United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, December 4, 2019 **Hearing Room 1568**

10:00 AM
2:18-20151 Verity Health System of California, Inc. **Chapter 11**

#33.00 HearingRE: [3604] Motion /Omnibus For Approval of 1) Settlement Agreements With Labor Unions, 2) Assumption and Assignment of Modified Collective Bargaining Agreements To SGM, 3) Termination of Retiree Healthcare Benefits and 4) Related Relief Declaration of Richard G. Adcock In Support Thereof

Docket 3604

Matter Notes:

12/4/2019

The tentative ruling will be the order.
Party to lodge order: Movant

POST PDF OF TENTATIVE RULING TO CIAO

Tentative Ruling:

12/3/2019 (updated to reflect the filing of the Proof of Service of the Motion):

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

1) Debtors' Omnibus Motion for Approval of (1) Settlement Agreements with Labor Unions, (2) Assumption and Assignment of Modified Collective Bargaining Agreements to SGM, (3) Termination of Retiree Healthcare Benefits and (4) Related Relief (the "Motion") [Doc. No. 3605]
   a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 3604, 3608, 3610, 3611, 3612 and 3613 [Doc. No. 3742]
2) Official Committee of Unsecured Creditors' Response to the Debtors' Omnibus Motion for Approval of (1) Settlement Agreements with Labor Unions, (2) Assumption and Assignment of Modified Collective Bargaining Agreements to SGM, (3) Termination of Retiree Healthcare Benefits and (4) Related Relief [Doc. No. 3668]

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I. Facts and Summary of Pleadings

On August 31, 2018 (the “Petition Date”), Verity Health System of California (“VHS”) and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors’ motion for joint administration of the Debtors’ Chapter 11 cases. Doc. No. 17. As of the Petition Date, the Debtors operated six acute care hospitals (the “Hospitals”).

Certain of the Debtors are parties to collective bargaining agreements (the "CBAs") with the California Nurses Association (the "CNA"), the National Union of Healthcare Workers (the "NUHW"), the Service Employees International Union, United Healthcare Workers-West (the "SEIU"), the United Nurses Associations of California/Union of Health Care Professionals ("UNAC"), and IFPTE AFL-CIO CLC, Local 20 ("Local 20," and together with CNA, NUHW, SEIU, and UNAC, the "Unions"). The Debtors have reached settlement agreements with the Unions providing for the modification of the CBAs (the "Settlement Agreements").

The Debtors seek an order (1) approving the Settlement Agreements, (2) authorizing the assumption of the modified CBAs to Strategic Global Management, Inc. ("SGM"), and (3) authorizing the Debtors to terminate retiree healthcare benefits used by eleven individuals. No opposition to the Motion is on file.

The Official Committee of Unsecured Creditors (the "Committee") does not oppose the Motion. However, the Committee asserts that the Debtors’ characterization of the terms of the Settlement Agreements in the Motion is too general. The Committee does not oppose the entry of an order granting the Motion, provided (1) the language of the Motion at paragraph 43, summarizing the Settlement Agreements, be superseded by the Settlement Agreements themselves and (2) none of the Settlement Agreements be deemed to require the Unions to vote in favor of any particular plan.

The material terms of the Settlement Agreements are as follows:

1) Each Union-represented employee who is not offered a job with SGM’s applicable acquiring and operating entity will be provided the following:
   a) An allowed claim for paid time off ("PTO"); and
   b) An allowed claim for severance.
2) The CBAs shall be deemed modified to immediate terminate and discontinue the benefits of eleven current retirees (the "Retiree Benefits").

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The Debtors will seek approval of a one-time payment to each Retiree equal to the present value of each Retiree's Health Benefit (the "Lump Sum Payment").

3) The Settlement Agreements are conditioned upon the closing of the SGM Sale, with a purchase price that is not materially less than that set forth in the Asset Purchase Agreement (the "APA").
4) The Unions agree not to oppose the prompt closing of the SGM Sale.

