IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
QUORUM HEALTH CORPORATION, *et al.*,	:	Case No. 20-10766 (BLS)
	:	
	:	(Jointly Administered)
Reorganized Debtor.	:	
Daniel H. Golden, as Litigation Trustee of the QHC Litigation Trust, and Wilmington Savings Fund Society, FSB, solely in its capacity as Indenture Trustee,	:	
	:	
Plaintiffs,	:	
vs.	:	
	:	Adv. Proc. No. 21-51190 (BLS)
Community Health Systems, Inc.; CHS/ Community Health Systems, Inc.; Revenue Cycle Service Center, LLC; CHSPSC, LLC; Professional Account Services, Inc.; Physician Practice Support, LLC; Eligibility Screening Services, LLC; W. Larry Cash; Rachel Seifert; Adam Feinstein; and Credit Suisse Securities (USA) LLC,	:	Re: Adv. D.I. 162, 165, 169, 172, and 173
	:	
Defendants.	:	

MEMORANDUM ORDER[1]

Before the Court are the following pleadings: the Motion for an Order to Intervene in this Adversary Proceeding and to File the Joinder for the Limited Purpose of Joining Daniel H.

[1] This Memorandum Order constitutes the Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure. This Court has jurisdiction over this core proceeding pursuant to 28 U.S.C. § 1334 and § 157(b)(1) and (b)(2)(H) and (O).

Golden, as Litigation Trustee for the QHS Litigation Trust (the "Trustee"), and Wilmington Savings Fund Society, FSB, solely in its capacity as Indenture Trustee (collectively, the "Plaintiffs"), in the Prosecution of Counts Seven and Eight of the Trustee's Complaint[2] (hereinafter the "Renewed Motion to Intervene")[3] filed by Quorum Health Corporation (hereinafter "Quorum"); the response[4] to the Renewed Motion to Intervene (the "Response") filed by the CHS parties;[5] and Quorum's reply[6] thereto (the "Reply"). The record,[7] which is largely undisputed, reflects as follows:

1. On February 7, 2022, Quorum filed a motion to intervene (the "First Motion to Intervene"), by which Quorum sought leave to file a one-count complaint against the CHS parties in this Adversary Proceeding.[8] Quorum's proposed complaint sought a declaratory judgment that Quorum was not obligated under the indemnification provision in the Separation and Distribution Agreement by and between Quorum and the CHS parties, dated April 29, 2016 (the "Separation Agreement"),[9] to advance the CHS parties' fees and expenses in this Adversary Proceeding.[10] The CHS parties opposed, and moved for a stay pending arbitration of the dispute as requested under the contract between Quorum and the CHS parties.[11]

[2] Counts Seven and Eight of the Trustee's Complaint seek to undo the indemnification and arbitration provisions under the Separation and Distribution Agreement (defined below) as a fraudulent transfer.

[3] Adv. D.I. 162.

[4] Adv. D.I. 165.

[5] The CHS parties are Community Health Systems, Inc.; CHS/Community Health Systems, Inc.; Revenue Cycle Service Center, LLC; CHSPSC, LLC; Professional Account Services, Inc.; Physician Practice Support, LLC; Eligibility Screening Services, LLC; W. Larry Cash; Rachel Seifert; and Adam Feinstein.

[6] Adv. D.I. 169.

[7] A detailed background of this matter is set forth in the prior Opinion regarding the First Motion to Intervene and Motion to Stay Litigation Pending Arbitration, and will not be repeated here. *See* D.I. 160.

[8] Adv. D.I. 54.

[9] Quorum entered into certain agreements, including the Separation Agreement, with CHS that governed or continued to govern matters related to Quorum's formation through a spin-off from CHS (the "Spin-Off Agreement"). *See* Adv. D.I. 61.

[10] Adv. D.I. 54-1.

[11] Adv. D.I.s 60, 61.

2. On August 30, 2023, the Court denied the First Motion to Intervene without prejudice and granted CHS' motion to stay litigation pending arbitration.[12] In denying Quorums' First Motion to Intervene without prejudice, "the Court observe[d] that Quorum has identified a cognizable interest[13] in the disposition of [Counts 7 and 8] of the underlying Adversary Proceeding dealing with the validity of the indemnification clauses."[14]

3. In response to the Court's invitation, Quorum filed the Renewed Motion to Intervene in this Court.[15] On September 25, 2023, the CHS parties filed their Response.[16] Quorum timely filed its Reply in support of the Renewed Motion to Intervene.[17] The briefing on the matter is complete.[18]

THE PARTIES' ARGUMENTS

4. Quorum seeks relief pursuant to Federal Rule of Civil Procedure 24(a), made applicable by Federal Rule of Bankruptcy Procedure 7024, which provides for "(a) mandatory intervention and (b) permissive intervention."[19] By its motion and subsequent briefing, Quorum—as a Debtor in the underlying chapter 11 case—asserts that it has a statutory right to intervene in this Adversary Proceeding as a party in interest under 11 U.S.C. § 1109(b). The CHS parties respond that intervention should be denied because Quorum is prohibited by the Spin-Off Agreement and the Federal Arbitration Act from intervening in Counts Seven and Eight.

---

[12] Adv. D.I. 161. This Court held that Quorum's proposed claim for declaratory judgment regarding the rights of the CHS defendants under the pertinent indemnification provisions was subject to arbitration.

[13] Section 1109(b) of the Bankruptcy Code grants an unconditional right to intervene. That statute states: "A party in interest, including the debtor . . ., may raise and may appear and be heard on any issue in a case under [Chapter 11]." 11 U.S.C. § 1109(b).

