

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

In re: BKY 19-40143 (MER)
Chapter 7
Welcov Healthcare, LLC
Debtor.

NOTICE OF HEARING AND EXPEDITED JOINT MOTION OF WELCOV HEALTHCARE, LLC AND PETITIONING CREDITORS FOR AN ORDER (I) GRANTING AN EXPEDITED HEARING; (II) APPROVING THE GLOBAL SETTLEMENT AGREEMENT; AND (III) DISMISSING THE INVOLUNTARY BANKRUPTCY PETITION PURSUANT TO 11 U.S.C. §§ 105(a) AND 303(j)(2) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 1017, 9006(c) AND 9019

TO: The entities specified in Bankruptcy Rule 1017 and Local Rules 9013-3(a)(1) and 9019-1(a):

NOTICE OF HEARING

1. Medline Industries, Inc., Healthcare Services Group, Inc. and Monida Healthcare Staffing Solutions, LLC (collectively, the "Petitioning Creditors") and Welcov Healthcare, LLC, the above captioned debtor (the "Debtor" and, together with the Petitioning Creditors, the "Movants"), hereby submit this joint motion (the "Joint Motion") requesting the relief described below and give notice of hearing on the Joint Motion.

2. PLEASE TAKE NOTICE that the court will hold a hearing on this Joint Motion on **Thursday, January 31, 2019, at 10:00 a.m. (prevailing Central Time)**, before the Honorable Michael E. Ridgway, Judge of the United States Bankruptcy Court, in Courtroom No. 7 West, at the United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415 (the "Hearing").

3. Due to the expedited nature of this Joint Motion, the Movants do not object to any response to this Joint Motion filed at any time prior to the Hearing or advocated at the Hearing.

4. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. The matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(M) and (O). Venue in this court is proper under 28 U.S.C. §§ 1408 and 1409. The case is now pending before this court.

5. The Movants submit this Joint Motion for an Order, substantially in the form attached hereto as **Exhibit C** (the “Order”), pursuant to sections 105(a) and 303(j)(2) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 1017, 9006(c) and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) granting the relief requested herein on shortened notice; (ii) approving the Welcov Multi-Party Agreement dated January 29, 2019, **Exhibit A** (the “Global Settlement Agreement”)¹; (iii) dismissing the involuntary petition; and (iv) granting such other and further relief as the court deems just and proper.

6. In support of the Joint Motion, the Movants (i) submit the *Memorandum of Law in Support of Expedited Motion of Welcov Healthcare, LLC and Petitioning Creditors for an Order (I) Granting an expedited hearing; (II) Approving the Global Settlement Agreement; and (III) Dismissing the Involuntary Bankruptcy Petition Pursuant to 11 U.S.C. §§ 105(a) and 303(j)(2) and Federal Rules of Bankruptcy Procedure 1017, 9006(c) and 9019*, attached hereto as **Exhibit B** (the “Memorandum of Law”) and (ii) respectfully state as follows:

PRELIMINARY STATEMENT

7. This case concerns the operations and resident care of twenty two (22) skilled nursing facilities located in the states of Minnesota, Wyoming, Iowa and South Dakota (the

¹ The Global Settlement Agreement will be subsequently filed.

“Facilities”), which the Debtor operates, directly and through certain non-debtor subsidiaries and affiliates set forth in the Global Settlement Agreement (collectively, with the Debtor, “Welcov”). The Facilities provide critical healthcare services to the approximately 1,360 residents (the “Residents”) who reside in the Facilities. The relief sought in this Motion is urgent – absent the court providing the relief set forth herein, there is substantial risk that the Residents will suffer irreparable harm and that their health, safety, and welfare will be put in jeopardy.

8. The Facilities are operated by the Debtor and its affiliates and subsidiaries. The Debtor is insolvent and no longer has sufficient resources with which to operate the Facilities and care for the Residents. Prior to the Petition Date, the Debtor entered into agreements with new operators who can take over operation of the Facilities effective as of February 1, 2019. These transitions are critical to ensuring the continued health, safety, and welfare of the Residents. The pendency of this involuntary case threatens to prevent the transfers from occurring.

