UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Lafayette Division

IN RE:

PROGRESSIVE ACUTE CARE, LLC, *et al.* **CASE NO. 16-50740**

DEBTORS **CHAPTER 11**

JOINT MEMORANDUM IN SUPPORT OF CONFIRMATION OF JOINT CHAPTER 11 PLAN OF ORDERLY LIQUIDATION FOR PROGRESSIVE ACUTE CARE, LLC, *ET AL*.

May it please the Court:

This Joint Memorandum is respectfully submitted in support of confirmation of the *Joint Chapter 11 Plan of Orderly Liquidation* [Doc. 465] (the "Plan") of Progressive Acute Care, LLC ("PAC"); Progressive Acute Care Avoyelles, LLC; Progressive Acute Care Oakdale, LLC; and Progressive Acute Care Winn, LLC (collectively "the Debtors") as jointly proposed with the Official Unsecured Creditors' Committee ("the Committee") in these jointly administered cases. One timely objection ("the Objection") to confirmation was filed by Sysmex America, Inc. ("Sysmex") [Doc. 533]; however, pursuant to the *Stipulation Regarding Withdrawal of Objection* [Doc. 538], Sysmex's motion to withdraw its objection [Doc. 539], and the June 26, 2017 Order [Doc. 543] of this Court approving the Stipulation, the Objection has been withdrawn. As explained below, the Plan complies with all of the applicable requirements for confirmation set forth in Section 1129 of the Bankruptcy Code; thus the Plan should be confirmed.

Summary of Plan Provisions

The Plan provides for the treatment of Claims against and Equity Interests in each of the four Debtors in the Chapter 11 Cases (PAC, PAC Winn, PAC Avoyelles and PAC Oakdale). As set forth below and in the Plan, the classes of Claims against and Equity Interests in each of the Debtors are treated as against a single consolidated Estate without regard to the separate legal existence of the Debtors. The Plan will not result in the merger or otherwise affect the separate legal existence of each Debtor, other than with respect to voting and distribution rights under the Plan. Allowed Claims held against one Debtor will be satisfied from the Assets of all Debtors and the Estates, and each Claim against a Debtor will be treated as a Claim against the consolidated Estate of all Debtors for all purposes including, but not limited to, voting and distribution; provided, however, that no Claim will receive value in excess of 100% of the Allowed amount of such Claim under the Plan.

The Plan implements and is built around the following key elements:

- The Plan incorporates the Plan Term Sheet entered into by and among, the Debtors, the Committee and Business First Bank ("BFB") and approved by the Settlement Agreement Approval Order [Docket No. 424]. The key elements of the Plan Term Sheet, as incorporated into the Plan, include:
    - A $1 million Priority Reserve to be established for payment of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims;
    - BFB Secured Claim to be allowed in the amount of $10,137,410.25 of principal plus interest and attorneys' fees accrued through the date of confirmation of the Plan;

- BFB to receive a maximum BFB Distribution Amount in the amount of $10,300,000, of which amount $9,500,000 has been disbursed to BFB as of the filing of the Disclosure Statement, leaving up to $800,000 to be disbursed on account of the BFB Distribution Amount;

- BFB to assign the BFB Secured Claim and BFB's claims against PAC Dauterive in PAC Dauterive's separately-administered bankruptcy case to the Liquidation Trust, which allows the Liquidation Trustee to recover the excess of payments received on account of the BFB Secured Claim and the BFB Dauterive Claim over the fixed BFB Distribution Amount for the benefit of the Liquidation Trust;

- The first $100,000 of FMP Payments received by the Estates to be disbursed on account of the BFB Distribution Amount, leaving the remainder of the FMP Payments to be administered by the Liquidation Trust pursuant to the terms of the Plan;

- Taking into account all credits through the Confirmation Hearing Date, the current balance of the BFB Distribution Amount is $438,000, which amount shall be satisfied from a 50% share of any remainder of the Priority Reserve and each cash distribution from the Liquidation Trust;

- Holders of General Unsecured Claims to be paid Pro Rata Share of (i) 50% of any remainder of the Priority Reserve and each cash distribution from the Liquidation Trust until the BFB Distribution Amount is paid and (ii) the Liquidation Trust Assets remaining available for distribution after Cash distributions from such Assets on account of the BFB Distribution Amount; and,

- Any recovery by BFB against guarantors of the BFB Secured Claim shall reduce the Estates' obligation to pay the BFB Distribution Amount on a dollar-for-dollar basis.