II. Findings and Conclusions

A. The Modified CBAs Are Approved

Section 1113 provides:

> (a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, … may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.
>
> (b)
>
> (1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—
>
> (A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employee benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and
>
> (B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.
>
> (2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing

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provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

(3) the balance of the equities clearly favors rejection of such agreement.

"Bankruptcy cases generally approach this complicated statute by breaking the statute into a nine part test" first set forth in *In re Am. Provision Co.*, 44 B.R. 907, 909 (Bankr. D. Minn. 1984). *See In re Karykeion, Inc.*, 435 B.R. 663, 677 (Bankr. C.D. Cal. 2010); *see also In re Family Snacks, Inc.*, 257 B.R. 884, 892 (B.A.P. 8th Cir. 2001) ("Virtually every court that is faced with the issue of whether a Chapter 11 debtor may reject its collective bargaining agreement utilizes a nine-part test that was first set down by the bankruptcy court in *In re American Provision Co.*"). The *American Provision* factors are as follows:

1) The debtor in possession must make a proposal to the Union to modify the collective bargaining agreement.
2) The proposal must be based on the most complete and reliable information available at the time of the proposal.
3) The proposed modifications must be necessary to permit the reorganization of the debtor.
4) The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated fairly and equitably.
5) The debtor must provide to the Union such relevant information as is necessary to evaluate the proposal.
6) Between the time of the making of the proposal and the time of the hearing on approval of the rejection of the existing collective bargaining agreement, the

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debtor must meet at reasonable times with the Union.

7) At the meetings the debtor must confer in good faith in attempting to reach mutually satisfactory modifications of the collective bargaining agreement.
8) The Union must have refused to accept the proposal without good cause.
9) The balance of the equities must clearly favor rejection of the collective bargaining agreement.

American Provision, 44 B.R. at 909.

Courts apply the *American Provision* factors even where a debtor is liquidating its assets and does not intend to continue in business after emerging from bankruptcy. Courts reason that "reorganization," as used in § 1113(b)(1)(A), is "generally understood to include all types of debt adjustment, including a sale of assets, piecemeal or on a going concern basis, under § 363 followed by a plan of reorganization which distributes the proceeds of the sale to creditors in accordance with the Bankruptcy Code's priority scheme." *Family Snacks*, 257 B.R. at 895. Some courts have held that where, as here, the Debtors are liquidating their assets, the phrase "necessary to permit the reorganization of the debtor" means "necessary to achieve a sale under § 363 of the Bankruptcy Code." *Alpha Nat. Res., Inc.*, 552 B.R. 314, 333 (Bankr. E.D. Va. 2016); *see also Walter Energy*, 542 B.R. at 890 (requiring that the debtor's proposal "be necessary to permit … those modifications necessary to consummate a going-concern sale"); *In re Karykeion, Inc.*, 435 B.R. 663, 679 (Bankr. C.D. Cal. 2010) (finding that the debtor had proven that rejection was necessary when the closing of a § 363 sale was contingent on rejection of a collective bargaining agreement). Others courts have concluded that in a liquidating case, the phrase "necessary to permit reorganization of the debtor" means "necessary to accommodate confirmation of a Chapter 11 plan." *Family Snacks*, 257 B.R. at 895.

In the context of this case, the term "necessary to permit the reorganization of the debtor" is best interpreted to mean "necessary to permit the Debtors to confirm a liquidating plan." This interpretation aligns most closely with the manner in which the Debtors are prosecuting this case. From the outset, the Debtors have stated their intent to sell the six Hospitals that they operate as going concerns, and use the proceeds from the sales to fund a plan of liquidation. The Debtors have already sold two of their Hospitals, and are in the process of closing the sale of their four remaining Hospitals.

Sections 1113 and 1114 are interpreted interchangeably because the language and standards of these sections overlap. *In re Walter Energy, Inc.*, 911 F.3d 1121, 1129 n.8 (11th Cir. 2018). To the extent that the Settlement Agreements require approval

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under § 1114, the Court's finding that the Settlement Agreements satisfy § 1113 shall also be deemed to constitute a finding that the Settlement Agreements satisfy § 1114.

