

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
NEW HAVEN DIVISION**

In Re:

THE ROSEGARDEN HEALTH AND
REHABILITATION CENTER LLC, et al.,

Debtors¹

CHAPTER 7

CASE NO. 18-30623 (AMN)

(Joint Administration)

MOTION FOR APPROVAL OF COMPROMISE

TO THE HONORABLE ANN M. NEVINS, UNITED STATES BANKRUPTCY JUDGE:

Jon Newton, the trustee (the “Trustee”) of the jointly administered Chapter 7 estates of The Rosegarden Health and Rehabilitation Center LLC (“Rosegarden”) and Bridgeport Health Care Center Inc. (“Bridgeport Health”; together with Rosegarden, the “Debtors”), by and through his counsel, Reid and Riege, P.C., hereby submits, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, a Motion for Approval of Compromise (the “Motion”), which Motion relates to a compromise entered into by and between the Trustee and Travelers Casualty and Surety Company of America (“Travelers”). In support of the Motion, the Trustee respectfully represents as follows:

1. On April 18, 2018 (the “Filing Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Connecticut.

2. On April 25, 2018, the Court entered an order directing the joint administration of the Debtors’ cases.

¹ The Debtors in these cases and the last four digits of each Debtor’s tax identification number are: The Rosegarden Health and Rehabilitation Center LLC (4423) and Bridgeport Health Care Center Inc. (6665).

3. Also, on April 25, 2018, People's United Bank, National Association filed a Motion to Appoint Trustee (the "Trustee Motion"). After an evidentiary hearing spanning several days, the Court, on May 15, 2018, entered an order granting the Trustee Motion.

4. On May 17, 2018, and upon the Application for the Approval of Jon P. Newton, Esq. as Chapter 11 Trustee of the Bankruptcy Estates of Rosegarden Health and Rehabilitation Center, LLC and Bridgeport Health Care Center, Inc., the Court entered an order approving the appointment of the Trustee.

5. Effective as of February 22, 2021, the Court converted the Debtors' Chapter 11 cases to Chapter 7 cases. On that same date, the United States Trustee filed a notice of appointment of Chapter 7 Trustee, pursuant to which the Trustee was appointed as the Chapter 7 Trustee of the Debtors' estates.

6. Rosegarden is a Connecticut limited liability company, which operated an 82-bed long- and short-term nursing care and rehabilitation facility located at 3584 East Main Street, Waterbury, Connecticut. On or about July 12, 2018, this Court, upon the Trustee's motion and following an evidentiary hearing, entered an Order Authorizing Chapter 11 Trustee to Wind Down and Cease to Operate the Rosegarden Health and Rehabilitation Center LLC and for Related Relief.

7. Bridgeport Health is a Connecticut corporation, which operated two long- and short-term nursing care and rehabilitation facilities in Bridgeport Connecticut: (i) a 240-bed facility located at 540 Bond Street (that is, Bridgeport Manor) and (ii) a 240-bed facility located at 600 Bond Street (that is, Bridgeport Health). On or about July 24, 2018, this Court, upon the Trustee's motion and following an evidentiary hearing, entered an Order Authorizing Chapter 11

Trustee to Wind Down and Cease to Operate Bridgeport Manor and for Related Relief. On or about January 7, 2020, this Court, upon the Trustee's motion and following several days of hearings, entered an Order Authorizing Trustee to Wind Down and Cease to Operate Bridgeport Health Care Center Inc.

8. Prior to the Filing Date, on July 2, 2015, Local 1522 of Council 4, American Federation of State County and Municipal Employees (the "Union"), as plaintiff, commenced an action in the United States District Court for the District of Connecticut against Bridgeport Health and Chaim Stern ("Stern"), as defendants, which action is titled *Local 1522 of Council 4, American Federation of State County and Municipal Employees v. Bridgeport Health Care Center, Inc.*, bearing case number 15-01019-JCH (the "Union Lawsuit"), in which the Union alleged that Bridgeport Health and Stern failed to provide the Union's members with the health care insurance coverage benefits required under the Union's collective bargaining agreement with Bridgeport Health. Other plaintiffs in the Union Lawsuit are the Estate of Carmen Espejo, Natividade Goncalves, Marion V. Perez, and Carlotta Rafael.