9. The Parties have reached an agreement pursuant to which the transfers can occur and this involuntary case can be dismissed in-favor of an Assignment for the Benefit of Creditors in accordance with Minnesota law (the “ABC”). The parties have further agreed to certain lien subordinations and other concessions in order to provide a recovery to unsecured creditors in the ABC. The agreements set forth herein are the product of hard fought, arms’ length negotiations among numerous parties with divergent interests. Faced with an absolute crises regarding Resident care and dwindling time and resources, the parties respectfully request that the court grant the relief set forth herein on an expedited and emergency basis.

10. This Joint Motion is filed on an emergency basis. Welcov does not have the financial resources to continue to operate the Facilities after February 1. Approximately 1,360

residents live in the Facilities and depend on Welcov for critical healthcare services, food, and other basic necessities of life. If the Facilities do not transition to new operators capable of providing these basic necessities on February 1, the Residents will likely not receive them. This will endanger the health, safety, and welfare of approximately 1,360 human beings. It is absolutely critical that this Motion be heard on an emergency basis and that the Court immediately grant the relief requested herein.

BACKGROUND

A. Company Background

11. The Debtor maintains its headquarters in Edina, Minnesota. Welcov currently operates twenty-two skilled nursing facilities located in the states of Minnesota, Wyoming, Iowa and South Dakota (the “Facilities”), which Facilities provide critical healthcare services to the approximately 1,360 residents (the “Residents”) who reside in the Facilities.

12. Thomas Boerboom and Paul Contris (collectively, “Owners”) directly and/or indirectly own Welcov.

13. Welcov is indebted to MidCap Financial Trust (“MidCap”), as Agent and Lender under those certain HUD and non-HUD Credit and Security Agreements dated as of September 21, 2017 (together with all other instruments, documents and other writings evidencing, securing, or pertaining to the MidCap AR Debt (as defined herein) the “MidCap AR Documents”), as of the date hereof, in the approximate amount of \$8.5 million (the “MidCap AR Debt”). The MidCap AR Debt is secured by a first priority, properly perfected security interest (the “MidCap Security Interest”) in all of Welcov’s accounts receivable (the “Welcov AR”).

14. Certain of the Facilities’ landlords as set forth in the Global Settlement Agreement (the “Sabra Landlords” and the “Fox Landlords” and, together with the Sabra

Landlords, the “Landlords”) assert liens and security interests in the Welcov AR, which liens and security interests are junior only to the liens and claims of MidCap pursuant to the MidCap AR Documents (the “Landlord AR Liens”).

15. Welcov owes approximately \$17.5 million (the “Trade Payables”) to unsecured vendors, services providers and other parties who have provided goods and services to Welcov on unsecured credit terms prior to the date hereof (collectively, the “Trade Vendors”). As of the Petition Date (defined below), the Petitioning Creditors are owed Trade Payables in the following amounts: (i) Medline - \$1,367,775.75; (ii) Healthcare Services - \$4,053,624.71; and (iii) Monida - \$160,558.11.

16. Welcov is insolvent and no longer able to continue as a going concern. Prior to the commencement of this chapter 7 involuntary case (this “Case”), Welcov entered into certain operations transfer agreements (collectively, the “OTAs”) whereby the operation of the Facilities would be transferred from Welcov to certain new operating entities (collectively, the “New Operators”). The OTAs were negotiated by and between Welcov and the New Operators. The Trade Vendors were not included in negotiations for the OTAs.

17. The assignment of the Facilities under the OTAs is scheduled to occur on February 1, 2019 (the “Operations Transfer Date”). Welcov does not have funding to continue operating the Facilities on or after the Operations Transfer Date. Absent the transfer of the Facilities on the Operations Transfer Date, Welcov has insufficient resources to provide for the health, safety, and welfare of the Residents.