[14] Adv. D.I. 160 at 10. "The Court also note[d] Quorum's statutory right to intervene as a party in interest pursuant to Section 1109(b). The Court would consider permitting Quorum to intervene in this adversary proceeding upon the filing of a motion requesting that relief." *Id.*

[15] Adv. D.I. 162.

[16] Adv. D.I. 165.

[17] Adv. D.I. 169.

[18] The Court notes that the parties have requested oral argument on the Renewed Motion to Intervene. That request is respectfully denied.

[19] Fed. R. Civ. P. 24(a).

Alternatively, the CHS parties suggest that the Court should limit Quorum's participation if the Court nevertheless permits Quorum to intervene.

ANALYSIS

5. The issue is whether Quorum has provided sufficient grounds to justify mandatory intervention for the limited purpose of joining in the Trustee's prosecution of Counts Seven and Eight of the Trustee's Complaint. Rule 7024 of the Bankruptcy Rules and Rule 24 of the Federal Rules of Civil Procedure govern intervention in an adversary proceeding.[20] Rule 24 of the Federal Rules of Civil Procedure provides for (a) intervention of right and (b) permissive intervention.[21] Under Rule 24(a), "anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene."[22] Section 1109(b) of the Bankruptcy Code confers upon a Debtor in an adversary proceeding the right to "appear and be heard on any issue in a case" under Chapter 11 of the Bankruptcy Code.[23] The Third Circuit has consistently held that the right to intervene under Section 1109(b) is "broad," "absolute" and "mandatory" and that courts have no "discretion to deny intervention to the parties in interest . . . that are specifically listed in section 1109(b)."[24]

[20] *7 Collier on Bankruptcy* ¶ 1109.03[5].

[21] Fed. R. Bankr. P. 7024 makes Fed. R. Civ. P. 24 applicable to adversary proceedings under the Bankruptcy Code. Fed. R. Civ. P. 24(a) states in relevant part:

> On timely motion, the court must permit anyone to intervene who (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

[22] *See id.; See United States v. State Street Bank & Trust Co*., 2002 WL 417013, at *1 (Bankr. D. Del. Mar. 4, 2002).

[23] "A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b); *Matter of Marin Motor Oil, Inc.*, 689 F.2d 445, 449-50 (3d Cir. 1982). ("The words 'this chapter' in section 1109(b) denote Chapter 11 of the Bankruptcy Code, the Chapter which deals specifically with reorganizations.")

[24] *Matter of Marin Motor Oil, Inc.*, 689 F.2d 449-57 (3d Cir. 1982).

6. Quorum is the Debtor in this Chapter 11 case, and thus is entitled to intervene as a matter of right. Under Rule 24(a), a court "must permit" a party to intervene when (1) the party is "given an unconditional right to intervene by a federal statute."[25] Section 1109(b) of the Bankruptcy Code grants such an unconditional right to intervene.[26] That statute states: "A party in interest, including the debtor . . ., may raise and may appear and be heard on any issue in a case under [Chapter 11]."[27] As this Court observed in its prior Opinion, Quorum is the Debtor and has identified a cognizable interest in this Adversary Proceeding.[28] The relief that the Trustee seeks in Counts Seven and Eight would have a direct impact on the claims between Quorum and the CHS parties, and Quorum seeks to intervene to protect that cognizable interest. Accordingly, because Quorum is a party in interest specifically listed in § 1109(b), Quorum has the right to intervene in the instant Adversary Proceeding."[29] Its agreement with the CHS parties to arbitrate indemnification rights arising from the Spin-Off Agreement may operate here to limit the scope of the relief Quorum may affirmatively seek in this Adversary Proceeding, but Quorum is nevertheless entitled to intervene and participate in this litigation.[30]

[25] Fed. R. Civ. P. 24(a)

[26] The Third Circuit follows precedent that holds "that section 1109(b) is applicable in adversary proceedings as it is in cases under the Bankruptcy Code, and that 'a statute of the United States confers an unconditional right to intervene,' within the meaning of Fed. R. Civ. P. 24(a)(1)." *See, e.g., In re Adelphia Communications Corp.,* 285 B.R. 853-54 (Bankr. S.D.N.Y. 2002).

[27] 11 U.S.C. § 1109(b).

[28] *See* D.I. 160 at 10.

[29] *See Marin Motor Oil*, 689 F.2d at 457. ("It is appropriate to add a point stressed by the district judge . . ., namely that the broad and absolute construction of section 1109(b) comports with the usual expectation of parties in interest that they will have a right to be heard, as parties in interest, by the tribunal adjudicating their interests. This expectation has its roots in notions of due process and fair play, even though there is no allegation here that denial of a right of intervention . . . would itself violate due process.")

[30] *See Adelphia Communications*, 285 B.R. at 857, 857 n.21. ("[C]ourts may control the proceedings before them even after intervention, and, if necessary, limit actions by intervenors or require coordination, in the interests of judicial economy, avoiding harassment or excessive burdens, or otherwise in the interests of justice . . . [The Court can] control [the] proceedings before it, including controlling duplicative or burdensome discovery, . . ., and thus, one way or another, inappropriate discovery requests would be subject to control by the court.")

Based upon the foregoing, and after due deliberation, and good and sufficient cause appearing therefor, it is hereby **ORDERED** that the Renewed Motion to Intervene is **GRANTED.**[31]

BY THE COURT:

Dated: December 14, 2023
Wilmington, Delaware

Brendan Linehan Shannon
United States Bankruptcy Judge

[31] The CHS parties have requested that, if intervention is permitted, the Court should prospectively impose restrictions on what sorts of action Quorum may take in this adversary proceeding. However, consistent with the observations of the *Adelphia* court quoted above, the Court is confident it can appropriately monitor Quorum's participation going forward to ensure that it remains within its proper scope, creates no wasteful or duplicative efforts, and does not unfairly prejudice the CHS parties.