

Hearing Date: May 20, 2019 at 1:30 p.m.

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § **Chapter 11**
§
PREFERRED CARE INC., et. al. § **Case No.: 17-44642**
§
Debtors. § **Jointly Administered**
§

**JOINT MOTION TO CONVERT PCI AND OWENSBORO CASES TO
CHAPTER 7 PROCEEDINGS**

PREFERRED CARE INC. AND OWENSBORO HEALTH FACILITIES, L.P. ONLY

Preferred Care Inc. (“**PCI**”) and Owensboro Health Facilities, L.P. (“**Owensboro**,” and, together with PCI, the “**Debtors**”), two of the Debtors in the above-captioned cases (the “**Chapter 11 Cases**”), hereby file this *Joint Motion to Convert Cases to Chapter 7 Proceedings* (the “**Motion**”), and in support thereof, respectfully state as follows:

**I.
EXECUTIVE SUMMARY**

1. On the Petition Date, PCI and thirty-three (33) affiliated limited partnerships filed these Chapter 11 Cases (defined below). Since that time PCI and Owensboro have transferred

**JOINT MOTION TO CONVERT PCI AND OWENSBORO
CASES TO CHAPTER 7 PROCEEDINGS**

substantially all of their assets with Court approval as to the transfers.

2. The Debtors' originally intended to convert or dismiss all of the thirty-four (34) procedurally consolidated Chapter 11 Cases simultaneously once all of the Debtors' facilities were transferred to new operators (or closed), and the Debtors had resolved potential avoidance actions. There are currently only two (2) remaining facilities being operated, both located in New Mexico. However, on April 8, 2019, a tort plaintiff in Kentucky represented by the Wilkes law firm filed a lawsuit in state court (the "**Owensboro Lawsuit**") alleging a post-petition tort claim against PCI and Owensboro. Since the Plaintiff alleges a post-petition claim, the automatic stay does not apply. The Debtors anticipate that similar post-petition lawsuits may be filed in the coming weeks and/or months.

3. PCI and Owensboro have transferred substantially all of their assets. There is no insurance to cover the Owensboro Lawsuit. Accordingly, PCI and Owensboro have no meaningful assets for recovery by the Plaintiff, and they therefore do not wish to defend the Owensboro Lawsuit (and incur fees neither debtor has the ability to pay). Accordingly, PCI and Owensboro have elected to convert their cases, Case Nos. 17-44642 and 17-44655, to Chapter 7 pursuant to 11 U.S.C. § 1112(a).

4. Contemporaneously with this Motion, the Debtors are filing their (i) *Motion to Amend Joint Administration Order for Preferred Care Cases*, and (ii) *Fifth Interim and Final Fee Application of Foley Gardere, as Counsel to PCI and Owensboro Only* (the "**Fifth Interim and Final Fee Application**"). The Debtors have determined that the most efficient, economical, and equitable course of action is to convert these cases to chapter 7 of the Bankruptcy Code. Thus, the Debtors request that the Court grant this Motion to Convert.

II.
JURISDICTION AND VENUE

5. The Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 1334 and 157. This matter concerns the administration of the Debtors' bankruptcy estates; accordingly, this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The predicates for the relief requested herein are 11 U.S.C. §§ 105, 1112(a), and FED. R. BANKR. P. (the "**Bankruptcy Rules**") 1017(f)(2) and 9013.

III.
BACKGROUND

A. The Bankruptcy Filings

7. On the Petition Date, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The resulting cases were administratively consolidated into the Main Case. On the Petition Date, the Debtors, other than Preferred Care, operated thirty-three (33) skilled nursing facilities—twenty-one (21) in Kentucky (the "**Kentucky Facilities**") and twelve (12) in New Mexico (the "**New Mexico Facilities**") with approximately 2,800 residents (the "**Residents**"). Their non-debtor affiliates operated an additional seventy-five (75) skilled nursing facilities in ten (10) additional states.¹

8. Due to the numerous pre-petition law suits filed by Wilkes against the Debtors and debtor affiliates, the Debtors needed the protection of the automatic stay to benefit from the

¹ Additional details concerning the Debtors and the circumstances leading to the commencement of this Chapter 11 Case can be found in the *Declaration of Alan Weiner in Support of First-Day Motions* (the "**Weiner Declaration**") [Docket No. 22]

breathing spell and stabilize their operations, identify and negotiate with new operators, and prepare to transfer their facilities in Kentucky and New Mexico in an orderly fashion.

