

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , ¹)	Case No. 21-11336 (KBO)
)	
Debtors.)	Jointly Administered
)	
)	Obj. Deadline: 1/12/22 at 4:00 p.m. (ET)
)	Hrg. Date: 1/20/22 at 10:00 a.m. (ET)

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER APPROVING
STIPULATION REGARDING PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM
OF MEDLINE INDUSTRIES, INC. PURSUANT TO 11 U.S.C. § 503(b)(9)**

Gulf Coast Health Care, LLC (“**Gulf Coast**”) and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby move (the “**Motion**”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), granting the relief described below. In support thereof, the Debtors respectfully represent as follows:

RELIEF REQUESTED

1. By the Motion, the Debtors respectfully request entry of the Proposed Order approving that certain stipulation (the “**Stipulation**”) between the Debtors and Medline Industries, Inc. (“**Medline**”) regarding payment of Medline’s administrative expense claim pursuant to 11 U.S.C. § 503(b)(9), a copy of which is attached to the Proposed Order as Exhibit 1.

The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, which cases are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 9511 Holsberry Lane, Suite B11, Pensacola, FL 32534.

JURISDICTION AND VENUE

2. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The legal predicates for the relief requested herein are section 105 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

4. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors confirm their consent to the entry of a final order by the Court in connection with the Motion in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

BACKGROUND

I. The Chapter 11 Cases

5. On October 14, 2021 (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Chapter 11 Cases are being jointly administered for procedural purposes only.

6. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. On October 25, 2021, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors in the

Chapter 11 Cases (the “**Committee**”) pursuant to Bankruptcy Code section 1102(a) [Docket No. 111]. No trustee or examiner has been appointed in the Chapter 11 Cases.

8. Additional information regarding the Debtors and the Chapter 11 Cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of the Chapter 11 Cases, is set forth in the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 16] (the “**First Day Declaration**”).²

II. The Medline 503(b)(9) Claim

9. On December 1, 2021, Medline provided invoices to the Debtors for goods provided to the Debtors in the 20 days prior to the Petition Date and requested payment of such invoices as an administrative expense arising under Bankruptcy Code section 503(b)(9). The Debtors reconciled such invoices and ultimately determined that Medline holds administrative expense claims pursuant to Bankruptcy Code section 503(b)(9) in the aggregate amount of \$199,553.75 (the “**Medline Section 503(b)(9) Claim**”).

III. The Stipulation

10. Following reconciliation of Medline’s invoices, the Debtors and Medline subsequently negotiated the amount and terms of payment of the Medline Section 503(b)(9) Claim and memorialized their agreement in the Stipulation. As set forth in the Stipulation, subject to Court approval, the Debtors have agreed to pay the Medline Section 503(b)(9) Claim to Medline in accordance with the following payment schedule: (i) \$119,732.25 to be paid within five business days after entry of an order approving the Stipulation; and (iii) \$79,821.50 to be

² Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

paid on or before February 15, 2022. The Debtors have also agreed that nothing in the Stipulation shall preclude Medline from asserting or prosecuting against the Debtors any prepetition claim or administrative claim, other than the Medline Section 503(b)(9) Claim.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

11. Bankruptcy Code section 105(a) provides that a bankruptcy court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the [Bankruptcy Code].” 11 U.S.C. § 105(a). Bankruptcy Code section 105(a) has been interpreted to expressly empower bankruptcy courts with broad equitable powers to “craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.” *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) (en banc). Although not limitless, this section has also been construed to give bankruptcy courts authority to provide equitable relief appropriate to assure the orderly conduct of bankruptcy proceedings. *See, e.g., In re Combustion Engineering, Inc.*, 391 F.3d 190, 236 (3d Cir. 2004).

12. Moreover, Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the bankruptcy court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Compromises pursuant to Rule 9019 are favored in the bankruptcy context “[t]o minimize litigation and expedite the administration of a bankruptcy estate.” *Martin v. Myers (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). “The authority to approve a compromise [or] settlement is within the sound discretion of the bankruptcy court.” *In re Northwestern Corp.*, 2008 WL 2704341, at *6 (Bankr. D. Del. July 10, 2008) (quoting *Key3media Grp., Inc. v. Pulver.Com, Inc. (In re Key3media Grp., Inc.)*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) (“In exercising this discretion, the bankruptcy court must determine whether the compromise is fair,

reasonable, and in the best interests of the estate.”)); *see also In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997) (same); *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (stipulations must be “fair and equitable”).

13. Bankruptcy Rule 9019(a) empowers bankruptcy courts to approve settlements “if they are in the best interests of the estate.” *Vaughn v. Drexel Burnham Lambert Grp., Inc. (In re Drexel Burnham Lambert Grp., Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991); *In re Eastwind Grp., Inc.*, 303 B.R. 743, 750 (Bankr. E.D. Pa. 2004) (noting that in “deciding whether to approve a settlement, the court must determine whether the proposed settlement is in the best interests of the estate”); *In re Geller*, 74 B.R. 685, 688 (Bankr. E.D. Pa. 1987) (indicating that a settlement will be approved as long as it clears a threshold of reasonableness). The bankruptcy court shall apprise itself “of all facts necessary to evaluate the settlement and make an ‘informed and independent judgment’ as to whether the compromise is fair and equitable.” *LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.)*, 841 F.2d 159, 162–63 (7th Cir. 1987) (citation omitted). Courts should not, however, substitute their judgment for that of the debtor, but instead canvas the issues to see whether the compromise falls below the lowest point in the range of reasonableness. *See In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986); *In re W.T. Grant and Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (“The court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable ranger of litigation possibilities.”) (internal citations and quotations omitted).

14. The Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a compromise should be approved. The four enumerated

factors are: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Meyers v. Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *accord Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (finding that the *Martin* factors are useful when analyzing a settlement of a claim against the debtor as well as a claim belonging to the debtor). The test boils down to whether the terms of the proposed compromise fall “within a reasonable range of litigation possibilities.” *In re Penn Cent. Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979) (citations omitted); *In re Pa. Truck Lines Inc.*, 150 B.R. 595, 598 (E.D. Pa. 1992) (same).

15. The Debtors believe that the Stipulation is both fair and reasonable and in the best interests of its estates and creditors, and should therefore be approved pursuant to Bankruptcy Code section 105(a) and Bankruptcy Rule 9019(a). The Stipulation is the product of good-faith discussions and arms’-length bargaining among the Debtors and Medline, and represents a consensual resolution of the amount and timing of payment of Medline’s outstanding administrative expense claims against the Debtors. The resolution contemplated by the Stipulation will result in finality of the Medline 503(b)(9) Claim and will avoid unnecessary motion practice and the administrative expenses associated therewith. Therefore, the Debtors submit that approval of the Stipulation under Bankruptcy Code section 105(a) and Bankruptcy Rule 9019 is appropriate under the circumstances.

NOTICE

16. The Debtors will provide notice of the Motion to: (a) the U.S. Trustee; (b) counsel to the Committee; (c) the Internal Revenue Service; (d) the Securities and Exchange Commission; (e) the United States Attorney for the District of Delaware; (f) the Centers for Medicare & Medicaid Services; (g) counsel for the Omega Entities; (h) counsel for New Ark

Capital, LLC; (i) counsel for Barrow Street Capital LLC and its affiliates; (j) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings); and (k) all parties entitled to notice pursuant to Local Rule 2002-1(b). The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

17. No previous request for the relief sought herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
December 29, 2021

MCDERMOTT WILL & EMERY LLP

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