B. Bankruptcy Case History

18. On January 18, 2019 (the “Involuntary Petition Date”), the Petitioning Creditors commenced the above captioned involuntary bankruptcy case (this “Case”) by filing an

involuntary petition (the “Involuntary Petition”) against the Debtor pursuant to section 303 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Minnesota.

C. Settlement Negotiations

19. The Movants believe, due to Welcov’s limited remaining liquidity and inability to continue to operate as a going concern, that it is in the best interests of all parties in interest, including the Movants, the Trade Vendors, the Landlord, MidCap, the Owners and the Residents, that Welcov (i) transition its operations to the New Operators, who are able to maintain the Facilities and care for the Residents, pursuant to the OTAs and (ii) subsequently initiate an Assignment for the Benefit of Creditors pursuant to Minnesota Statutes Chapter 577 (the “ABC”) so that an assignee may administer Welcov’s remaining assets for the benefit of Welcov’s creditors. Lighthouse Management, Inc. has been selected as assignee in accordance with Minnesota Statutes Chapter 577 (not individually but solely in its capacity as assignee under the ABC, “Assignee”).

20. Since the Petition Date, and with the assistance of their advisors, the Movants, the Landlords, MidCap, the Owners and Assignee (under the Global Settlement Agreement, each, a “Party” and, collectively, the “Parties”) have engaged in intensive negotiations in haste to avoid a delay in the Facilities’ transition to the New Operators, so as to not risk the health, safety and wellbeing of the Residents of the Facilities notwithstanding the insolvency and financial failure of Welcov. As a result of such negotiations, the Global Settlement Agreement was reached.

D. Global Settlement

21. After dedicated efforts on all sides, the Parties have agreed on the Global Settlement Agreement, which contemplates, inter alia, (i) the transfer of the Facilities’ operations to the New Operators; (ii) the subordination of the Landlord AR Liens to the claims of the Trade

Vendors; (iii) and the commencement of the ABC for the benefit of all of Welcov's creditors.

The Global Settlement Agreement is summarized as follows²:

- a. Dismissal of Involuntary Petition. The Movants will file an emergency motion with the court seeking immediate approval of the Global Settlement Agreement and dismissal of the Involuntary Petition so that the transfer of the Facilities' operations to the New Operators may occur on the Operations Transfer Date.
- b. Transfer of Facilities. The Parties, including but not limited to the Petitioning Creditors, agree that, notwithstanding the filing of the Involuntary Petition, it is critical to the health, safety, and wellbeing of the Residents that the Facilities be transitioned to new operators as soon as possible, and in any event on or prior to the Operations Transfer Date. To the extent any Facility is transferred to any entity owned by or affiliated with the Owners, the transferee entity shall assume any trade payables owed by such Facility to all of such Facility's Trade Vendors.
- c. Commencement of ABC. As soon as practicable on or following the Operations Transfer Date and entry of the Order, Welcov shall commence the ABC and shall assign, subject to all rights, privileges, security interests, and liens in favor of MidCap in its collateral (the "MidCap Collateral"), all of Welcov's remaining assets to Assignee, including, for the avoidance of doubt, the Welcov AR and any and all claims or causes of action or rights of action held by Welcov against any person, whether based on a contract, applicable tort or common law, or any law, statute or regulation of any governmental body or entity, including without limitation commercial tort claims (including claims against the Welcov's current and former officers, directors, managers and members and those acting in concert with any of the foregoing and, without limiting the generality of the foregoing, any and all claims or causes of action which may be covered by, or insured under, any applicable policy of officers' or directors' liability insurance) and any avoidance action claims under Minnesota Statutes Chapter 577 shall be transferred to Assignee (collectively, the "Assignee Claims") and the rights to collect under Welcov's existing insurance policies (including but not limited to the primary director and officer liability, employment practices liability, or fiduciary liability policies and any claims arising thereunder), to be administered in accordance with Minnesota Statutes Chapter 577 and in accordance with the terms set in the Global Settlement Agreement.
- d. Midcap Debt. All of the proceeds of Midcap's collateral shall continue to be directly deposited in to the lockbox accounts existing as the date of the Global Settlement Agreement until Welcov's debts to MidCap (the "MidCap Debt") are fully and finally paid. All funds deposited into such lockbox accounts may continue to be applied by MidCap upon receipt thereof toward payment of the MidCap Debt in accordance with the terms of the MidCap transaction documents.