- The Plan Term Sheet estimated that the Debtors would collect FMP Payments in the amount of $666,509. However, after the Settlement Agreement Approval Order was entered, the Buyer asserted rights in the FMP Payments. The Debtors, the Buyer, and the Committee resolved the dispute over the FMP Payments by the

FMP Payment Settlement Agreement, according to which the Debtors are now entitled to collect at least $295,000 of the FMP Payments.

- On the Effective Date, the authority, power and incumbency of the Debtors shall terminate, and vest in the Liquidation Trustee and Debtor Representative, and all Assets of the Debtors not sold to the Buyer or otherwise distributed in accordance with the Plan, including, without limitation, the Avoidance Actions, shall become assets of the Liquidation Trust or revest in the Debtors for administration by the Debtor Representative. The Liquidation Trustee shall, among other things, (a) sell, lease, license, abandon or otherwise dispose of Liquidation Trust Assets; (b) prosecute through judgment and/or settling the Liquidation Trust Assets and any defense asserted by the Liquidation Trust in connection with any counterclaim or crossclaim asserted against the Liquidation Trust; (c) calculate and make distributions required under the Plan to be made from the Liquidation Trust Assets; (d) file all required tax returns, and pay obligations on behalf of the Liquidation Trust from the Liquidation Trust Assets; (e) otherwise administer the Liquidation Trust; (f) file quarterly reports with the Bankruptcy Court with respect to the expenditures, receipts, and distributions of the Liquidation Trust; and, (g) perform such other responsibilities as may be vested in the Liquidation Trustee pursuant to the Liquidation Trust Agreement, the Confirmation Order, or as may be necessary and proper to carry out the provisions of the Plan relating to the Liquidation Trust.

- On the Effective Date, the Oversight Committee shall be formed. The Oversight Committee shall advise and assist the Liquidation Trustee in the implementation and administration of the Liquidation Trust pursuant to the Liquidation Trust Agreement and the Plan. A list of the proposed members of the Oversight Committee, whose appointment shall become effective as of the Effective Date of the Plan, shall be filed with the Bankruptcy Court as a Plan Document.

- Allowed Priority Non-Tax Claims against the Debtors are unimpaired under the Plan, and holders of such claims shall be paid in full.

- Allowed Non-Lender Secured Claims against the Debtors shall be treated in one of the following ways at the Liquidation Trustee's election: (i) the rights of the holder shall be reinstated, (ii) the

holder shall retain a lien and receive deferred cash payments totaling at least the value of the claim as of the Effective Date, (iii) the collateral securing the claim shall be surrendered to the holder, or (iv) the holder shall be paid cash equal to the amount of the claim, as set forth more fully in Section 3.4(b) of the Plan.

- Holders of Allowed Intercompany Claims shall not receive or retain any property or rights under the Plan on account of such Claims.

- All Equity Interests shall be canceled effective as of the Effective Date, and no holder of an Equity Interest shall receive or retain any property or rights under the Plan on account of its Equity Interests.

Administrative Expense Claims and Priority Tax Claims are not classified under the Plan. An Entity entitled to payment pursuant to Sections 546(c) or 553 of the Bankruptcy Code (11 U.S.C. §§ 546 or 553), and an Entity entitled to payment of administrative expenses pursuant to Sections 503 and 507(a) of the Bankruptcy Code (11 U.S.C. §§ 503 and 507(a)), shall receive, on account of such Allowed Administrative Expense Claim, Cash in the amount of such Allowed Administrative Expense Claim on the Effective Date unless otherwise agreed to between the parties.

