So Ordered.

Dated: August 26, 2025

G. Michael Halfenger
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

KLE Equipment Leasing, LLC, *et al.*,[1]	Case No. 25-22922-gmh Chapter 11 Proceedings
Debtors.	Jointly Administered

ORDER GRANTING THE DEBTORS' APPLICATION TO EMPLOY KERKMAN & DUNN AS COUNSEL FOR THEIR ESTATES PURSUANT TO 11 U.S.C. §327(a)

On May 21, 2025, related debtors KLE Equipment Leasing, LLC (KLE Equipment), Olson Equipment Leasing LLC (Olson Equipment), Wausau Office Space, LLC (Wausau Office), Kirk Ecklund, ECI, Inc. (ECI), and Elite Carriers, Inc. (Elite) (collectively, the debtors) each filed a petition under chapter 11 and requested that their cases be jointly administered. Soon after, the six debtors applied for approval of their employment of Kerkman & Dunn (K&D) to represent them as debtors in possession of their bankruptcy estates.

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1. Jointly administered with Olson Equipment Leasing, LLC, (Case No. 25-22923-gmh), Wausau Office Space, LLC, (Case No. 25-22925-gmh), Kirk L. Ecklund (Case No. 25-22927-gmh), ECI, Inc. (Case No. 25-22929-gmh) and Elite Carriers, Inc. (Case No. 25-22931-gmh). This order applies to all of the jointly administered debtors.

The United States trustee (UST) objects to the debtors' joint application to employ K&D. At an August 13, 2025 hearing on the application the debtors presented the testimony of their financial consultant, William Hutchinson, and owner-debtor Kirk Ecklund in support of their application. ECF No. 196. At the end of the hearing the court took the matter under advisement.

I

Section 327 of the Bankruptcy Code governs the authority of trustees—and thus chapter 11 debtors in possession on whom §1107 bestows the rights, powers, and duties of trustees—to employ attorneys and other professionals. Section 327(a) generally authorizes a debtor's employment of an attorney who "do[es] not hold or represent an interest adverse to the estate, and that [is a] disinterested person[ ]". 11 U.S.C. §327(a). The Bankruptcy Code defines a "disinterested person" as one who

> (A) is not a creditor, an equity security holder, or an insider;
>
> (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
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> (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

11 U.S.C. § 101(14). The Seventh Circuit has read §101(14)'s catch-all phrase, "for any other reason", to be "'sufficiently broad to include any professional with an 'interest or relationship that would even faintly color the independence and impartial attitude required by the Code.'" *Kravit, Gass & Weber, S.C. v. Michel (In re Crivello)*, 134 F.3d 831, 835 (7th Cir. 1998) (quoting *In re BH & P Inc.*, 949 F.2d 1300, 1308 (3d Cir. 1991)). And that court has construed §327(a)'s provision that a professional not "hold or represent an interest adverse to the estate" to entail that the professional may not

> (1) [ ] possess or assert any 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) [ ] possess a predisposition under circumstances that render such a bias against the estate.

Id. (quoting *In re Roberts*, 46 B.R. 815, 827 (Bankr. D. Utah 1985)).

Section 327(c) offers a caveat, however, applicable when counsel to be employed by the bankruptcy estate also represents a creditor of that estate. "[A] trustee [or debtor in possession] may employ a creditor's attorney under § 327(c) provided the dual representation presents no actual conflict of interest." *Johnson v. Richter, Miller & Finn (In re Johnson)*, 312 B.R. 810, 820 (E.D. Va. 2004); see also §327(c) ("In a case under chapter . . . 11 . . . , a person is not disqualified for employment under [§327] solely because of such person's employment by or representation of a creditor, unless there is 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."). Whether there is an actual conflict of interest for §327(c) purposes depends on the meaning of that phrase as used in the Code. *Id.* at 822 ("[T]he determination as to whether an actual conflict of interest exist[s] . . . [is] guided by federal bankruptcy law and not state law.").

The UST's objection to the debtors' application jointly to employ K&D raises the following questions:

- By representing the jointly administered debtors, does K&D represent an adverse interest to the debtors' estates or represent an interest that would make the firm *not* disinterested, i.e., an interest that would even faintly color the firm's independence and impartial attitude?