² The following is a summary of the salient terms of the Global Settlement Agreement. In the event of any inconsistencies between the summary of the Global Settlement Agreement, the terms of the Global Settlement Agreement control.

- e. Subordination of Landlord AR Liens in Favor of Trade Vendors. Effective upon the Facilities being transferred to new operators, the Landlords agree to subordinate their claims against Welcov and the Landlord AR Liens, in their entirety, except for the amounts owed to Landlords for any Landlord Advances (as that term is defined in Section 4(e) of the Global Settlement Agreement and subject to the Trade Carve-Out as defined below) and interest thereon, to the claims of the Trade Vendors. With respect to the Landlord Advances, after the Trade Creditors receive distributions in the aggregate amount of \$1 million (the “Trade Carve-Out”), all amounts due to Landlords pursuant to any Landlord Advances, including interest due and owing on the Landlord Advances, shall be entitled to priority of payment before payment of any remaining claims of the Trade Vendors after payment of the Trade Carve-Out.
- f. Budget. After the Dismissal Order has been entered and becomes a final non-appealable order and subject to the entry of an order entered in the ABC acceptable to MidCap in its sole discretion, MidCap agrees to advance to the Assignee funds as outlined in the Budget (the “MidCap Funding”), or so much of the MidCap Funding as has been advanced until such time as the MidCap Debt has been fully and finally paid.
- g. Assignee. Upon commencement of the ABC, Assignee shall comply and take steps necessary to effectuate the terms of the Global Settlement Agreement, including making distributions on in accordance with the terms of the Global Settlement Agreement and Budget. Assignee shall have standing and authority to prosecute, settle or compromise the Assignee Claims for the benefit of the creditors of Welcov, excluding the Landlords, but including without limitation the Trade Vendors, subject to payment of the expenses set forth in the Budget.
- h. Oversight Committee. Upon the commencement of the ABC, an oversight committee (the “Oversight Committee”) shall be formed and consist of members appointed by the Petitioning Creditors. The Oversight Committee shall consult with and advise Assignee with regard to the performance of Assignee’s duties. Assignee shall provide the Oversight Committee with monthly collection reports and access to books and records. The Parties agree that the Oversight Committee shall have standing to appear and be heard on any matter brought in relation to the ABC. In the event that Assignee fails to pursue the Assignee Claims, the Oversight Committee may retain legal counsel on a contingency basis to pursue such claims for the sole benefit of the Trade Vendors, subject to payment of the expenses set forth in the Budget.

22. The Parties further agree and acknowledge that, notwithstanding the individual economic interest of any Party, the paramount interest of all of the Parties is to ensure the health, safety and wellbeing of the Residents of the Facilities such that the Residents are able to receive continued quality care and avoid or other harm notwithstanding the insolvency and financial failure of Welcov. No Party waives, under the Global Settlement Agreement, any of its future

rights with respect to any future matter or dispute among the Parties and the Parties enter into this Agreement on an emergency basis to protect not their own economic interest but the interests of the Residents.

EXPEDITED HEARING

23. The court's consideration of the Motion on an emergency basis is warranted due to Welcov's limited remaining liquidity and inability to continue to operate as a going concern on or after February 1, 2019. The transition of the Facilities' operations from Welcov to the New Operators is necessary to ensure the health, safety and wellbeing of the Residents. The safe and expeditious transfer of the Facilities to the new Operators on the Operations Transfer Date is a material term of the Global Settlement Agreement for the Debtor, the Owners, the Landlords and MidCap.