At the election of the Liquidation Trustee, each holder of an Allowed Priority Tax Claim will receive in full satisfaction of such Allowed Priority Tax Claim (a) payments in Cash, in regular installments over a period ending not later than five (5) years after the Petition Date, of a total value, as of the Effective Date, equal to the amount of such Allowed Claim; (b) a lesser amount in one Cash payment as may be agreed upon in writing by such holder; or (c) such other treatment as may be agreed upon in writing by such holder; provided, that such agreed upon treatment may not provide such holder with a return having a present value as of the Effective Date that is greater than the amount of

such holder's Allowed Priority Tax Claim or that is less favorable than the treatment provided to the most favored General Unsecured Claims under the Plan.

Each holder of an Allowed Priority Non-Tax Claim against the Debtors shall be unimpaired under the Plan and, pursuant to section 1124 of the Bankruptcy Code, all legal, equitable and contractual rights of each holder of an Allowed Priority Non-Tax Claim with respect to such Claim shall remain unaltered, except as provided in sections 1124(2)(A)-(E) of the Bankruptcy Code, and such holder of an Allowed Priority Non-Tax Claim shall be paid Cash in an amount equal to its Allowed Priority Non-Tax Claim on the Plan Distribution Date. Class 1 is unimpaired and therefore deemed to have accepted the Plan.

In the sole discretion of the Liquidation Trustee, each holder of an Allowed Non-Lender Secured Claim against the Debtors (Class 2) shall be treated in one of the following ways: (1) on the Effective Date, the legal, equitable, and contractual rights of each holder of an Allowed Non-Lender Secured Claim shall be reinstated in accordance with the provisions of section 1124(2); (2) on the Effective Date, the holder of an Allowed Non-Lender Secured Claim shall (i) retain a lien securing such Allowed Non-Lender Secured Claim and (ii) receive deferred Cash payments from the Liquidation Trust totaling at least the value of such Allowed Non-Lender Secured Claim as of the Effective Date; (3) on the Effective Date, the collateral securing such Allowed Non-Lender Secured Claim shall be surrendered to the holder of such Allowed Non-Lender Secured Claim in full satisfaction of such Allowed Non-Lender Secured Claim; or (4) the holder of an Allowed Non-Lender Secured Claim shall be paid Cash in an amount equal

to the value of such holder's Allowed Non-Lender Secured Claim, on or before the later of (i) the Plan Distribution Date and (ii) the date that is ten (10) Business Days after the entry of a Final Order allowing such Claim. No ballots were cast for Class 2 Claims and no Class 2 Claims are believed to exist.

The holder of the BFB Secured Claim, the sole Class 3 Claimant and a non-insider, shall be treated as follows:

(a) on the Effective Date, the BFB Secured Claim shall be Allowed in the amount of **$10,137,410.25 of principal plus interest and attorneys' fees accrued through the date of confirmation of the Plan**[1];

(b) on the Effective Date, BFB shall fully and irrevocably assign its rights to distributions in connection with the BFB Secured Claim and the BFB Dauterive Claim to the Liquidation Trust;

(c) BFB shall receive distributions pursuant to the Plan in the maximum amount of the BFB Distribution Amount according to the terms and conditions of this Plan and the Settlement Agreement, including the following:

a) as of January 30, 2017, BFB has received payment of $9,500,000 on account of the BFB Distribution Amount, and such payments shall not be subject to dispute, claim, contest or challenge;

b) to the extent the BFB Distribution Amount remains unpaid, upon the Liquidation Trustee's receipt of the FMP Payments, the first $100,000 of such funds received by the Liquidation Trustee will be distributed to BFB on account of the BFB Distribution Amount (to the extent not otherwise paid prior to the Effective Date);

c) to the extent the total amount of Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Non-Lender Secured Claims is less than $1 million, one half of the remaining balance in the Priority Reserve will be

[1] The exact amount of the Allowed BFB Secured Claim shall be provided to the Court and put into the case record at the hearing on Plan confirmation.

distributed to BFB on account of the BFB Distribution Amount and the remainder to the Liquidation Trust;

d) one half of each distribution made from the Liquidation Trust shall be paid on account of the BFB Distribution Amount until the BFB Distribution Amount has been paid in full;

e) any net recovery based on the Guarantees will be applied on account of the BFB Distribution Amount;

f) one half of any net recovery based on the BFB Dauterive Claim will be applied on account of the BFB Distribution Amount and the remainder will be allocated to the Liquidation Trust; and,

g) any payments received by BFB under subsections (i) through (vi) above which in the aggregate exceed the BFB Distribution Amount will be promptly turned over by BFB to the Liquidation Trust.

