filed by F. Scott Milligan, Chapter 7 Trustee, on October 16, 2024 [Doc. 29], is GRANTED.

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[5] The Court also notes that approval of the Compromise Motion results in the bankruptcy estate having an interest in the ABE Lawsuit by virtue of the provision in the Agreement that 30% of any recovery net of court-approved attorneys' fees and expenses will belong to the bankruptcy estate.

[6] The inclusion in 9600, LLC's opposition of an application for its counsel to be employed as special counsel is wholly inappropriate procedurally because (1) it constitutes a separate request and (2) only the Trustee may seek to employ special counsel under § 327(e). Thus, the Court will not further address that request.