APPROVAL OF THE GLOBAL SETTLEMENT

24. Approval of the Global Settlement Agreement is in the best interest of creditors for the following reasons:

- a. The Movants believe that the ABC approach will streamline resolution of the creditors' claims and result in no delay to the transfer of the Facilities' operations to the New Operators, thus ensuring that there will be no adverse impact on the health, safety and wellbeing of the Residents of the Facilities.
- b. The interests of creditors will be served by the ABC approach because it will be administered by Assignee (an independent fiduciary), with the oversight and input from the Oversight Committee. Also, administration of the Debtor's estate through an ABC in accordance with the terms of the Global Settlement Agreement, rather than through a bankruptcy case, will result in the greatest net return for creditors by minimalizing the fees and costs associated with a bankruptcy case.

25. In determining whether to enter into the Global Settlement Agreement, the Movants weighed all the factors listed above. The Movants believe that the Global Settlement Agreement is in the best interest of creditors and the estate.

DISMISSAL OF THE INVOLUNTARY PETITION

26. Dismissal of the Involuntary Petition is warranted here, where dismissal is supported by both the Petitioning Creditors and the Debtors after hard-fought, arms-length negotiations. Moreover, dismissal of the Involuntary Petition will benefit all stakeholders by allowing for the implementation of the Global Settlement Agreement which, among other things, will result the liquidation of Welcov in a timely, cost-efficient manner and with a minimum impact on the transfer of the Facilities' operations to the New Operators, ensuring that the health, safety and wellbeing of the Residents is maintained.

RELIEF REQUESTED

27. By this Motion, the Movants request that the court enter an order (i) granting an expedited hearing to consider the relief requested herein pursuant to Bankruptcy Rule 9006(c); (ii) approving the Global Settlement Agreement pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019; and (ii) dismissing the Involuntary Petition pursuant to section 303(j)(2) of the Bankruptcy Code and Bankruptcy Rule 1017.

28. In compliance with Local Rule 9013-2, this Motion is verified and is accompanied by a memorandum of law and proposed order.

29. Pursuant to Local Rule 9013-2, the Movants give notice that they may, if necessary, contact Paul Contris of Welcov to testify at the hearing on the Motion regarding the facts set forth herein.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Movants respectfully request that the court enter the Order (i) approving the Joint Motion on an expedited basis; (ii) approving the

Global Settlement Agreement; (iii) dismissing the involuntary petition; and (iv) granting such other and further relief as the court deems just and proper.

Dated: January 29, 2019
Minneapolis, Minnesota

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Counsel for the Debtor

VERIFICATION

I, David Gordon, shareholder of Polsinelli PC, counsel for the Welcov Healthcare, LLC, declare under penalty of perjury that the facts set forth in the preceding Joint Motion are true and correct according to the best of my knowledge, information and belief.

Dated: January 29, 2019
Atlanta, Georgia



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Counsel for the Debtor

EXHIBIT A
Global Settlement Agreement

[Global Settlement Agreement to be filed subsequently.]

EXHIBIT B
Memorandum of Law

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

In re: BKY 19-40143 (MER)
Chapter 7
Welcov Healthcare, LLC

Debtor.

MEMORANDUM OF LAW IN SUPPORT OF EXPEDITED JOINT MOTION OF WELCOV HEALTHCARE, LLC AND PETITIONING CREDITORS FOR AN ORDER (I) GRANTING AN EXPEDITED HEARING; (II) APPROVING THE GLOBAL SETTLEMENT AGREEMENT; AND (III) DISMISSING THE INVOLUNTARY BANKRUPTCY PETITION PURSUANT TO 11 U.S.C. §§ 105(a) AND 303(j)(2) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 1017, 9006(c) AND 9019

Medline Industries, Inc. (“Medline”), Healthcare Services Group, Inc. (“Healthcare Services”) and Monida Healthcare Staffing Solutions, LLC (“Monida” and, together with Medline and Healthcare Services, the “Petitioning Creditors”) and Welcov Healthcare, LLC, the above captioned debtor (the “Debtor” and, together with the Petitioning Creditors, the “Movants”), by and through their respective undersigned counsel, hereby submits this memorandum of law (this “Memorandum”) in support of their *Expedited Motion of Welcov Healthcare, LLC and Petitioning Creditors for an Order (I) Granting an expedited hearing; (II) Approving the Global Settlement Agreement; and (III) Dismissing the Involuntary Bankruptcy Petition Pursuant to 11 U.S.C. §§ 105(a) and 303(j)(2) and Federal Rules of Bankruptcy Procedure 1017, 9006(c) and 9019* (the “Joint Motion”).¹

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Joint Motion.

