

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

UNIVERSAL HEALTH CARE GROUP, INC.,

AMERICAN MANAGED CARE, LLC,

Debtors.

Chapter 11

Case No. 8:13-bk-01520-KRM

Jointly Administered with

Case No. 8:13-bk-05952-KRM

**MOTION TO APPROVE GLOBAL SETTLEMENT
WITH BANKUNITED, N.A.**

Soneet R. Kapila, as the duly appointed Chapter 11 Trustee for the estate of Universal Health Care Group, Inc., which entity serves as the sole member of American Managed Care, LLC (the “Trustee”), moves for entry of an order approving a global settlement with BankUnited, N.A. (the “Motion”). The terms of the settlement are set forth in detail in this Motion. A copy of the executed Settlement Agreement has been separately filed with the Court.

In support of the Motion, the Trustee states:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper in pursuant to 28 U.S.C. § 1408.
3. The Motion is brought pursuant to Bankr. Rule 9019.

Background

4. Universal Health Care Group, Inc. (“Universal”) filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code on February 6, 2013 (the “Petition Date”).

5. The Trustee's appointment was approved by Order of the Bankruptcy Court dated April 22, 2013 (Doc. No. 238).

6. On May 4, 2013, the Trustee exercised the authority of Universal as the sole member of American Managed Care, LLC ("AMC") to file a Chapter 11 petition on behalf of AMC.

7. Universal Health Care, Inc., Universal Health Insurance Company, Inc., Universal HMO of Texas, Inc., Universal Health Care of Nevada, Inc., Universal Health Care of Georgia, Inc., (collectively the "*Regulated Subsidiaries*") are wholly-owned subsidiaries of Universal Group; and

8. BankUnited, N.A., as Issuing Lender and as Administrative Agent ("*BankUnited*") on behalf of a bank group consisting of Capital Bank Financial Corp., Mercantil Commercebank, N.A., Banco De Credito E Inversiones Miami Branch and Israel Discount Bank (the "*Bank Group*") entered into a credit agreement with Universal Group, dated April 6, 2012 for \$60 million (the "*Credit Agreement*").

9. The Credit Agreement was secured by substantially all of the prepetition assets of Universal Group, including Universal Group's ownership interests in the Regulated Subsidiaries.

10. AMC guaranteed the obligations of Universal Group under the Credit Agreement, and AMC's guaranty is secured by substantially all of the prepetition assets of AMC.

11. BankUnited, on behalf of the Bank Group, has filed secured proofs of claim for approximately \$37 million in both the Chapter 11 case of Universal Group and the Chapter 11 case of AMC.

12. Shortly after his appointment, Trustee timely filed a provisional objection to BankUnited's claim of lien against the Universal Group's ownership interest in the Regulated Entities (the "*Provisional Objection*").

13. BankUnited, on behalf of the Bank Group, claims a lien against a tax refund to Universal Group in the approximate amount of \$5.8 million, plus accrued interest (the "*\$5.8 million Tax Refund*"). The \$5.8 Million Tax Refund is currently in the possession of BankUnited.

14. BankUnited has filed a motion to lift the automatic stay to exercise its security interest against the \$5.8 million Tax Refund and objections have been filed by the Trustee and the Florida Department of Financial Services as the receiver for Universal Health Care, Inc. and Universal Health Insurance Company, Inc. (the "*Florida Receiver*").

15. On October 26, 2012, Universal Group received a tax refund for \$11,150,209 (the "*\$11 million Tax Refund*"); and

16. On October 29, 2012, Universal Group was placed in default of the Credit Agreement and was required to deliver forthwith the \$11 million Tax Refund to BankUnited which constituted the cash collateral of the Bank Group.

17. On November 2, 2012, in direct contravention to the mandate of BankUnited and in violation of the Credit Agreement, the \$11 million Tax Refund was transferred by Universal Group to Universal Health Care Insurance Company, Inc.

18. On March 22, 2013, both Universal Health Care, Inc. and Universal Health Care Insurance Company, Inc. were placed into receivership by Order of the First Circuit in and for Leon County, Florida.

19. The \$11 million Tax Refund is currently in the possession of the Florida Receiver and, to date, the Florida Receiver has refused to turn over the \$11 million Tax Refund, notwithstanding the fact that it was received as a fraudulent transfer and/or preference.

20. The Bank Group asserts a security interest in the \$5.8 million Tax Refund and the \$11.0 million Tax Refund under Florida law, including Florida Statutes chapter 679, et. seq.

21. The Trustee contends that the \$11 million Tax Refund is recoverable as a fraudulent transfer and/or an insider preference and BankUnited contends that it has a valid lien on such recovery.

22. The Bank Group asserts a security interest in the deposits made by Carepoint/Citrus in connection with the failed sale of the stock of the Regulated Subsidiaries, including the deposit that is currently in possession of the Trustee.

23. In response to subpoenas from the Trustee, BankUnited has produced documents related to the Credit Agreement and all accounts managed by BankUnited and BankUnited Investment, on behalf of Universal Group and the Regulated Subsidiaries.

24. BankUnited, has represented that it has possession and control of the certificated stock of the Regulated Subsidiaries that have issued stock and/or recorded a Form UCC-1 Financing Statement against the Regulated Subsidiaries and non-regulated subsidiaries in which no certificated stock was issued.