- If K&D has a resulting adverse interest, does that interest arise solely because of K&D's employment by or representation of a creditor?

- And, if so, is there an actual conflict of interest that would prevent it from representing the debtors?

II

A

Debtor Kirk Ecklund is the sole owner of all jointly administered non-individual debtors. ECF No. 12, at 1. The non-individual debtors collectively operate as a single business enterprise in the trucking and logistics industry, with each of them performing a function that is interrelated with those of the others. ECI and Elite hire over-the-road drivers and obtain contracts from customers in need of transportation, in addition to conducting "logistics brokerage services, commercial vehicle leasing and vehicle repairs." *Id*. at 2. KLE Equipment "own[s] . . . semi-tractors and trailers and lease[s] them to ECI", and Olson Equipment owns semi-tractors and trailers and leases them to Elite. *Id*. at 3. Wausau Office "was formed in December 2021 to lease commercial office space in Wausau", and Wausau Office leases space to the debtors. *Id.*

William Hutchinson credibly testified that each company is entirely dependent on its sister companies. Hutchinson—who provided expert testimony based on his knowledge, training, and experience in finance and lending, as well as facts learned during his engagement by the debtors as their financial consultant—explained that, at least in the short-term, the debtor companies could not survive independently: they each depend on services provided by the others to market trucking and logistics services. He further opined that because of their integrated structure, the companies have routinely engaged in inter-company transfers of the type that are common among entities operating similarly structured businesses.

In September 2024 the debtors' major secured creditor, BMO Bank N.A. (BMO), filed a lawsuit in Winnebago County Circuit Court seeking replevin, foreclosure of its interests in its collateral, and monetary judgments against all the debtors and other non-debtor entities. *Id.* at 5; see *BMO Bank N.A. v. Ecklund*, No. 2024CV851 (Winnebago Cnty. Cir. Ct. filed Sept. 9, 2024). That litigation continued into 2025, when BMO requested the appointment of a state-court receiver, a motion the state court scheduled

for hearing on May 21, 2025. ECF No. 12, at 5. After efforts to compromise the matter failed, the debtors petitioned for bankruptcy relief under chapter 11 shortly before the state court was scheduled to commence the receivership hearing. *Id.*

B

While BMO was pursuing its state-court action against the debtors, as well as after the debtors filed their bankruptcy petitions, Kirk Ecklund transferred personal assets and made business decisions favoring non-debtors. Before filing his personal bankruptcy petition, for example, Ecklund transferred membership interests in real-estate-owning LLCs, collectively valued at almost $15 million, to his two sons, Tannor and Trenton Ecklund, in exchange for either cash or the assumption of underlying debts associated with those interests. ECF No. 107, at 5 & 9–13.[2] Ecklund's disclosure of these transfers in his statement of financial affairs notes, "The transferee assumed all liabilities of the company transferred; Debtor's counsel is determining whether any additional consideration is necessary to ensure fair value is paid for the transfer." *Id.* at 5. The UST contends that Ecklund's pre-bankruptcy conduct makes K&D's joint representation of the debtors untenable. The UST argues that Ecklund has a duty to the creditors of his bankruptcy estate to "avoid these transfers" so that the estate can sell the transferred property "at the highest price to satisfy the estate's creditor's claims". ECF No. 149, at 11. According to the UST, "this avoidance would put K&D directly at odds with Mr. Ecklund, who is the principal making decisions for all the Jointly Administered Debtors." *Id*. Ecklund's bankruptcy estate, the UST believes, "will need . . . counsel able to avoid those preferences and reclaim that property for the benefit of its creditors, something directly adverse to Mr. Ecklund's interests and decisions." *Id.* at 11–12.

2. One of the interests transferred, ownership of Wisconsin Powersports, Inc., is listed as a gift to Trenton Ecklund. ECF No. 107, at 9.

In addition to transfers of personal assets, Ecklund, before filing for bankruptcy, began shifting business opportunities to his sons' trucking business in an effort to mitigate losses to ECI's and Elite's businesses that he expected to result from the BMO litigation and to a greater extent from their bankruptcy filings. He directed both entities to "migrate[ ] the over-the-road trucking business . . . to Ecklund International[, Inc.]" (International), a long-dormant entity owned by his sons. ECF No. 25-1, at 4; ECF No. 12, at 5–6. International did not pay ECI or Elite directly for this boon, though it compensates those debtors, including by leasing trucks and trailers and employing drivers who would have left ECI and Elite for other opportunities once the firms filed for bankruptcy protection.