BACKGROUND

1. The factual basis for this Memorandum is set forth in the Joint Motion, verified by David Gordon, shareholder of Polsinelli PC (1201 West Peachtree Street NW, Suite 1100, Atlanta, Georgia 30309, (404) 253-6000, dgordon@polsinelli.com) and is incorporated as though fully set forth herein.

LEGAL ARGUMENT

A. To maximize recoveries of the Debtor's creditors and to ensure the health, safety and well-being of the Residents, the relief requested herein should be granted on an expedited basis.

2. The Movants request expedited approval of the Motion. Bankruptcy Rule 9006(c) provides that the court may reduce the notice period for a motion for cause. Here, cause exists to grant the Joint Motion on an expedited basis. As described in more detail in the Joint Motion, the Debtor has limited liquidity and will be unable to operate as a going concern on or after February 1, 2019. Prepetition, the Debtor negotiated and entered into certain agreements to transfer the operations of the Facilities to the New Operators on February 1st, the Operations Transfer Date. Should the transfer of the Facilities' operations not occur on the Operations Transfer Date, the health, safety and wellbeing of the Residents of the Facilities will be put at risk. Moreover, the occurrence of the transfer of the Facilities' operations on the Operations Transfer Date is a material condition to the agreement to enter the Global Settlement Agreement for the Debtor, the Landlords, MidCap and the Owners.

B. The Global Settlement Agreement is in the Best Interest of the Debtor's Creditors and Should Be Approved.

3. Under Fed. R. Bankr. P. 9019(a), on motion by the trustee and after notice and hearing, the bankruptcy court may approve a settlement. Settlement agreements are generally encouraged and favored by the courts and "[i]n the absence of mistake or fraud, a settlement

agreement will not be lightly set aside.” *Justine Realty Co. v. American Nat’l Can Co.*, 976 F.2d 385, 391 (8th Cir. 1992). Settlements are a favored approach to resolving disputes. *Liddell by Liddell v. Board of Educ. of City of St. Louis*, 126 F.3d 1049, 1056 n.9 (8th Cir. 1997) citing *Williams v. First Nat’l Bank*, 216 U.S. 582, 595 (1910). The courts are encouraged to hospitably receive settlements because “a remedy that everyone agrees to is a lot more likely to succeed than one to which the defendants must be dragged kicking and screaming.” *Liddell by Liddell*, 126 F.3d at 1056.

4. Under Rule 9019(a), a court must find that the proposed settlement is fair and equitable and is in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Hanson Industries, Inc.*, 88 B.R. 942, 945 (Bankr. D. Minn. 1988). The approval of a compromise and settlement lies within the sound discretion of the bankruptcy court. *ReGen Capital III, Inc. v. Official Comm. of Unsecured Creditors (In re Trism, Inc.)*, 282 B.R. 662, 666 (8th Cir. B.A.P. 2002) citing *Lambert v. Flight Transp. Corp. (In re Flight Transp. Corp. Sec. Litig.)*, 730 F.2d 1128, 1135-36 (8th Cir. 1984).

5. In exercising its discretion, the court considers the following factors: (i) the probability of success in the litigation; (ii) difficulties in the collection of any judgment that may be obtained; (iii) the complexities of any litigation and the expense; (iv) the paramount interests of creditors; and (v) the promotion of the integrity of the judicial system. *Flight Transp.*, 730 F.2d at 1135; *In re Hancock-Nelson Mercantile Co., Inc.*, 95 B.R. 982, 990 (Bankr. D. Minn. 1989) citing *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929). As long as the settlement is in the best interest of the estate as a whole, it may be approved even though some parties in interest object. *Flight Transp.*, 730 F.2d at 1135.