The Settlement

1. Validity of Liens. Upon approval of this Settlement Agreement, the Bank Group shall be deemed to have allowed and valid liens against the prepetition assets of Universal Group and AMC, as described in the Credit Agreement, the Security Agreement, the Pledge Agreement and the UCC-1 Financing Statements, subject to the allowed carve-outs set forth in this Settlement Agreement. The extent and the validity of the liens of the Bank Group may only be challenged in the event of a default of this Settlement Agreement. The lien of the Bank Group, however, specifically does not extend to any recoveries by the Trustee under Chapter 5 of the

Bankruptcy Code, except as expressly set forth herein, or to recoveries by the Trustee for causes of action belonging to Universal Group or AMC, pursuant to 11 U.S.C. § 541, including any business or other torts arising in favor of Universal Group or AMC. The Order approving this Settlement Agreement shall be in a form acceptable to BankUnited and shall ratify the validity, priority and extent of the Bank Group's liens against Universal Group and AMC as provided for in this paragraph and render, as *res judicata* any such subsequent contests, so long as BankUnited and the Bank Group are not in default of obligations under this Settlement Agreement.

2. Universal Group Carve-outs. The Trustee, on behalf of the estate of Universal Group, shall receive the following carve-outs from the liens of the Bank Group:

- a. Absent a separate court-approved settlement agreement with the Florida Receiver to the contrary, the Trustee will receive 30% or an amount not to exceed \$750,000 from amounts determined due to BankUnited or the Trustee from the \$5.8 million Tax Refund.
- b. Absent a separate court-approved settlement agreement with the Florida Receiver to the contrary, the Trustee will receive 30% of amounts recovered from the Florida Receiver, with a cap of \$3.0 million on the amounts recoverable from the \$11.0 million Tax Refund by BankUnited or the Trustee.
- c. The Trustee will receive 15% of any surplus attributable to Universal Group's ownership of each of the Regulated Entities.
- d. The Trustee will receive 5% of any deposit recoveries from Carepoint/Citrus and will share equally with BankUnited on any net recoveries obtained as a result of any consequential damages recovered (the "Carepoint/Citrus Claims").

3. AMC Carve-out. The Trustee, on behalf of the estate of AMC, is entitled to a carve-out of 25% of the net proceeds of any sale of the tangible assets owned by AMC after the payment of all costs of sale and taxes. The Trustee in close consultation with BankUnited will organize and coordinate the sale of the assets owned by AMC.

4. DIP Accounts. BankUnited and the Bank Group will waive liens, if any against any debtor in possession account maintained by the Trustee for Universal Group and for AMC.

5. Frozen Accounts. BankUnited will be entitled to stay relief to exercise set off rights against accounts maintained in the name of Universal Group, and frozen during the

Chapter 11 case, except that BankUnited will deliver to the Trustee \$35,000 from those accounts pursuant to the Bank Group's prior consent to allow the Trustee to use cash collateral.

6. Deficiency Claim. BankUnited will provide the Trustee with a complete accounting of the liquidation of its collateral. To the extent that BankUnited has a deficiency claim (including recovery of all principal, plus interest, fees and costs through the date of the applicable bankruptcy petition), BankUnited will file an amended claim and will be allowed an unsecured claim for the deficiency. To the extent that BankUnited has a surplus after payment of its claim as filed, the surplus will be paid to the Trustee.

7. Release of Claims. The Trustee, on behalf of the bankruptcy estates of Universal Group and AMC, and BankUnited on behalf of itself, and each member of the Bank Group will execute mutual releases in the form attached hereto of any and all claims by and between them, except those claims and obligations set forth in this Settlement Agreement.

8. Joint Prosecution and Defense. The Trustee and BankUnited will jointly prosecute claims to recover the \$5.8 million Tax Refund, the \$11.0 million Tax Refund and the Citrus/Carepoint Claims and have entered (or will enter) into a Joint Defense Agreement for that purpose. BankUnited will take the lead in addressing the Carepoint/Citrus Claims. Further, should an action be filed against Carepoint /Citrus for consequential damages as a result of the failed sale of the stock of the Regulated Entities, the firm of GrayRobinson, P.A. shall be engaged through an application under 11 U.S.C. § 327(e) to act as special counsel to the Trustee under an engagement agreement to be determined. The Trustee and BankUnited will work together and cooperate in actions to preserve and protect the surplus value and equity of the Regulated Entities. In this regard, it is understood that the parties may enter into a subsequent agreement regarding the costs and fees associated with these efforts.

9. Jurisdiction. The United States Bankruptcy Court for the Middle District of Florida will retain jurisdiction to enforce or interpret any of the terms of this Settlement Agreement.

Legal Argument

It is generally recognized that the law favors compromise of disputes over litigation. *In re Blair*, 538 F.2d 849 (9th Cir. 1976). Some courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re New Concept Housing, Inc.*, 951 F.2d 932 (8th Cir. 1991). *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, 111 S. Ct. 387, 112 L.Ed.2d

398 (1990), the Court enunciated certain factors which must be considered in determining whether to approve a compromise, which are (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. To approve the compromise, the Court need not determine which party would ultimately prevail, but only that the matter was open to reasonable doubt. *In re Justice Oaks, II, Ltd.*, 898 F. 2d 1544 (11th Cir.), *cert. denied* 498 U.S. 959 (1990).

The Trustee, after review of the documents relating to the BankUnited's lien, and after hours of negotiating with the BankUnited, has determined that the proposed settlement and agreed carve-out is in the best interest of the estates. BankUnited's lien is facially valid. The Trustee has also examined potential causes of action against the Bank Group, including (a) a potential avoidance of a prepetition setoff; (b) preferences and fraudulent transfers; and (c) secondary liability claims. In weighing the probability of success of the claims along with the expense and delay associated with bringing the claims, the Trustee has determined in his business judgment that proposed settlement constitutes a fair and reasonable settlement that should be approved by the Bankruptcy Court.

/s/ Roberta A. Colton
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 16, 2013, a true and correct copy of the foregoing was forwarded through the Court's CM/ECF noticing system to **all registered CM/ECF recipients**; and by U.S. Mail to the **20 largest unsecured creditors** (attached).

/s/ Roberta A. Colton
Attorney