The Unions have agreed in the Settlement Agreements that the Debtors have met *American Provision* factors one, five, six, and seven. Factor eight is moot because the Unions have not rejected the Debtors' proposed amendments to the CBAs.

As set forth below, the Court finds that the Debtors have satisfied factors two (proposal made on good information), three (proposal necessary for cases), four (parties treated fairly), and nine (balance of equities favors relief).

Factor 2—The Proposal Was Based on the Most Complete and Reliable Information

To satisfy this factor, "the debtor is simply required to gather the most complete information available at the time and to base its proposal on information it considers reliable." *In re Karykeion, Inc.*, 435 B.R. 663, 678 (Bankr. C.D. Cal. 2010).

The Court finds that the Debtors' proposals to the Unions were based on current, complete, and reliable information. Throughout the negotiation process the Debtors continued to update the proposals so that they reflected the latest developments in the cases.

Factor 3—The Proposal Is Necessary to Permit Plan Confirmation

As noted, within the context of this case, the term "necessary to permit the reorganization of the debtor" is best interpreted to mean "necessary to permit the Debtors to confirm a liquidating plan." This interpretation aligns most closely with the manner in which the Debtors are prosecuting this case.

The Court finds that the proposal is necessary to facilitate the sale of the Hospitals on a going-concern basis. The Debtors, the Unions, and SGM have renegotiated the CBAs in a manner that will allow the Hospitals to continue to operate sustainably. As the Court has found previously, the unfortunate but undeniable reality is that the legacy cost structure imposed by the CBAs is simply too great to permit the Hospitals to continue to sustainably operate. The modified CBAs will enable continued operation of the Hospitals.

Factor 4—The Proposed Modifications Treat Creditors, the Debtor, and All Affected Parties Fairly and Equitably

The Court finds that the Settlement Agreements treat all parties fairly and equitably. The Settlement Agreements do not disproportionately burden the

employees represented by the Unions (the "Represented Employees"). The Settlement Agreements place burdens upon all constituencies in these cases; they do not single out the Represented Employees for unfair treatment.

The Court finds that the Lump Sum Payment to Retirees is fair and equitable. The Retirees will receive cash equal to the present value of their health benefits. The Retirees are not prejudiced by this treatment.

Most important, the Settlement Agreements will allow the Hospitals to continue to operate and continue to employ the majority of the Represented Employees. Obviously, continued operation of the Hospitals is in the best interests of all constituents in these cases—the Debtors, the Represented Employees, SGM, and creditors.

Factor 9—The Balance of the Equities Favors Relief

The balance of the equities favors the modifications negotiated between the Debtors and the Unions. As discussed, the Settlement Agreements provide a path forward for the continued operation of the Hospitals under the management of SGM, which will preserve the jobs of most of the Represented Employees.

B. The Debtors are Authorized to Assume and Assigned the Modified CBAs to SGM

Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained that the business judgment rule governs the Bankruptcy Court's review of the Debtors' decision to assume or reject an executory contract or unexpired lease. *Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007). The *Pomona Valley* court stated that the Court "need engage in only a cursory review" of the debtor's decision, and "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

The Unions have agreed that the consideration provided through execution of the Settlement Agreements constitutes adequate assurance of future performance under the CBAs within the meaning of § 365(b)(1).

Assumption and assignment of the CBAs is an appropriate exercise of the Debtors' sound business and judgment. Assumption and assignment allows SGM to continue to employ the Represented Employees, whose work is essential to the

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functioning of the Hospitals.

The Debtors have satisfied the requirements for assumption and assignment of the CBAs under § 365.

C. Concerns Raised by the Committee

In response to the concerns raised by the Committee, the Court confirms that with respect to the Unions' obligations to support any plan propounded by the Debtors, the language of the Settlement Agreements (as opposed to the language summarizing the Settlement Agreements contained in the Motion) controls.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Carlos Nevarez or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Party Information

Debtor(s):

Verity Health System of California, Represented By
Samuel R Maizel

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John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
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