Ecklund's credible testimony suggests that International captured freight-hauling business that ECI and Elite could not have retained after filing their bankruptcies and likely left those debtors better off than if International had not entered the market. Ecklund's sons revived International in November 2024 and began operating in April or May 2025. International initially started its new operations by leasing semis from an unrelated third-party. But it soon began leasing trucks and employing drivers from debtors ECI and Elite. After the migration, "Ecklund International operates the over-the-road trucking business" and "employs the drivers." ECF No. 25-1, at 5. The equipment International subleases from ECI and Elite is ultimately owned or leased by debtors KLE Equipment and Olson Equipment.

Ecklund, who has worked in the trucking industry since 1981, credibly explained the business justifications for the trucking-company debtors' dealings with International and International's recent servicing of some former customers of those debtors. He explained that BMO's threat to force those debtors into receivership and their subsequent bankruptcy filings created several immense business challenges for ECI and Elite.

Underscoring some of the practical difficulties ECI and Elite faced as debtors

operating in the shipping business, Ecklund testified that before BMO's terminal litigation threat and the subsequent bankruptcy filings, ECI and Elite employed a combined 148 drivers who drove semitrailers to deliver products both locally and nationally. These drivers used Comchek to purchase fuel and pay other necessary services.[3] He explained that some purchases made through Comchek are prepaid but that approximately 90% of the purchases are on credit, including purchases for any required truck repairs or fuel. For fuel purchases, Comchek facilitates a driver's purchase by charging the fuel to a vendor-specific account. For example, if a driver fuels up at Love's, the driver uses Comchek to make the purchase on credit. Similarly, when drivers need lodging, ECI or Elite covers the expense with a credit transaction. In short, for ECI and Elite to conduct ordinary operations as over-the-road trucking businesses they needed ready access to unsecured credit through Comchek. But, for ECI and Elite to continue their use of Comchek after filing for bankruptcy, they needed to make cash deposits with Comchek that exceeded their means. Ecklund credibly testified that, based on his industry experience, he does not believe that ECI and Elite could have obtained the necessary unsecured credit after filing for bankruptcy (or being placed in receivership).

Ecklund also credibly testified that many ECI and Elite customers stopped doing business with them immediately following the bankruptcy filing, a common occurrence in the trucking industry. Ecklund opined that freight customers commonly refuse to do business with bankrupt trucking companies because industry history teaches that customers using those companies risk losing their freight in transit when drivers walk away without completing the delivery for fear of not being paid or having their expenses reimbursed. Ecklund testified that Elite lost a large customer immediately

3. See *Comchek*, Comdata, https://www.comdata.com/products-services/comchek/ (last visited Aug. 25, 2025).

after it filed for bankruptcy and quite a few other customers followed suit. He credibly opined based on his experience and industry knowledge that Elite and ECI would be unable to retain most of their customers, even though he tried to convince those customers that Elite and ECI would continue to provide reliable service.

Ecklund convincingly testified that, as a result of the industry's reaction to their bankruptcy filings, Elite and ECI would have lost the customers that migrated to International even if International had not entered the market. International also acquired drivers from ECI and Elite, but, like the departing customers, those drivers left ECI and Elite because of the perceived financial uncertainty caused by the bankruptcy filings. Ecklund opined that because of the rapid loss of business and drivers surrounding the bankruptcy, the best financial course for ECI and Elite (and thus all the interrelated debtors) was to promote International as an alternative shipper to the lost or likely-to-depart customers. While ECI's and Elite's post-bankruptcy operations have constricted, the course has been profitable. International subleases semi-tractors and trailers from ECI and Elite for amounts that exceed what ECI and Elite pay to lease the equipment from KLE Equipment and Olson Equipment. As a result, promoting International to ECI's and Elite's departing customers generates subleasing income to offset some of the freight-business revenue lost because of the bankruptcy filing. A UST analysis of ECI's and Elite's earnings confirms that recent losses of freight-shipping business have had a significant negative impact on each company's revenue. But Hutchinson, who has reviewed these debtors' recent financial data, testified that while revenue for ECI and Elite is down, profitability for each entity has increased—a result attributable to the fact that ECI and Elite are now obtaining subleasing income without incurring the expenses inherent in operating trucks to deliver freight.