9. On or about September 8, 2016, the Secretary of Labor, United States Department of Labor (the "Secretary"), as plaintiff, commenced an action in the United States District Court for the District of Connecticut against Bridgeport Health and Stern, as defendants, which action was titled *Perez v. Bridgeport Health Care Center, Inc., et al.*, bearing case number 16-01519-AVC (the "First DOL Action"), in which the Secretary alleged that Bridgeport Health and Stern had violated the Employee Retirement Security Act of 1974, 29 U.S.C. section 1001 et seq. ("ERISA") in regard to the Bridgeport Health Care Center, Inc. Retirement Plan (the "Retirement Plan").

10. On or about February 1, 2018, the Secretary, as plaintiff, commenced an action in the United States District Court for the District of Connecticut against Bridgeport Health and Stern, as defendants, which action is titled *Acosta v. Bridgeport Health Care Center, Inc.*, et al., bearing case number 18-00189-VAB (the “Second DOL Action”; together with the Union Lawsuit and the First DOL Action, the “Lawsuits”), in which the Secretary alleged that Bridgeport Health and Stern had violated ERISA in regard to the Bridgeport Health Care Center, Inc. Benefit Plan (the “Health Plan”).

11. The Lawsuits involved substantial claims against Bridgeport Health and Stern with respect to the Retirement Plan and the Health Plan. Relatively shortly after his appointment, the Trustee became aware of the Lawsuits and recognized, among other things, the significant impact that such Lawsuits, involving several millions of dollars, held for hundreds of Bridgeport Health’s employees, many of whom experienced serious losses to their retirement funds and an inability to properly fund the costs of needed health care. These developments, together with, *inter alia*, the Chapter 11 filing by Bridgeport Health, and its uncertain future at that time, prompted the Trustee to take steps to seek a resolution of the Lawsuits.

12. Toward that end, the Trustee, along with the other parties, agreed to mediate the issues involved in the Lawsuits and regarding the Retirement Plan and the Health Plan. The parties selected Magistrate Judge Holly Fitzsimmons as their mediator, who accepted the engagement. The Parties first appeared before Judge Fitzsimmons on December 17, 2018, and for the next year and one-half, participated in numerous mediation sessions before Judge Fitzsimmons, including periodic settlement discussions among themselves (and through the mediator). After these lengthy, time-consuming, and extensive negotiations, the Parties agreed

to a compromise of the Lawsuits. To evidence their agreement, the Parties entered into a certain Consent Judgment and Order (the “Consent Judgment”).

13. On June 19, 2020, the Court entered an order granting the Trustee’s Motion for Approval of Consent Judgment and Order.

14. The Consent Judgment resolved most of the parties’ various issues with respect to the Retirement Plan and the Health Plan. It left open, however, a fidelity bond claim relating to such plans from Travelers as the fidelity bond carrier. Under the Court approved Consent Judgment, the Trustee remained obligated to pursue this claim, which is the subject of this Motion.

15. More specifically, on or about August 28, 2019, the Trustee, on behalf of Bridgeport Health, and with the input of the United States Department of Labor (the “US DOL”), submitted to Travelers a Proof of Loss relating to the alleged fraud and/or dishonesty committed by Stern, which the Trustee believed to trigger a viable claim under Bridgeport Health’s ERISA Fidelity Coverage Policy issued by Travelers to Bridgeport Health (the “Policy”). The Trustee further considered Stern to be the Fiduciary, as defined in the Policy, of Bridgeport Health.