6. Here, consideration of these factors supports approval of the Joint Motion and the Global Settlement Agreement. First, the Global Settlement Agreement provides for an out-of-court liquidation so that an independent assignee may administer Welcov's remaining assets for the benefit of all of Welcov's creditors. Specifically, under the Global Settlement Agreement unsecured creditors may receive a pro rata distribution of recovered Welcov AR, subject to MidCap's AR Liens and the Budget for the ABC, and the proceeds from the Assignee Claims. Additionally, entry of the Global Settlement and dismissal of the Involuntary Petition will permit the Debtor to proceed with the transfer of the operations of the Facilities to the New Operators, insuring that the health, safety and wellbeing of the Residents of the Facilities will be maintained.

7. Second, without the approval of the Global Settlement Agreement, the Trade Vendors' claims would remain subject to both the Landlord AR Liens and the MidCap AR Liens, rendering any recovery for unsecured creditors unlikely.

8. Third, the Movants believe that the cooperative approach through the ABC will streamline resolution of the creditors' claims against the estate without the time and cost of proceeding through a contested bankruptcy case where nearly all of the Debtor's assets are encumbered and result in the minimization of the attorneys' fees associated with resolving the claims. The Global Settlement Agreement represents a final resolution of the matters between the Parties.

9. Fourth, the Global Settlement Agreement is in the best interests of the Debtor's estate and its creditors. The Global Settlement provides an avenue for the Trade Creditors to receive a pro rata distribution of amounts collected from the Welcov AR, subject to the Midcap AR Lien and the Budget, and any proceeds realized from the pursuant of the Assignee Claims.

Without the Global Settlement, unsecured creditors will remain subject to the Landlord AR Liens and, therefore, unlikely to realize any recoveries from the Welcov AR and will not be entitled to any proceeds from the Assignee Claims.

10. For the foregoing reasons, the movants believe that they have properly exercised their business judgment in the negotiation and execution of the Global Settlement Agreement, the settlement falls well within the range of reasonableness required for approval of the Global Settlement Agreement, and that approval of the Settlement Agreements is in the best interests of the Debtor and their estate. The Movants therefore request that this court approve the Settlement

**C. The Petitioning Creditors and the Debtor
Consent to Dismissal of the Involuntary Petition.**

11. Under section 303(j)(2) of the Bankruptcy Code, after notice to all creditors and a hearing, the court may dismiss an involuntary petition “on consent of all petitioners and the debtor[.]” Similarly, Bankruptcy Rule 1017 provides for dismissal of an involuntary petition “by consent of the parties.”

12. The court should dismiss the Involuntary Petition under section 303(j)(2) of the Bankruptcy Code and Bankruptcy Rule 1017 on an expedited basis.² Subject to approval of the Global Settlement Agreement, dismissal of the Involuntary Petition is supported by both the Petitioning Creditors and Debtor. Through rigorous and expeditious negotiations, the Parties have agreed to the Global Settlement Agreement, which provides for an out-of-court restructuring that will enable a pro rata distribution to unsecured creditors without putting the

² Courts in other jurisdictions have approved the dismissal of involuntary petitions under section 303(j)(2) of the Bankruptcy Code on an expedited basis. *See In re Oak HRC New Castle, LLC*, Case No. 18-10074 [Docket No. 23] (Bankr. D. Del. April 27, 2018) (on one-day notice, the court entered an order approving a stipulation to dismiss the involuntary proceeding so that the debtor’s liquidation may occur pursuant to a state court receivership, dismissing the involuntary petition on consent of the petitioning creditors and the debtor, and retained jurisdiction to hear and determine all matters arising from implementation of the agreement); *see also In re Wilton Holdings Inc.*, Case No. 09-12563 [Docket No. 15] (Bankr. D. Del. Sept. 30, 2009).

health and welfare of the Residents at risk by impeding the transfer of the Facilities' operations to the New Operators. The Movants have provided notice of this Motion to all know creditors of the Debtor.