What is more, even if customers had not looked to go elsewhere based on ECI's and Elite's bankruptcy filings, the filings would likely have made ECI and Elite unable to maintain their vehicle fleet. ECI and Elite employ mechanics to maintain their leased

equipment, but the mechanics need replacement parts to maintain the fleet. Ecklund testified that many of these parts are vehicle-specific and must be obtained directly from a manufacturer's authorized dealer. After the bankruptcy filing, several dealers with whom ECI and Elite previously did business were unwilling to sell them parts—even for cash—until they paid their outstanding credit balances in full. To eliminate this obstacle to maintaining the trucks that International is now subleasing, International paid the dealers to settle ECI's and Elite's accounts.

III

A

The UST contends that Ecklund's personal pre-bankruptcy transfers and his business decisions on behalf of the non-individual debtors give rise to possible avoidance claims under chapter 5 of the Bankruptcy Code and that this alone disables K&D from representing the debtors. In the UST's view, the perceived need to advise the bankruptcy estates' representative—Kirk Ecklund—creates an adverse interest that precludes the debtors' engagement of K&D because "avoidance would put K&D directly at odds with Mr. Ecklund, who is the principal making decisions for all the Jointly Administered Debtors." ECF No. 149, at 11. Focusing on International picking up customers and drivers from ECI and Elite, perhaps without adequately compensating the debtors, the UST asserts, "Through no fault of K&D, Mr. Ecklund's act of migrating his business interests to . . . International has created an irreconcilable conflict between K&D and Mr. Ecklund, and thus all of Mr. Ecklund's companies" because "K&D will be forced to directly and squarely undermine Mr. Ecklund and his decision by avoiding this business migration under" chapter 5. *Id*. at 10.

This argument misunderstands the §327 inquiry, however. That inquiry requires the court to determine whether K&D "hold[s] or represent[s] an interest adverse to the estate" and is "disinterested". §327(a). Nothing about Kirk Ecklund's pre-bankruptcy transfers suggests that *K&D* holds or represents an interest adverse to any of the

debtors' bankruptcy estates. K&D has never represented International or any recipient of a pre-bankruptcy transfer from Kirk Ecklund or any of the debtors. K&D did not begin representing the debtors until immediately before the bankruptcy, and it did not advise Ecklund on his pre-bankruptcy transfers and business planning. Ecklund first informed K&D of the transfers the UST contends are avoidable after the debtors filed their petitions—when K&D was assisting the debtors to complete their schedules and statements of financial affairs. Beyond counseling the debtors on their disclosure duties as debtors in possession, K&D has no interest in or involvement with any of the allegedly avoidable transfers.

Even if one presumes that K&D will have to counsel Ecklund as debtor in possession to pursue avoidance actions against transferees that include his sons and their company, International, that does not make K&D conflicted or interested. K&D is the proposed counsel to the debtors in possession—again, exercising the powers and duties of trustees of their bankruptcy estates—charged with assisting those debtors in carrying out their duties. §327(a) (generally authorizing "the trustee, with the court's approval, [to] employ . . . attorneys . . . that do not hold or represent *an interest adverse to the estate*, and that are disinterested persons, *to represent or assist the trustee in carrying out the trustee's duties* under this title" (emphasis added)). Even accepting that Ecklund has a personal interest in favoring his family over his creditors—in contrast to his duty as debtor in possession—that personal interest is not imputed to K&D. The interests imputed to K&D are those of the bankruptcy estates, not those of the individual who, as debtor in possession or the representative of a debtor in possession, is charged with the powers and duties of a trustee in administering and maximizing the value of those estates. See 11 U.S.C. §§1106 & 1107. To see this, one need only recognize that the UST does not (and could not) suggest that K&D (or any other attorney) would be prohibited from representing a chapter 11 trustee in deciding whether these estates should pursue avoidance claims because the debtor, Ecklund, made the transfers. That Ecklund is

debtor in possession of his individual bankruptcy estate (and corporate representative of the estates of the non-individual debtors) rather than a trustee vested with the same rights, powers, and duties does not change the analysis. To be sure, K&D may have to advise Ecklund that the debtors in possession are duty bound to pursue avoidance claims that he finds personally distasteful and achieves financial outcomes that he sought to avoid before filing the bankruptcy petitions. But counseling clients that the law requires a course they would otherwise avoid does not give rise to a disabling adverse interest. A contrary conclusion would leave Holmes's bad man—devoid by design of moral compass—hopelessly adrift with no counsel to guide him. See Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 Harv. L. Rev. 457 (1897).