B. PCI Subsidiary Sale

9. On April 27, 2018, PCI filed its *Motion for Entry of an Order (I) Authorizing and Approving: (A) Bid Procedures; (B) Form of Stock Purchase Agreement; and (C) Form and Manner of Notices; (II) Scheduling an Auction and Sale Hearing; (III) Approving the Sale of Substantially All of the Assets of Preferred Care Inc., Free and Clear of All Liens, Claims, Encumbrances and Interests; and (IV) Granting Related Relief* (the “**Motion to Sell PCI Subs**”) [Docket No. 656]. Pursuant to the Motion to Sell PCI Subs, PCI sought approval to sell Preferred Care Health Facilities, Inc. and Preferred Care Development Centers, Inc.—two (2) PCI wholly owned subsidiaries. The Court approved the Motion to Sell PCI Subs on August 22, 2018 [Docket No. 999]. Pursuant to the sale, PCI transferred virtually all of its assets.

C. Transfer of the Owensboro Facility

10. On June 27, 2018, the Debtors that operated the Kentucky Facilities filed the Kentucky Transfer Motion² seeking approval of the transfer of the Kentucky Facilities to new operators pursuant to negotiated Operating Transfer Agreements (“**OTAs**”). The anticipated closing date for the transfer of the Debtors’ twenty-one (21) Kentucky Facilities was August 1, 2018. The Debtors continued negotiating with new operators for the New Mexico Facilities. The Owensboro Facility was one of the twenty-one (21) Kentucky Facilities that the Debtors sought approval to transfer the operations.

² *Motion for Order (A) Granting Authority to: (I) Transfer the Operations and Related Assets of the Kentucky Facilities Free and Clear of all Liens Claims, Encumbrances, and Interests; (II) Assume and Assign Certain Executory Contracts and Unexpired Leases; and (III) Reject and Terminate the Kentucky Facility Leases; (B) Approving the Form of Operating Transfer Agreement; and (C) Granting Related Relief and Brief in Support* [Docket No. 824].

11. Following successful negotiations with the Committee and heavily contested hearings on July 23 and 24, the Court granted the Kentucky Transfer Motion, including the Owensboro Facility. Following a one-month delay, the transfers of nineteen (19) of the Kentucky Facilities, including the Owensboro Facility, closed on or about September 1, 2018. The Debtors' remaining Kentucky Facilities were transferred shortly thereafter.

D. Owensboro Litigation Leading to this Motion to Convert

12. On April 8, 2019, Wilkes filed a lawsuit on behalf of a tort plaintiff in Kentucky state court, initiating a post-petition tort claim against PCI and Owensboro. This lawsuit is not subject to the automatic stay. The Debtors have limited resources to defend the Owensboro Lawsuit. Accordingly, the Debtors file this Motion to convert their case to Chapter 7 cases under the Bankruptcy Code.

**IV.
RELIEF REQUESTED AND BASIS FOR RELIEF**

13. The Debtors hereby request entry of an order pursuant to section 1112(a) converting these Chapter 11 Cases to ones under chapter 7 of the Bankruptcy Code. Section 1112(a) states as follows:

[A] debtor may convert a case under [chapter 11] to a case under chapter 7 of this title unless—

- (1) the debtor is not a debtor in possession;
- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a case under this chapter other than on the debtor's request.³

³ 11 U.S.C. § 1112(a).

