

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| In re: | : Chapter 11 |
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| MODIVCARE INC., <i>et al.</i> , | : Case No. 25-90309 (ARP) |
| | : : |
| Reorganized Debtors. ¹ | : (Jointly Administered) |
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| ----- | X |

**REORGANIZED DEBTORS’ REPLY IN SUPPORT OF
MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO REJECT CERTAIN EXECUTORY CONTRACTS**

The above-captioned debtors and debtors in possession (collectively, the “**Reorganized Debtors**”) respectfully submit this reply (the “**Reply**”) (a) to the *Objection of HealthSpring, Inc. to Debtors’ Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts* [Docket No. 1189] (the “**Objection**”) filed by Healthspring, Inc. (“**HealthSpring**”) and (b) in support of *Debtors’ Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts* [Docket No. 1133] (the “**Motion**”).² In support of this Reply and the Motion, the Reorganized Debtors filed the *Declaration of Kenneth Shepard in Support of Debtors’ Reply in Support of Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts* (the “**Shepard Declaration**”) contemporaneously herewith.

¹ A complete list of each of the Reorganized Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”) and the last four digits of each Debtor’s taxpayer identification number (if applicable) may be obtained on the website of the Reorganized Debtors’ claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Reorganized Debtor ModivCare Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1200, Denver, Colorado 80237.

² Capitalized terms used but not otherwise defined in this Reply will have the meaning ascribed to such terms in the (a) Objection, (b) Motion, or (c) Shepard Declaration, as applicable.



PRELIMINARY STATEMENT

1. The Reorganized Debtors seek authority to reject the Rejected Contracts because continued performance would materially deplete the Reorganized Debtors' liquidity and provide no benefit to the estates or the Reorganized Debtors. As further described below, for the last year and a half, HealthSpring has failed to perform and pay amounts due under the Rejected Contracts. More specifically, the parties have had an ongoing dispute regarding the amount of service and administrative costs incurred by the Reorganized Debtors in providing the services under the Rejected Contracts that should be borne by HealthSpring. Under HealthSpring's interpretation of the amounts owed, the Rejected Contracts are not financially profitable for the Reorganized Debtors. Under the Reorganized Debtors' interpretation, the Rejected Contracts would be profitable, but because HealthSpring refuses to pay approximately \$10 million in costs owed and anticipated to be due, the Reorganized Debtors have been and will continue to operate at a loss in performing the services. The parties have been unable to reach a commercial resolution of this dispute. The Reorganized Debtors' continued performance under these resource-draining agreements without adequate consideration from HealthSpring would needlessly consume liquidity the Reorganized Debtors need as they seek to operate as reorganized companies having just emerged from bankruptcy.

2. HealthSpring's Objection invites a detour into irrelevant issues including onboarding timelines, transition logistics, and generalized patient-impact narratives that do not bear on the only question before the Court: *whether rejection is a reasonable exercise of business judgment that benefits the estates*. It is.

3. Fundamentally, Modivcare is a technology-enabled services company, and the NEMT business acts as a broker to connect transportation providers with the Members who need

rides to medical appointments. Modivcare does not arrange transportation for Members in the event of acute health emergencies. The rides Modivcare arranges are for essential – but non-emergency – medical appointments. Modivcare plays an important role in the health care industry, and the services it provides are valuable to its clients and their members – Modivcare increases efficiency for its clients and enhances Member experience and satisfaction. But Modivcare is not in the business of or licensed to provide emergency medical care or emergency transportation services. Accordingly, the Rejected Contracts do not involve the provision of any emergency medical transportation or acute medical care to the Members. This defeats any suggestion of an imminent, identifiable risk to public health and safety that would justify holding the Reorganized Debtors' decision to reject to a standard higher than whether rejection is a reasonable exercise of their business judgement.

4. The Court need not even evaluate factual issues regarding whether and how HealthSpring will get its Members to their non-emergency medical appointments absent Modivcare's services. HealthSpring points to no legal authority – no case law, no statute, no contract – supporting its proposition that a public health and safety exception justifying a higher standard of review for rejection applies under these facts. The Rejected Contracts are service contracts between two private parties, involving non-emergency transportation, and the same transportation could be obtained for HealthSpring's Members through other brokers or directly from transportation providers. Counsel for the Reorganized Debtors did not find any case law, whether in this jurisdiction or others, where a heightened standard of review for rejection applied to a contract similar to the one here. HealthSpring essentially asks this Court to set new precedent that would impact the legal standard for rejection for many different kinds of contracts and that could have a devastating effect on reorganized debtors.

5. The Reorganized Debtors present more than sufficient justification for the Court to grant the relief requested in the Motion. Rejection of the Rejected Contracts is necessary to ensure the Reorganized Debtors receive the fresh start promised by the Bankruptcy Code and will preserve liquidity and avoid ongoing losses from an unprofitable relationship. The Objection's attempts to convert this summary proceeding into a broader factual dispute and to create new law regarding rejection should be denied, and the requested relief should be granted.