B

The UST's second contention has more force. He emphasizes that several of the debtors hold claims against their co-debtors, including avoidance claims under 11 U.S.C. §547, that result from prepetition inter-company transfers and loans. Apparently, each of the non-individual debtors owes at least one other debtor a prepetition debt, with some debtors owing multiple debts to multiple debtors, including Kirk Ecklund. And the non-individual debtors each made payments to at least one other debtor within the last ninety days, providing a basis for the UST to assert that each non-individual debtor has a fiduciary duty to assert preference claims against other debtors. The existences of these claims, says the UST, disables K&D from representing the debtors collectively. As the UST sees it, under these circumstances, "[n]either K&D nor any single law firm can represent all of the Jointly Administered Debtors because it would constitute representing an adverse interest." ECF No. 149, at 14.

Generally, counsel cannot be retained by a debtor in accordance with §327(a) if counsel also represents entities in connection with claims against the debtor because counsel would represent a prohibited adverse interest. But counsel's representation of a

debtor's creditors—i.e., those holding claims against a debtor that arose at or before the debtor petitioned for bankruptcy—is, as mentioned above, a special circumstance.[4] Section 327(c), added to the Bankruptcy Code in 1984, states that representation of a creditor does not disqualify counsel from employment by a trustee (or debtor in possession) unless counsel has an "actual conflict of interest":

> In a case under chapter . . . 11 . . . , a person is not disqualified for employment under [§327] solely because of such person's employment by or representation of a creditor, unless there is 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.

Because the term "conflict of interest"—actual or otherwise—is not defined in the Code, one turns to ordinary meanings that best fit the statutory context. *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011) ("Our interpretation of the Bankruptcy Code starts 'where all such inquiries must begin: with the language of the statute itself.' . . . Because the Code does not define 'applicable,' we look to the ordinary meaning of the term." (quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989); and then citing *Hamilton v. Lanning*, 560 U.S. 505, 513 (2010))).

Black's Law Dictionary defines "conflict of interest" in part as "[a] real or seeming incompatibility between the interests of two of a lawyer's clients". *Conflict of Interest,* Black's Law Dictionary (12th ed. 2024). "Actual" is understood in the legal context to mean "[e]xisting in fact; real". *Actual*, Black's Law Dictionary (12th ed. 2024); see also, e.g., *Actual*, Black's Law Dictionary (5th ed. 1979) (further defining "actual" in part to mean "existing presently in act; having a valid objective existence as opposed to that which is merely theoretical or possible", "[o]pposed to potential, possible, virtual,

4. Section 101(10) defines "creditor" to mean, among other things, an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor". 11 U.S.C. § 101(10)(A); see *id.* §301(b) ("The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.").

theoretical, hypothetical, or nominal", and "[s]omething real, in opposition to constructive or speculative"); *Webster's Third New International Dictionary* 22 (2002) (defining "actual" in part as "existing in act", "contrasted with *potential* and *possible*"; "existing in fact or reality", "contrasted with . . . *hypothetical*"; and "something that is actual or exists in fact"). Unsurprisingly, then, several courts in this circuit and elsewhere have concluded that an "actual conflict of interest" under §327(c) only "occurs when the professional serves two presently competing and adverse interests." *In re Am. Printers & Lithographers, Inc.*, 148 B.R. 862, 866 (Bankr. N.D. Ill. 1992) (citing *In re Diamond Mortg. Corp. of Ill.*, 135 B.R. 78, 91 (Bankr. N.D. Ill. 1990)); see also *In re Boy Scouts of Am.*, 35 F.4th 149, 158 (3d Cir. 2022) ("Pragmatically, a conflict is actual when the specific facts before the bankruptcy court suggest that 'it is likely that a professional will be placed in a position permitting it to favor one interest over an impermissibly conflicting interest.'" (quoting *In re Pillowtex, Inc.*, 304 F.3d 246, 251 (3d Cir. 2002))); *Byrd v. Johnson*, 467 B.R. 832, 848–49 (D. Md. 2012) ("[A]n alleged conflict of interest is 'actual' and warrants disqualification under § 327(c) if there is 'active competition between two interests, in which one interest can only be served at the expense of the other.'" (alteration in original) (quoting *Johnson*, 312 B.R. at 822)); *Raymond Prof. Group, Inc. v. William A. Pope Co. (In re Raymond Prof. Group, Inc.)*, 421 B.R. 891, 901–03 (Bankr. N.D. Ill. 2009).