14. No caveat identified in subparagraphs (1) through (3) of section 1112(a) is present here. Accordingly, “[a] debtor has the absolute right to convert his or her chapter 11 case to a chapter 7 case.”⁴

15. Assuming that this Court must conduct some evaluation of this request to convert, section 1112(a) provides no express standard under which the Court is to evaluate that request. Nor is the “for-cause” standard in section 1112(b) applicable.⁵ Case law suggests that, when evaluating the propriety of conversion requests, most courts either (a) convert a case absent “extreme circumstances” against it or (b) conduct an equitable analysis of the facts in that case, including whether a chapter 11 plan has or has not been filed.⁶

16. Here, no factor traditionally identified by the courts as an “extreme circumstance”—such as bad faith, abuse of process, or other egregious conduct—exists. The Debtors filed these Chapter 11 Cases in good faith in an attempt to orderly, efficiently, and economically to liquidate their assets and wind down their operations for the benefit of their creditors. The Debtors have orderly, efficiently, and economically liquidated their assets pursuant to their stated intention for the Chapter 11 Cases. Accordingly, the Debtors respectfully request that this Court enter an order converting these cases to ones under chapter 7 of the Bankruptcy Code.

⁴ *In re Texas Extrusion Corp.*, 844 F.2d 1142, 1161 (5th Cir. 1988).

⁵ *In re Hased Enterprises, LLC*, 16-10299-RLJ7, 2017 WL 4457434, at *8 (Bankr. N.D. Tex. 2017) (“Unlike a motion to convert or dismiss a chapter 11 case initiated by a trustee or party in interest under §1112(b), such motion by a debtor does not require a hearing and analysis by the court on what is best for creditors and the estate.”).

⁶ *In re Adler*, 329 B.R. at 409 (citing *In re Pakuris*, 262 B.R. 330, 333-35 (Bankr. E.D. Pa. 2001); *In re Spencer*, 137 B.R. 506, 512 (Bankr. N.D. Okla. 1992); *In re Marrama*, 313 B.R. 525, 531 (1st Cir. B.A.P. 2004)).

17. Although Bankruptcy Rules 1017(f)(2) and 9013 require no hearing on the relief requested herein, the Debtors have nevertheless sought permission from this Court to set this matter for hearing on **May 20, 2019 at 1:30 p.m.**

V.
OTHER RELATED RELIEF

18. As part of the conversion order, and in an attempt to wind down all outstanding administrative issues and to streamline the conversion of these cases to chapter 7, the Debtors respectfully request that this Court order the following relief.

- (a) Allow Post-Conversion Checks to Clear. While most of administrative costs have been paid, some may still remain outstanding as of the date of conversion. Some of these costs may remain unpaid because they have yet to be incurred (but will be soon) or because the checks used to pay these costs have yet to clear the Debtors' accounts.
- (b) Authorize PCI and Owensboro to Pay All Estate Professionals Allowed Unpaid Fees and Expenses. Throughout these Chapter 11 Cases, the Debtors have been authorized to pay on a monthly basis all of their professionals – including those of the Debtors and the Committee, among others – 80% of the fees incurred and 100% of the expenses advanced. Contemporaneously with this Motion, Debtors' counsel filed their Fifth Interim and Final Fee Application for the portion of the fees and expenses allocated to the Debtors. As such, the Debtors respectfully request that this Court allow and direct the Debtors to pay, immediately prior to conversion, all amounts owed to estate professionals that are approved on a final basis as of the Conversion Date, including the amounts requested in the Fifth Interim and Final Fee Application.
- (c) Dismiss Stretto as Claims and Noticing Agent. On December 8, 2017, the Debtors filed a motion to employ JND Corporate Restructuring (“JND”), which later changed its name to Stretto, *see* Docket No. 1547, as their noticing, claims, and balloting agent. This Court approved the Debtors' retention of JND/Stretto on January 19, 2018. Since the approval of that employment, JND/Stretto has, among other things, received all proofs of claim filed in these Chapter 11 Cases. Given that the Chapter 11 Cases for PCI and Owensboro specifically will be converted to chapter 7 (pending Court approval of this Motion), the services of JND/Stretto are no longer necessary *for those specific Debtors*. As such, the Debtors respectfully request that this Court dismiss JND/Stretto as the estates' claims, noticing,

and balloting agent and order JND/Stretto to provide all proofs of claim filed with respect to the Debtors to the Chapter 7 trustee within fourteen (14) days of such Chapter 7 trustee's appointment.