16. In the Proof of Loss and various supplements thereto, the Trustee asserted losses to the Retirement Plan and the Health Plan. The magnitude of the asserted losses relating to the Retirement Plan totaled, in the aggregate, approximately \$500,000.00, consisting primarily of the difference between the principal amounts owed under the Retirement Plan and the principal amounts paid (that is, approximately \$500,000.00). The magnitude of the asserted losses relating to the Health Plan totaled approximately \$305,000.00, arising primarily from a stop loss insurance policy that Stern pled to diverting. In support of the foregoing, the Trustee, again with the assistance of the US DOL, provided, among other things, charts, calculations detailing the

losses, bank statements, pleadings, including the complaints and the Consent Judgment, the plea agreement of Stern, and the transcript of Stern's plea.

17. Travelers, from the outset, disputed the Proof of Loss on several grounds, including that Bridgeport Health had not established a covered loss under the Policy. Travelers asserted, *inter alia*, that Bridgeport Health had essentially provided only conclusory statements that fell short of supporting documentation for the claim. Among the various components of Travelers' position was that the amounts sought by the Trustee in the Proof of Loss were addressed and satisfied in connection with resolution of the Lawsuits and the Consent Judgment, in which the Retirement Plan and Health Plan recognized relatively substantial recoveries.

18. Discussions and negotiations between the Trustee and Travelers ensued for many months. Such exchanges ultimately proved to be productive, as the parties agreed to resolve their dispute. In connection therewith, the parties entered into a certain Confidential Settlement Agreement (the "Agreement"), a copy of which Agreement is attached hereto as **EXHIBIT A** and incorporated herein by reference.

19. Under the Agreement, and as more fully set forth in **EXHIBIT A**, the parties agreed as follows:

- a. Travelers shall pay to the Retirement Plan the sum of \$100,000.00;
- b. Bridgeport Health, the Retirement Plan, the Health Plan, and any other Employee Benefit Plan as defined in the Policy shall assign to Travelers all rights, title and interest in any and all claims against Stern together with all rights of recovery, subrogation or restitution arising out of or in any way connected with Stern and/or the released claims. However, specifically excluded from this assignment is any right or claim to funds Bridgeport Health, the Retirement

Plan, the Health Plan, and any other Employee Benefit Plan as defined in the Policy, previously collected from Stern; and

c. Bridgeport Health, the Retirement Plan, the Health Plan, and any other Employee Benefit Plan as defined in the Policy, shall release Travelers from any and all claims arising under the released claims and/or the Policy.

20. By this Motion, the Trustee seeks entry of an order approving the compromise described herein and the Agreement and empowering him to perform in accordance with the terms set forth in the Agreement. The Trustee submits that the proposed settlement is fair, equitable, and reasonable and meets the tests for approval by this Court. The settlement resolves substantial claims impacting, most notably, the former employees of Bridgeport Health. It provides the infusion of substantial funds on account of the Retirement Plan to the benefit of Bridgeport Health's employees. It is the product of extensive arms-length negotiations, which sometimes proved to be quite difficult. The settlement avoids the time and costs of further litigation, which would, almost certainly, be sizeable.

21. Bankruptcy Rule 9019(a) permits the Court, following notice and a hearing as provided by Bankruptcy Rule 2002, to approve a compromise or settlement of claims. Neither Bankruptcy Rule 9019 nor any section of the Bankruptcy Code explicitly sets forth the standards by which a Court is to evaluate a proposed settlement for approval. However, the standards for approval of settlements in bankruptcy cases are well established and focus upon whether the proposed settlement is reasonable and is in the best interests of creditors. In Protective Committee for Independent Stockholders of TNT Trailer Ferry v. Anderson, 290 U.S. 414 (1968), *reh'g denied*, 391 U.S. 909 (1968), the seminal case on approval of settlements in bankruptcy cases, the United States Supreme Court held that the trial court must make an

informed, independent judgment as to whether a settlement is fair and equitable, and explained as follows:

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.

Id. at 424 (citations omitted).