(d) During the period between the Confirmation Date and the Effective Date, the BFB Adversary Proceeding will be stayed and held in abeyance. On the Effective Date, the BFB Adversary Proceeding will be dismissed with prejudice;

(e) On the Effective Date, the Committee and the Debtors' Estates shall be deemed to have fully and irrevocably waived and released any right to seek recovery of payments made to BFB pursuant to the consent orders regarding conditional disbursements of funds, entered on December 7, 2016 [Docket No. 408] and January 5, 2017 [Docket No. 429].

BFB has accepted the Plan.

Each holder of an Allowed General Unsecured Claim, Class 4, shall receive in satisfaction of its Allowed General Unsecured Claim on the Plan Distribution Date Cash in an amount equal to such holder's Pro Rata Share of the Liquidation Trust Assets remaining available for distribution after Cash distributions from such Assets on account of the BFB Distribution Amount. Class 4 has overwhelmingly accepted the Plan and has done so without reference to ballots cast by insiders of the Debtors.

On the Effective Date, all Intercompany Claims (Class 5) will be extinguished, and no holder of an Intercompany Claim will receive or retain any property or rights under the Plan on account of such Claim. Accordingly, the Class is deemed to reject the Plan although the Plan's provision calling for substantive consolidation of the Debtors seems to make that a moot issue.

All Equity Interests (Class 6) shall be canceled effective as of the Effective Date, and no holder of an Equity Interest shall receive or retain any property or rights under this Plan on account of its Equity Interests. Accordingly, Class 6 is deemed to have rejected the Plan.

Section 12.1 of the Plan provides for the rejection of any and all executory contracts and leases not previously assumed and assigned or previously rejected. Any counterparty to such contract would then have the right to assert a general unsecured claim for rejection damages, if any, which, if Allowed, would be treated as a Class 4 Claim under the Plan.

(1) The plan complies with the applicable provisions of this title.

Generally, this standard is met if the plan document correctly designates classes (section 1122) and contains the mandatory language required under section 1123. See Kane v. Johns Manville Corp. (In re Johns Manville Corp.), 843 F.2d 636, 648-649 (2d Cir. 1988) ("the legislative history of subsection 1129(a)(1) suggests that Congress intended the phrase 'applicable provisions' in this subsection to mean provisions of chapter 11 that concern the form and content of reorganization plans"); In Re: S & W

Enterprises, 37 B.R. 153 (Bankr. N.D. Ill. 1984). The Debtors aver that compliance with this provision is proven by the contents of the Plan itself.

(2) The proponent of the plan complies with the applicable provisions of this title.

This standard is generally thought to mean that solicitation of votes did not begin until after a Disclosure Statement was approved by the Court and circulated to creditors. In re Texaco. Inc., 84 B.R. 893, 906-07 (Bankr. S.D.NY 1988). See, H.R. 95-595, 95th Cong., 1st Sess. 412 (1977); 5 Collier on Bankruptcy, ¶1129.02, at 21, 22. In this case, none of the Debtors nor the Committee, as joint proponents of the Plan, nor anyone employed or engaged by any of them, made any attempt to solicit any votes until after this Court entered an Order approving the Disclosure Statement [Doc. 507] and the Balloting Materials were actually transmitted to creditors as required by the Court [Doc. 512]. Thus, the Plan meets the requirements set forth in Section 1129(a)(2). The Debtors aver that compliance with this provision is proven by the record of this case as well as by the Declaration under Penalty of Perjury ("the Declaration") which will be submitted in connection with the Confirmation Hearing.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