19. In sum, the relief requested above is designed to streamline the conversion of these Chapter 11 to ones under Chapter 7, and to not leave any lingering administrative issues for the Chapter 7 trustee or other affected parties. Accordingly, the Debtors request that this Court grant the related relief requested herein as being authorized under the Bankruptcy Code and in the best interests of these estates.

WHEREFORE, the Debtors respectfully request that this Court enter an order granting the relief requested herein and awarding the Debtors such other and further relief that this Court deems just and proper.

DATED: April 25, 2019

Respectfully submitted by:

/s/ Mark C. Moore _____

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CERTIFICATE OF SERVICE

I hereby certify that, on April 25, 2019, a true and correct copy of the foregoing document was served electronically by the Court's PACER system.

/s/ Mark C. Moore
Mark C. Moore

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
PREFERRED CARE INC.,	§	Case No.: 17-44642
LORDSBURG HEALTH	§	Case No.: 17-44673
FACILITIES, L.P., et. al.	§	
	§	
Debtors.	§	

**ORDER GRANTING JOINT MOTION TO CONVERT
PCI AND OWENSBORO CASES TO CHAPTER 7 PROCEEDINGS**

This matter having come before this Court on the *Joint Motion to Convert PCI and Owensboro Cases to Chapter 7 Proceedings* (the “**Motion**”)¹ filed by the Debtors Preferred Care Inc. (“**PCI**”) and Owensboro Health Facilities, L.P. (“**Owensboro**” and, together with PCI, the “**Debtors**”) in the above-captioned bankruptcy cases (the “**Converting Cases**”); the Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; the Court finds that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); the Court finds that the Debtors have shown good, sufficient, and sound business purpose and justification for the relief granted herein;

¹ Capitalized terms not defined herein shall be given the meaning ascribed to them in the Motion.

the Court finds that proper and adequate notice of the Motion and the hearing thereon was given under the circumstances and that no other or further notice is necessary or required; and the Court finds that, upon the record herein, and after due deliberation, noting that no objections to the Motion were received, and good and sufficient cause exists for granting the relief herein; accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

A. Conversion to Chapter 7

1. The relief requested in the Motion is **GRANTED** to the extent set forth herein.
2. The following cases are hereby converted from ones under chapter 11 to ones under chapter 7 effective upon entry of this Order (the “**Conversion Date**”):
 - a. *In re Preferred Care Inc.*, Case No. 17-44642-mxm11; and
 - b. *In re Owensboro Health Facilities, L.P.*, Case No. 17-44655-mxm11
3. The Clerk shall enter a notation in substantially the following form on the docket sheet of each of the Converting Cases to reflect the conversion of the cases:

An order has been entered directing the conversion of this bankruptcy case. For all matters affecting these cases and pleadings filed between November 13, 2017 and [the Conversion Date], the docket in Case No. 17-44642 should be consulted. For all matters affecting these cases and pleadings filed on or after [the Conversion Date], the docket in [Case No. 17-44642 or 17-44655, as applicable] should be consulted.

B. Outstanding Checks May Clear

4. Any outstanding checks payable by the Debtors on the Conversion Date are authorized to clear. The Debtors, Wells Fargo Bank, N.A. (“**Wells Fargo**”), and/or the agents and representatives of the Debtors or Wells Fargo may take any and all reasonable and necessary steps to ensure that all checks outstanding on the Conversion Date clear following the entry of this Order.

**ORDER GRANTING JOINT MOTION TO CONVERT
PCI AND OWENSBORO CASES TO CHAPTER 7 PROCEEDINGS**

C. Authority to Pay All Estate Professionals Allowed Unpaid Fees and Expenses.

5. The Debtors are authorized and directed to pay, immediately prior to conversion, all amounts owed to estate professionals that have have been approved by this Court on a final basis.

D. Dismiss Stretto as Claims, Noticing, and Balloting Agent.

6. Stretto is hereby dismissed as the claims, noticing, and balloting agent for these specific Debtors. Stretto shall mail all proofs of claim in the Chapter 11 Cases to the chapter 7 trustee appointed over the Debtors within fourteen (14) days after such chapter 7 trustee's appointment.

End of Order

Respectfully submitted by:

/s/ Mark C. Moore

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**ORDER GRANTING JOINT MOTION TO CONVERT
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