22. The United States Court of Appeals for the Second Circuit has instructed that the responsibility of the judge “is not to decide the numerous questions of law and fact raised by appellants, but rather to canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied sub nom.*, Cosoff v. Rodman, 464 U.S. 822 (1993). See also In re Purified Down Products Corp., 150 B.R. 519, 522-23 (S.D.N.Y. 1993); In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 287 (Bankr. S.D.N.Y. 1990); In re Carla Leather, Inc., 44 B.R. 457, 470 (Bankr. S.D.N.Y. 1984), *aff’d*, 50 B.R. 764 (S.D.N.Y. 1984). In evaluating the propriety of a settlement, the court need not conduct a trial, “mini-trial”, or “rehearsal of the trial” on the merits to actually resolve the extant factual and legal issues, but must simply consider whether, against the background of those issues, the settlement is reasonable. Newman v. Stein, 464 F.2d 689, 692 (2d Cir. 1972), *cert. denied sub nom.*, Benson v. Newman, 409 U.S. 1039 (1972). See also In re International Distribution Centers, Inc., 103 B.R. 420, 423 (S.D.N.Y. 1989); In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 496 (Bankr. S.D.N.Y. 1991).

23. The Trustee submits that the proposed settlement falls within the range of reasonableness necessary to approve it under Federal Rule of Bankruptcy Procedure 9019. As stated above, it resolves the substantial claims which are the subject of the Proof of Loss. It provides a substantial and meaningful infusion of funds on account of the Retirement Plan to the benefit of Bridgeport Health's former employees. It arises after arms-length negotiations among the parties. It avoids the time and costs of litigation (expected to be substantial), on terms which are fair and reasonable. In the end, the proposed compromise provides the means for Bridgeport Health's former employees to recognize some additional and meaningful value and peace of mind with respect to their interests in the Retirement Plan.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the compromise described above and in the Agreement and granting him such other and further relief as is just and equitable.

Dated at Hartford, Connecticut this 25th day of March, 2024.

JON NEWTON, TRUSTEE

By /s/ Jon P. Newton
Jon P. Newton, Esq.
Federal Bar No. ct03376
Reid and Riege, P.C.
His Attorneys
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Hartford, CT 06103
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EXHIBIT A

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the “Agreement”) is made this [REDACTED] day of _____, 2024, by and between Travelers Casualty and Surety Company of America and Bridgeport Health Care Center, Inc. The aforementioned entities are referred to hereinafter collectively as the “Parties,” and individually as a “Party.” This Agreement shall be effective as of the date on which this Agreement is last signed by the Parties.

I. RECITALS

WHEREAS, the Parties by way of compromise desire to resolve in accordance with this Agreement any and all disputes that exist or may exist between and among them with regard to Bridgeport Health Care Center, Inc.’s claim for coverage under the Policy (defined herein) and/or Travelers Casualty and Surety Company of America.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises contained herein and intending to be legally bound hereby, the Parties hereby agree as follows:

II. AGREEMENTS

1) DEFINITIONS

The definitions set forth below are provided for purposes of this Agreement only. As utilized herein, each defined term stated in the singular form shall include the plural form and each defined term stated in the plural form shall include the singular form. “Including” means “including without limitation.”

- A. **“Travelers”** shall mean Travelers Casualty and Surety Company of America, which has a principal place of business at One Tower Square, Hartford, Connecticut 06183, and its respective parents, subsidiaries, successors and affiliated corporations and entities and each of their officers, directors, shareholders, employees, members, agents, attorneys and other representatives.
- B. **“BHCC”** shall mean Bridgeport Health Care Center, Inc., which had a principal place of business at 600 Bond Street, Bridgeport, Connecticut 06610, along with its branches, subsidiaries, successors and affiliated corporations and entities and its past, present and future officers, directors, shareholders, employees, attorneys, agents and other representatives, including Jon P. Newton in his capacity as the duly appointed bankruptcy trustee of BHCC. BHCC shall further mean the entity sponsoring the Insured Plans (defined herein) and as set forth in the Policy (defined herein). BHCC shall also mean the Debtor in the Bankruptcy Proceeding (defined herein).
- C. **“Policy”** shall mean the ERISA Fidelity Coverage Policy Number 106201413 issued by Travelers to BHCC along with any other contracts or policies of insurance written or issued by Travelers to or for the benefit of BHCC and/or

the Insured Plans (defined herein) under which BHCC has sought or could have sought coverage for its alleged loss as specified in the Proof of Loss (defined herein) and Other Claim Materials (defined herein).