The UST's contention that K&D cannot represent the debtors jointly because the non-individual debtors made prepetition transfers to other debtors and hold potential inter-debtor avoidance claims amounts to a contention that K&D cannot represent the debtors jointly solely because K&D would be representing the same entities as creditors. That contention is governed by §327(c) and, as such, K&D is only disqualified from the representation if it has an actual conflict of interest—that is, if the debtors' interests are presently competing and adverse.

Here, the credible and unrebutted testimony of Kirk Ecklund and William Hutchinson shows that the debtors' interests do not meet this actual-conflict standard. The debtors' interrelated operations are part of a single business enterprise that functions to provide trucking and logistics services to third parties. Ecklund testified that the non-individual debtors have historically been codependent—each relies on the others for necessary operations in furtherance of the common trucking and logistics enterprise—some of the debtors provide trucking and logistics services to customers, others own and lease the necessary equipment, others provide the real estate from which to operate or provide ownership capital and management expertise. As Hutchinson credibly explained, the structuring of the debtors' single enterprise into multiple component entities is common and serves legitimate business ends, including to isolate potential liability risks in a manner that better attracts sources of capital. Beyond this, the debtors have represented that they intend to propose a plan of reorganization that pays all their creditors' claims in full.

The debtors' evidence shows that, as matters stand currently, the debtors' planned joint reorganization of what is in essence a single business enterprise is more likely to maximize the interests of all the estates and the creditor-beneficiaries of those estates. The court accordingly concludes and finds that (1) there currently is no actual conflict of interest that disqualifies K&D from representing the debtors jointly and (2) the interests of the jointly administered debtors' bankruptcy estates—and the creditors of those estates—are most likely best served by common representation because it avoids (at least for now) requiring each debtor to hire separate attorneys and to bear the accompanying increase in administrative and transaction costs.

In reaching this decision the court is mindful that many decisions suggest that employment of a professional with a potential conflict is disfavored, even while also observing that deciding whether a conflict is actual or merely potential is a matter left to the bankruptcy court's discretion based on its consideration of the totality of

circumstances. See, e.g., *In re BH & P*, 949 F.2d at 1314–17. And while many decisions emphasize a need to ensure that appointed professionals will "tender undivided loyalty and provide untainted advice and assistance" to the bankruptcy estate, e.g., *In re Chardon, LLC*, 536 B.R. 791, 803 (Bankr. N.D. Ill. 2015) (quoting *Crivello*, 134 F.3d at 836), the appropriate touchstone under circumstances like those here—where several debtors function as a single business enterprise—is whether approving joint representation of debtors with *potentially* conflicting interests (here the existence of potential inter-debtor claims) is more likely to maximize the value of all the represented estates than would requiring some or all of the estates to be separately represented. "Potential conflict," moreover, is no oxymoron—contrary to the conclusion of some decisions, e.g., *In re Grabill Corp.*, 113 B.R. 966, 970 (Bankr. N.D. Ill. 1990) ("The opposing line of cases, which the Court will follow, considers the concept of potential conflicts as a contradiction in terms" (citing *In re Kendavis Indus. Int'l, Inc.*, 91 B.R. 742, 754 (Bankr. N.D. Tex. 1988))), aff'd sub nom., *Grabill Corp. v. Pelliccioni*, 135 B.R. 835 (N.D. Ill. 1991), aff'd sub nom., *In re Grabill Corp.*, 983 F.2d 773 (7th Cir. 1993)). As discussed above, a conflict of interest between related debtors remains potential rather than actual as long as the representative is not required to make a choice in faithfully serving all of the representative debtors, see *Raymond Prof. Group*, 421 B.R. at 902, a circumstance that has not been shown to exist here because, even presuming the existence of avoidable inter-debtor transfers and inter-debtor claims, nothing yet shows that these estates and their creditor beneficiaries are best served by confrontation rather than cooperation.