Under Bankruptcy Rule 3020(b)(2), good faith is presumed unless an objection raising the issue is filed. See Matter of Midwestern Companies, Inc., 55 B.R. 856 (Bankr. D.Mo. 1985); In Re: O'Loughlin, 40 B.R. 707 (Bankr. D.Ma. 1984). No objection related to bad faith has been filed and, therefore, the Plan and the Debtors and the Committee have met this requirement. Furthermore, as the Court is aware, this Plan was heavily negotiated at arm's length among the Debtors, the Committee, and BFB, far

and away the largest creditor and the only secured creditor in the cases. In addition, the Declaration will attest to this factual finding.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

This requirement reflects an intention to have parties in interest know the full details of a transaction. The section does not require that such facts must be contained in the plan, but only that it must be revealed to the court and creditors. No one has objected to confirmation on the basis of an alleged failure to meet this standard. However, the Plan provides for disclosure and/or Court approval of fees and expenses for all professionals employed during the case.

(5)(A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

No objection has been raised alleging a failure to meet this standard and the Declaration supports this finding. No insiders will be employed by the Debtors nor receive any payments from the Debtors after Plan confirmation. No insiders will be employed by the Liquidation Trust after Plan confirmation; the Liquidation Trustee may engage former insiders in a limited consulting role if needed to fulfill its duties, but only after receiving approval to do so from the Liquidating Trust Oversight Committee based

on terms and conditions approved by the Liquidating Trust Oversight Committee. Furthermore, the identity of SOLIC as the proposed Liquidation Trustee and its proposed compensation at $10,000.00 per month for the first four (4) months has been disclosed and Declarant submits that SOLIC's role in that capacity and proposed compensation is consistent with the interest of creditors and public policy, especially in view of the historical knowledge that SOLIC and Declarant have obtained with respect to the Debtors' assets, liabilities and affairs. Thus, the Plan meets the requirements set forth in Section 1129(a)(5).

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

This provision is self-explanatory and is not applicable in this case as the Plan does not provide for any rate changes. Thus, Section 1129(a)(6) is inapplicable in this case.

(7) With respect to each impaired class of claims or interests—
(A) each holder of a claim or interest of such class—
(i) has accepted the plan; or
(ii) will receive or retain under the plan on account, of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or…

This is the so-called "best interest of Creditors" test which serves to protect individual creditors who do not vote in favor of a plan from receiving less under a Chapter 11 Plan (which may be accepted by a class of claims to which they belong) than such creditor would receive if the case were converted to Chapter 7 and the debtor's assets liquidated by a trustee. The test requires that the court determine that, as to any

impaired class of claims or interests, each claimant or interest holder has either affirmatively accepted the plan or will receive or retain under the plan at least as much as he would receive were the case converted to Chapter 7 on the effective date and the estate liquidated at that point in time. The test is designed to protect the interests of minority claimants that have not accepted a plan, regardless of their size, from oppression by the majority of claimants. See, In Re: Technical Coloring Chemical Works, Inc. v. Two Guys from Massapequa, Inc., 327 F.2d 737 (2nd Cir. 1964).

As the liquidation analysis contained in the Disclosure Statement demonstrates, each creditor in any class of impaired claims (Classes 2 through 4) that will receive distributions has either unanimously voted in favor of the Plan, or any dissenting creditor in any such class will receive or retain under the plan at least as much as it would receive were the cases converted to Chapter 7 on the Effective Date and the estates liquidated at that point in time. Furthermore, the Intercompany Claims in Class 5 would receive no distributions in Chapter 7 cases so the similar treatment of that class under the Plan (which provides for substantive consolidation of the estates of all Debtors) does not violate the "best interest of Creditors" test under Section 1129(a)(7).