- D. **“Chaim Stern”** means Mr. Chaim Stern of Flushing, New York, who is a former employee and alleged Fiduciary (as defined in the Policy) of BHCC and named in the Proof of Loss (defined herein).
- E. **“Proof of Loss”** means the Proof of Loss dated August 28, 2019 submitted by or on behalf of BHCC to Travelers along with any and all documents referenced in the Proof of Loss and/or submitted or provided to Travelers or its representatives by BHCC and/or the DOL in support of the Proof of Loss relating to the alleged fraud or dishonesty committed by Chaim Stern, acting alone or in collusion with other persons.
- F. **“Health Plan”** means the BHCC Benefit Plan that is referenced in the Proof of Loss.
- G. **“Retirement Plan”** means the BHCC Retirement Plan that is referenced in the Proof of Loss.
- H. **“Insured Plans”** mean the Health Plan and the Retirement Plan and any and all Employee Benefit Plans as that term is defined in the Policy.
- I. **“DOL”** means the United States Department of Labor and its past, present and future employees, attorneys, agents and other representatives.
- J. **“Bankruptcy Proceeding”** means the case captioned, *In Re: The Rosegarden Health and Rehabilitation Center LLC, et al.*, Case NO. 18-30623 (AMN), United States Bankruptcy Court, District of Connecticut, New Haven Division.
- K. **“Civil Suits”** mean the suit filed by Thomas E. Perez, Secretary of Labor for the DOL against BHCC and Chaim Stern in Case 3:16-cv-01519-AVC, United States District Court for the District of Connecticut, the suit filed by R. Alexander Acosta, Secretary of Labor for the DOL against BHCC and Chaim Stern in Case 3:18-cv-00189-KAD, United States District Court for the District of Connecticut, and the suit filed by Local 1522 of Council 4, American Federation of State County and Municipal Employees and others against BHCC and Chaim Stern in Case 3:15-cv-01019-JCH, United States District Court for the District of Connecticut.
- L. **“Criminal Action”** means the case filed by the United States of America against Chaim Stern in Case 3:20-cr-00007-JCH, United States District Court for the District of Connecticut.

- M. **“Claim”** means the claim(s) by BHCC and/or the Insured Plans for insurance coverage under the Policy for any and all losses, damages, costs or expenses that BHCC and/or the Insured Plans claim to have incurred or may incur resulting from, arising out of or related to, in whole or in part, the acts or omissions of Chaim Stern, whether he was acting alone or in collusion with others.
- N. **“Other Claim Materials”** means any and all allegations, claims, information, memoranda, exhibits, reports, summaries, analyses, documents, communications and correspondence (verbal, written, electronic, email and otherwise), charts and data of any kind or nature that BHCC, the DOL and any other person or entity and/or their respective employees, representatives, consultants, agents or attorneys submitted, provided or disclosed to Travelers in support of the Claim or the Proof of Loss at any time.
- O. **“Released Claims”** means:
1. Any and all claims for coverage under the Policy by or on behalf of BHCC and/or the Insured Plans arising out of or relating to the allegations, claims, facts and circumstances directly or indirectly referenced in the Proof of Loss;
 2. Any and all claims for coverage under the Policy by or on behalf of BHCC and/or the Insured Plans arising out of or relating to the allegations, claims, facts and circumstances directly or indirectly referenced in the Other Claim Materials;
 3. Any and all claims for coverage under the Policy by or on behalf of BHCC and/or the Insured Plans arising out of or relating to the allegations, claims, facts and circumstances directly or indirectly referenced in the Civil Suits;
 4. Any and all claims for coverage under the Policy by or on behalf of BHCC and/or the Insured Plans arising out of or relating to the allegations, claims, facts and circumstances directly or indirectly referenced in the Criminal Action;
 5. Any and all claims for coverage under the Policy relating directly or indirectly to the acts, omissions, conduct and/or activities of Chaim Stern, including his alleged fraud or dishonesty allegedly committed in his capacity as a fiduciary of BHCC;
 6. Any and all claims for coverage under the Policy for direct loss of, or direct loss from damage to, Property (as defined in the Policy) that belongs to the Insured Plans directly caused through acts of Fraud or Dishonesty (as defined in the Policy) committed by a Fiduciary (as defined in the Policy), whether identified or not, acting alone or in collusion with other persons;