So, while the UST's concerns are understandable, they are premised on potential conflicts among the interrelated debtors that may never arise and so are not disabling by operation of §327(c). None of this relieves the debtors or K&D of their fiduciary duties to maximize the values of the bankruptcy estates, and the Code affords other robust means of enforcing those duties. For example, creditors contending that the debtors in possession are not fulfilling their duties to pursue avoidable transfers may

request standing to pursue inter-debtor avoidance actions on a derivative basis. See, e.g., *Gecker v. Estate of Flynn (In re Emerald Casino, Inc.)*, 867 F.3d 743, 761 (7th Cir. 2017) ("[U]nder bankruptcy law, a creditor can bring a derivative claim on behalf of a bankruptcy estate." (citing *Enodis Corp. v. Emps. Ins. of Wausau (In re Consol. Indus.)*, 360 F.3d 712, 716 (7th Cir. 2004))). And, perhaps more germane here, in representing the debtors in possession jointly, K&D undertakes the risk that it will not be entitled to compensation if the conflicts created by the debtor-creditor relationships among the estates evolve into actual conflicts of interest within the meaning of §327(c). See 11 U.S.C. §328(c) ("Except as provided in section 327(c) . . . , the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 . . . if, at any time during such professional person's employment under section 327 . . . , such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.").

C

The UST also argues that the court should deny the debtors' application to employ K&D because K&D did not adequately disclose its connections with the debtors as required by Federal Rule of Bankruptcy Procedure 2014. The UST argues that K&D's disclosure was insufficient because it "did not adequately disclose the extent of the creditor/debtor interrelationships between the various Jointly Administered Debtors" and did not disclose "Mr. Ecklund's transfer of $15 million worth of property to his sons in the last year." ECF No. 149, at 16.

Federal Rule of Bankruptcy Procedure 2014(a) requires the debtors' application to employ K&D to "be accompanied by a verified statement of the person to be employed, setting forth that person's connections with" "the debtor," "creditors", "any other party in interest", "their respective attorneys and accountants", "the United States trustee", and "any person employed in the United States trustee's office." Fed. R. Bankr.

P. 2014(a)(2) & (3). Jerome Kerkman, the debtors' proposed lead counsel, filed an initial declaration and a supplemental declaration in support of K&D's application. ECF Nos. 25-1 & 142.

The court has reviewed the initial disclosures filed by Kerkman on behalf of K&D and concludes that these disclosures satisfy Rule 2014(a)(3). Focusing only on matters contested by the UST, the initial disclosure details the migration of business from ECI and Elite to International and explains that the debtors are all cross-guarantors of the debt owed to BMO. While the initial disclosure does not disclose the extent of the inter-debtor creditor relationships, Kerkman did state in the initial disclosure that "[a]s a result of the[ ] intercompany relationships [among the debtors], there are intercompany balances that are still being determined", ECF No. 25-1, at 3, and he filed a supplement on July 21, 2025, after the debtors filed their schedules, stating that the debtors' schedules "provide detail relating to the amounts owed among the debtors" and "the contractual relationships and transfers that occurred among the debtors before the petition date." ECF No. 142, at 1.

While these disclosures did not include information regarding Ecklund's prepetition property transfers to his sons, as discussed in section III.A, above, K&D was not involved in those transfers. Nothing about Ecklund's pre-bankruptcy transfers is a connection that K&D was required to disclose under Rule 2014.

Under the circumstances, the disclosures were sufficient to provide parties in interest the information necessary to determine K&D's relevant connections to the debtors. The disclosures comply with Rule 2014.

IV

For these reasons, IT IS HEREBY ORDERED as follows:

1. The United States trustee's objection to the debtors' application to employ K&D is overruled.

2. The jointly administered debtors are authorized to employ K&D as general bankruptcy counsel for each of their estates pursuant to 11 U.S.C. §327(a), effective May 23, 2025.

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