CONCLUSION

13. For the reasons set forth in the Joint Motion and this Memorandum, the Movants respectfully request that the court enter the Order (i) approving the Joint Motion on an expedited basis; (ii) approving the Global Settlement Agreement attached to the Order as Exhibit 1; (iii) dismissing the involuntary petition; and (iv) granting such other and further relief as the court deems just and proper.

Dated: January 29, 2019
Minneapolis, Minnesota

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EXHIBIT C
Proposed Order

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

In re:

BKY 19-40143 (MER)
Chapter 7

Welcov Healthcare, LLC

Debtor.

ORDER GRANTING EXPEDITED JOINT MOTION OF WELCOV HEALTHCARE, LLC AND PETITIONING CREDITORS FOR AN ORDER (I) GRANTING AN EXPEDITED HEARING; (II) APPROVING THE GLOBAL SETTLEMENT AGREEMENT; AND (III) DISMISSING THE INVOLUNTARY BANKRUPTCY PETITION PURSUANT TO 11 U.S.C. §§ 105(a) AND 303(j)(2) AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 1017, 9006(c) AND 9019

This matter came before the court upon the *Expedited Motion of Welcov Healthcare, LLC and Petitioning Creditors for an Order (I) Granting an expedited hearing; (II) Approving the Global Settlement Agreement; and (III) Dismissing the Involuntary Bankruptcy Petition Pursuant to 11 U.S.C. §§ 105(a) and 303(j)(2) and Federal Rules of Bankruptcy Procedure 1017, 9006(c) and 9019* (the “Joint Motion”)¹ of Medline Industries, Inc., Healthcare Services Group, Inc. and Monida Healthcare Staffing Solutions, LLC (collectively, the “Petitioning Creditors”) and the above-captioned Debtor in the involuntary chapter 7 case seeking entry of an order (i) on an expedited basis; (ii) approving the Welcov Multi-Party Agreement dated January 29, 2019, attached as Exhibit A to the Joint Motion (the “Global Settlement Agreement”) among the Debtor, the Petitioning Creditors, MidCap Financial Trust, certain of the landlords for the Debtor’s facilities (each as set forth in the Global Settlement Agreement, the Debtor’s owners (Thomas Boerboom and Paul Contris) and Lighthouse Management, Inc. (not individually but

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Joint Motion.

solely in its capacity as assignee under the Assignment for the Benefit of Creditors pursuant to Minnesota Statutes Chapter 577); (iii) dismissing the involuntary petition which commenced this case; and (iv) granting such other and further relief as the court deems just and proper pursuant to sections 105(a) and 303(j)(2) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 1017, 9006(c) and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and upon the court having found that adequate and sufficient notice of the Joint Motion has been given under the circumstances; and it appearing that no other or further notice of the Joint Motion is necessary or required; and this court having found that it has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157 and 1334; and this court having reviewed the Joint Motion; and the court having determined that the relief requested; in the Joint Motion is in the best interest of the Debtor, its estates, its creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefore,

IT IS ORDERED that:

1. The Joint Motion is GRANTED as provided herein.
2. Good and sufficient notice of the hearing and the relief sought in the motion was given under the circumstances and the terms of section 303(j) of the Bankruptcy Code have been satisfied.
3. The request for an expedited hearing is approved.
4. Each and every term of the Global Settlement Agreement is hereby approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.
5. The Debtor is authorized to enter into the Global Settlement Agreement.
6. This order and the Global Settlement Agreement shall be binding upon the Debtor and their respective successors or assigns, including, without limitation, any trustee or other

fiduciary hereafter appointed as a legal representative of the Debtor under chapters 7 or 11 of the Bankruptcy Code.

7. The involuntary petition is hereby dismissed, without prejudice to the Petitioning Creditors' right to re-file an involuntary petition, the Debtor's right to contest such a petition or the Debtor's right to file a voluntary petition should the parties be unable to consummate the Assignment for the Benefit of Creditors pursuant to Minnesota Statutes Chapter 577.

8. The terms and conditions of this order shall be immediately effective and enforceable upon its entry.

9. This court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

Dated:

Michael E. Ridgway
United States Bankruptcy Judge