7. Any and all claims for coverage under the Policy arising out of or relating directly or indirectly to the acts, omissions, conduct and/or activities of any current or former employee of BHCC which caused or contributed to any loss alleged in the Proof of Loss or the Other Claim Materials, including such employee's alleged fraud or dishonesty;
8. Any and all claims for coverage under the Policy including, but not limited to, claims under any and all Insuring Agreements in the Policy, arising from or relating to directly or indirectly any loss allegedly caused by, arising out of or resulting from the Claim which were or which could have been made or asserted in the Proof of Loss; and
9. Any and all claims arising out of or relating to Travelers' handling of the Claim for coverage under the Policy, including any claims for breach of contract, breach of implied duties of good faith and fair dealing, breach of fiduciary duties, bad faith and unfair claims practices or unfair insurance practices.

2) STATEMENT OF INTENT

The Parties execute this Agreement as a compromise of a disputed claim and as a means of resolving finally all questions, issues, duties, obligations, liabilities and responsibilities in connection with, arising out of or relating to in any way the Policy and the Released Claims.

It is the intention of the Parties that this Agreement shall resolve all disputes between the Parties relating to the Released Claims and forever release Travelers from any and all obligations, duties and responsibilities to BHCC and/or the Insured Plans or any person or entity asserting any alleged right in connection with the Released Claims or under the Policy. This Agreement includes, and is not limited to, obligations, duties and responsibilities of any kind or nature arising out of the Released Claims. The terms of this Agreement shall be construed to accomplish the release of Travelers from any and all obligations, duties and responsibilities to BHCC and/or the Insured Plans or anyone claiming through them in connection with, arising out of or relating to the Released Claims or the Policy.

The Parties recognize and acknowledge that they may hereafter discover facts different from or in addition to those they knew or believed to be true with respect to the Released Claims. BHCC and the Insured Plans waive expressly any right to assert any new, different or additional claims otherwise herein released on account of such different or additional facts.

3) PAYMENT, ASSIGNMENT AND RELEASE

Travelers agrees to pay to the Retirement Plan the sum of One Hundred Thousand Dollars (\$100,000.00) (the "Settlement Sum") net of any deductible or retention within thirty (30) days of Travelers' receipt of a) the executed original of this Agreement; and b) the Court's approval of the Agreement in the Bankruptcy Proceeding. It shall be a condition precedent to Travelers' obligation

to pay the Settlement Sum that this Agreement be approved by the Court in the Bankruptcy Proceeding.

In consideration of the foregoing payment of the Settlement Sum, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BHCC and the Insured Plans hereby assign to Travelers all rights, title and interest in any and all claims against Chaim Stern together with all rights of recovery, subrogation or restitution arising out of or in any way connected with Chaim Stern and/or the Released Claims. However, specifically excluded from this assignment is any right or claim to funds BHCC or the Insured Plans previously collected from Chaim Stern. Nothing in this Agreement is binding on any person or entity who is not a Party or signee to this Agreement.

In further consideration of the foregoing payment of the Settlement Sum, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BHCC and the Insured Plans hereby release, remise, acquit and forever discharge Travelers from and against all past, present and future claims, debts, demands, acts, causes of action, suits, accounts, covenants, contracts, agreements, damages and liabilities whatsoever of every name and nature, both in law and in equity, that BHCC and the Insured Plans now have, have ever had or will ever have in the future, known or unknown, against Travelers in connection with, arising out of or relating to in any way the Released Claims and/or the Policy.