> *(8) With respect to each class of claims or interests—*
> *(A) such class has accepted the plan; or*
> *(B) such class is not impaired under the plan.*

Section 1129(a)(8) requires that either all impaired classes of claims and interest accept the Plan or that the Plan meet the requirements of Section 1129(b) as to any classes of claims or interest that do not accept the Plan. Class 1 under the Plan is not impaired so it is deemed to have accepted the Plan. There are no known Claims in Class

2, so no ballots were cast in that Class and it should be disregarded for confirmation purposes. Alternatively, the treatment of any Class 2 Claims is consistent with the requirements of Section 1129(b) with respect to the treatment of secured claims in a "fair and equitable manner." As the Balloting Tabulation [Doc. 536] submitted by Debtors' counsel evidences, Classes 3 and 4 are impaired but accepted the Plan by the requisite majorities. Class 5 (Intercompany Claims) and Class 6 (Equity Interests) will receive nothing under the Plan and therefore are deemed to reject. However, those classes are treated fairly and equitably as required by Section 1129(b) since the members of neither class would receive anything in Chapter 7 bankruptcies of the Debtors and no junior class of claims or interests is receiving or retaining any property under the Plan. Accordingly, although the Plan has not been accepted by all impaired class of claims or interests, it should nonetheless be confirmed.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash….

This section requires certain mandatory minimal treatment of all priority claims. The Plan provides for the payment in full, in cash, of all allowed administrative claims on

the Effective Date or as soon thereafter as same are allowed by the Court. The Plan also provides that each holder of an Allowed Priority Tax Claim will receive in full satisfaction of such Allowed Priority Tax Claim (a) payments in Cash, in regular installments over a period ending not later than five (5) years after the Petition Date, of a total value, as of the Effective Date, equal to the amount of such Allowed Claim; (b) a lesser amount in one Cash payment as may be agreed upon in writing by such holder; or (c) such other treatment as may be agreed upon in writing by such holder. No party has objected to confirmation based on a failure of the Plan to comply with Section 1129(a)(9).

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

This section is self-explanatory and requires that any plan which seeks to impair any class of claims must be accepted by the requisite majority (2/3 in amount and more than 50% in number) of non-insider claims in at least one of the impaired classes. Two classes of impaired claims, Class 3 and 4, have accepted the Plan. Class 3 is a single member class, Business First Bank, and that member is not an insider. Likewise, Class 4 accepted the Plan without counting any ballots cast by insiders. Accordingly, the Plan meets the requirements of Section 1129(a)(10).

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

This is the so-called feasibility standard and, since the Plan is expressly a Plan of Liquidation, it is not applicable in this case.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

This provision requires payment of the U.S. Trustee quarterly fees, which is provided for in Article 2.2 of the Plan. All U.S. Trustee fees have been paid by the Debtors through the last quarter preceding the confirmation hearing. Any additional fees due shall be paid by the Liquidating Trustee in accordance with the aforementioned Plan provision. No one has objected to confirmation of the Plan for alleged failure to meet this standard.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

This provision is self-explanatory and is not applicable in this case since, as the Declaration establishes, the Debtors have never maintained any defined benefit retirement plans for their employees.

(14) and (15) deal solely with individual debtors and are not applicable in this case.

(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property of a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

The sale of substantially all the assets of the Debtors (the three hospitals) occurred and was closed months ago and the Plan provides for no other transfers. Thus, this standard is inapplicable in this case.

Section 1129(c) (d) and (e) provide for three more standards that may need to be met in order for a plan to be confirmed.

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title. If the requirements of subsection (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

This requirement is inapplicable as there are no competing plans.

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

This section only applies if an appropriate objection is filed by a governmental entity. No such objection has been filed in this case.

(e) In a small business case….

By definition, this requirement only applies in a small business case and these are is not small business cases as the each of the Debtor's liabilities exceed the maximums permitted under Section 101(51D) of the Code.

Finally, the Plan provides of substantive consolidation of the Estates of the Debtors upon the Effective Date. The Declaration establishes the necessary factual findings justifying substantive consolidation.

Conclusion

The Plan, as amended, complies with all provisions of §1129 and should be confirmed by this Court. The Debtors and the Committee urge this Court to enter a Confirmation Order.

Respectfully submitted by:

/s/ William E. Steffes

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