4) CONFIDENTIALITY

This Agreement and all matters relating to the terms, negotiation and implementation of this Agreement, including, but not limited to, the Settlement Sum and all communications generated in connection therewith, shall be confidential and shall not be disclosed to any person or entity by the Parties except:

- A. Jon P. Newton, in his capacity as the duly appointed bankruptcy trustee of BHCC, may file under seal a copy of the Agreement to the Court in the Bankruptcy Proceeding for the sole purpose of obtaining Court approval of the Agreement;
- B. upon prior written consent of the Parties;
- C. to any person who is an officer, director, employee, lawyer or agent or other representative of a Party and their legal counsel;
- D. to any reinsurer, retrocessionaire or excess insurer of a Party;
- E. to the auditors, accountants, lenders, creditors, investors, regulators or actuaries of a Party;
- F. as required by law or by any other regulatory authority or body having jurisdiction over a Party;

G. in any proceeding to enforce the terms of this Agreement, but in such case only after requesting that the court or other applicable tribunal enter a confidentiality order protecting disclosure of this Agreement and all documents and communications relating thereto; or

H. as ordered by a court of competent jurisdiction.

In the event that any person or entity not a party to this Agreement, by way of a document request, interrogatory, subpoena or questioning at deposition or trial, attempts to compel disclosure of anything protected by this Paragraph, the Party from whom disclosure is sought shall, if legally permissible, decline to provide the requested information on the ground that this Agreement prevents such disclosure. In the event a third-party seeks an order from any court or governmental body to compel such disclosure, or in the event that a court, government official or governmental body (other than the Internal Revenue Service) requests or requires disclosure of anything protected by this Paragraph, the Party from whom disclosure is sought shall immediately give written notice by electronic mail, facsimile or hand-delivery to the other Party, and shall immediately provide copies of all notice papers, orders, requests or other documents in order to allow the other Party to take such protective steps as may be appropriate. Notice shall be made under this Paragraph to the persons identified in Paragraph III.4. of this Agreement.

Material protected by this paragraph shall be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Federal Rules of Evidence and similar provisions of state law or state rules of court.

III. OTHER PROVISIONS

1) NON-PREJUDICE AND CONSTRUCTION OF AGREEMENT

This Agreement is the product of arms-length negotiations between the Parties with the benefit of advice from counsel, and the Parties agree that it shall be so construed. No Party will claim that any alleged ambiguity in this Agreement shall be construed against any other Party by virtue of the drafting of the Agreement.

2) NO MODIFICATION

No change or modification of this Agreement shall be valid unless it is made in writing and signed by both Parties.

3) EXECUTION

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original and such counterparts shall together constitute one and the same instrument.

4) NOTICES

Unless another person is designated, in writing, for receipt of notices hereunder, notices to the respective Parties shall be sent to the following persons:

TRAVELERS: Shannon Walls, Managing Director & Counsel
Bond & Specialty Insurance Claim
Travelers Casualty and Surety Company of America
770 Pennsylvania Drive, Suite 110
Exton, PA 19341
srwalls@travelers.com

With a copy to: Scott S. Spearing, Esq.
Casner & Edwards, LLP
303 Congress Street
Boston, MA 02210
spearing@casneredwards.com

BHCC: Jon P. Newton
Reid and Riege, P.C.
One Financial Plaza
Hartford, CT 06103
jnewton@reidandriege.com

5) INTEGRATION

This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all prior discussions, agreements and understandings, both written and oral, express or implied, that exist or may exist among the Parties with respect thereto.

6) GOVERNING LAW

This Agreement shall be construed in accordance with the substantive laws of the State of Connecticut.

7) SEVERABILITY

In the event that any part(s), term(s) or provision(s) of this Agreement is held to be invalid or otherwise legally unenforceable, except for Section II, Paragraph 3, Payment, Assignment and Release, the surviving parts and provisions of this Agreement shall remain in effect as the whole of this Agreement.

8) NO ADMISSION OF LIABILITY AND NO PRECEDENTIAL VALUE

- A. The Parties agree that this Agreement shall be without precedential value and it is not intended to be, nor shall it be construed as, an interpretation of any insurance policy. Except as to any proceeding between the Parties to enforce terms of this Agreement, this Agreement shall not be used as evidence, or in any other manner, in any court or other dispute resolution proceeding to create, prove or interpret the obligations of Travelers under any insurance policy it issued or allegedly issued to BHCC or to any other person or entity.
- B. The Parties agree that this Agreement is the result of a compromise of disputed issues of coverage and that the execution and delivery of this Agreement by any of the Parties shall not constitute or be construed as an admission or confession of coverage, liability, a course of performance or wrongdoing on the part of any of them. The Parties agree that nothing contained herein shall be construed or be viewed as a waiver, modification or alteration of any of the terms, conditions, limitations and/or exclusions of the Policy and Travelers specifically reserves and does not waive any of its rights and defenses under the Policy. The Parties acknowledge that this Agreement is not and cannot be construed as any admission by Travelers that any indemnity or other coverage obligation exists under the Policy or that Travelers has any other obligations of any nature whatsoever with respect to the Policy.

9) REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants that it has authority to execute this Agreement as its binding legal obligation. Each Party represents and warrants that the person signing this Agreement on its or their behalf are authorized by those they purport to represent to execute this Agreement.

10) HEADINGS

The paragraph headings contained herein are for purposes of organization only and shall not constitute part of this Agreement.

11) SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

12) NO ASSIGNMENT OF AGREEMENT

Neither Party shall assign this Agreement without first obtaining the written consent of the other Party; provided, however, that this provision shall not prohibit any assignment by a Party made by merger, consolidation or operation of law or to a person who succeeds to all or substantially all of such Party's rights.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

**BRIDGEPORT HEALTH CARE
CENTER, INC.**

**TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
NEW HAVEN DIVISION**

In Re:

THE ROSEGARDEN HEALTH AND
REHABILITATION CENTER LLC, et al.,

Debtors¹

CHAPTER 11

CASE NO. 18-30623 (AMN)

(Joint Administration)

Re: ECF No. ____

ORDER GRANTING MOTION FOR APPROVAL OF COMPROMISE

Upon consideration of the Motion for Approval of Compromise (the “Motion”) filed by Jon Newton, Trustee (the “Trustee”) of the jointly administered Chapter 7 estates of The Rosegarden Health and Rehabilitation Center LLC and Bridgeport Health Care Center Inc. (“Bridgeport Health”), by and through his counsel, Reid and Riege, P.C., after due notice and a hearing, and it appearing to the Court that just cause exists to grant the Motion, it is hereby:

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Trustee, on behalf of Bridgeport Health, shall be, and hereby is, authorized to enter into, and perform under, that certain Confidential Settlement Agreement and Release (the “Agreement”) by and between Bridgeport Health and Travelers Casualty and Surety Company of America (“Travelers”), which Agreement is attached to the Motion as **EXHIBIT A**; and is further

ORDERED, that, pursuant to the Motion, and as more fully set forth in the Agreement:

- a. Travelers shall pay to the Retirement Plan, as such term is defined in the Motion, the sum of \$100,000.00;

¹ The Debtors in these cases and the last four digits of each Debtor’s tax identification number are: The Rosegarden Health and Rehabilitation Center LLC (4423) and Bridgeport Health Care Center Inc. (6665).

- b. Bridgeport Health, the Retirement Plan, the Health Plan, as such term is defined in the Motion, and any other Employee Benefit Plan as defined in the Policy (as such term is defined in the Motion) shall assign to Travelers all rights, title and interest in any and all claims against Chaim Stern together with all rights of recovery, subrogation or restitution arising out of or in any way connected with Mr. Stern and/or the released claims. However, specifically excluded from this assignment is any right or claim to funds Bridgeport Health, the Retirement Plan, the Health Plan, and any other Employee Benefit Plan as defined in the Policy, previously collected from Mr. Stern; and
- c. Bridgeport Health, the Retirement Plan, the Health Plan, and any other Employee Benefit Plan as defined in the Policy, shall release Travelers from any and all claims arising under the released claims and/or the Policy.