ARGUMENT

A. Rejection of the Contracts Satisfies the Business Judgment Standard

6. The standard to determine whether to authorize rejection of an executory contract is the well-established "business judgment" standard, which requires only a showing that rejection of the contract in question will benefit the debtor's estate. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1989) ("It is well established that 'the question of whether a lease should be rejected . . . is one of business judgment.'") (internal citations omitted); Motion ¶ 10-11.³ Courts generally defer to a debtor's decision to reject a contract under the business judgment standard. *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 374 (2019) ("The bankruptcy court will generally approve that choice, under the deferential 'business judgment' rule."). A debtor's power to reject executory contracts "is vital to the basic purpose of a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization." *In re Mirant Corp.*, 378 F.3d 511, 517 (5th Cir. 2004) (quoting *In re Nat'l Gypsum Co.*, 208 F.3d 498, 504 (5th Cir. 2000)). This exercise is a simple one; courts adjudicate section 365(a) motions as a summary proceeding and will

³ HealthSpring does not dispute that this is the default rule and recognizes that motions to assume or reject are summary determinations focused on whether rejection advantages the estate.

approve such relief under the motion so long as the debtor's decision rationally benefits the estate. *See Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000) (“A bankruptcy court's hearing on a motion to reject is a summary proceeding that involves only a cursory review of a trustee's decision to reject the contract.”).

7. Given the deferential legal standard, contested motions to reject generally should not involve extensive discovery or drawn out evidentiary hearings. *Orion Pictures Corp. v. Showtime Networks (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993) (“At heart, a motion to assume should be considered a summary proceeding, intended to efficiently review the trustee's or debtor's decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate. It is not the time or place for prolonged discovery or a lengthy trial with disputed issues.”).

8. Here, the Reorganized Debtors have determined, in their business judgement, that rejection of the Rejected Contracts would serve the best interests of the estates. For the last year and half, the Reorganized Debtors have performed under the Rejected Contracts at a loss, given the parties' dispute over the amount of service and administrative costs owed by HealthSpring to the Reorganized Debtors (the “*Costs*”). Shepard Decl. ¶ 8. Unfortunately, the parties have been unable to resolve this dispute, and the Reorganized Debtors are out of pocket \$10 million in Costs incurred in providing the services under the Rejected Contracts. Shepard Decl. ¶ 8-9. If HealthSpring's interpretation of the Costs owed is correct, then the Rejected Contracts are not profitable for Modivcare (nor does Modivcare breakeven), because Modivcare's operational costs to provide the services exceed the revenue collected from HealthSpring for such services, even assuming HealthSpring pays the shortfall of \$2 million. If Modivcare's interpretation is correct, then HealthSpring has significantly underpaid Modivcare for services provided under the Rejected

Contracts, and Modivcare is out of pocket \$10 million and continues to lose money while performing at current rates under the Rejected Contracts. Regardless of which party is correct as to the amount owed, the Rejected Contracts are burdensome, unprofitable, loss-making agreements and confer no benefit to the Reorganized Debtors or their estates. Shepard Decl. ¶ 8-9.

9. The Reorganized Debtors made the decision to reject after conducting a cost-benefit analysis that considered (a) HealthSpring's continued non-performance under the Rejected Contracts; (b) the Reorganized Debtors' analysis with respect to value provided under the contracted rates; (c) the Reorganized Debtors' determination that litigating the dispute over the Costs would be an expensive, drawn-out, and uncertain endeavor; and (d) the Reorganized Debtors' costs to continue to provide NEMT services under the Rejected Contracts. Shepard Decl. ¶ 16. The Reorganized Debtors can no longer bear the liquidity challenges created by HealthSpring's non-performance under the Rejected Contracts. The Reorganized Debtors will continue to be harmed by HealthSpring's continued non-performance if rejection is not approved. These are precisely the burdens section 365 empowers a debtor to shed to protect the estate and its creditors.

B. No Heightened Legal Standard Applies as a Matter of Law

10. HealthSpring requests a heightened standard of review instead of the business judgment standard in an attempt to convert a summary section 365(a) proceeding into an untimely, sprawling factual inquest that would require the Court to balance the harm to the Reorganized Debtors in continuing to perform under the contract with the harm to HealthSpring and its Members if rejection were approved. There is no legal precedent or authority for a heightened standard to apply here, however.

11. In cases involving certain fact patterns, bankruptcy courts have applied a heightened standard to look beyond the debtor's business judgement in determining whether to approve rejection of a contract. In those cases, the courts have "adopt[ed] a standard by which it would authorize rejection of an executory power contract only if the debtor can show that it burdens the estate, [] that, after careful scrutiny, the equities balance in favor of rejecting that [] contract, and that rejection of the contract would further the Chapter 11 goal of permitting the successful rehabilitation of debtors." *In re Mirant Corp.*, 378 F.3d 511, 525 (5th Cir. 2004) (internal quotation omitted).

12. HealthSpring's own authorities, however – *Midlantic*, *Mirant*, and *Pilgrim's Pride* – only applied this heightened standard when the agreement involved the abandonment of hazardous property or where there was some regulatory overlay governing the contract. *See e.g.*, *Midlantic Nat'l Bank v. New Jersey Dep't of Environmental Protection (In re Quanta Resources Corp.)*, 474 U.S. 494, 505-07 (1986) (finding the Bankruptcy Code does not allow a debtor to preempt applicable state law and abandon hazardous oil waste that posed a threat to the public's health and safety); *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 525-57 (1984) (applying the heightened standard to a debtor's efforts to reject a collective bargaining agreement, which is subject to federal regulation and oversight by the National Labor Relations Board); *In re Mirant Corp.*, 378 F.3d 511, 525 (5th Cir. 2004) (instructing the district court to "consider applying a more rigorous standard to the rejection" of an electricity contract subject to the oversight of the Federal Energy Regulatory Commission).⁴

⁴ Even if the heightened standard applied to this case, the Reorganized Debtors believe they have satisfied its requirements. Given the Court's guidance during the Status Conference on January 28, 2026, the Reorganized Debtors have not briefed this issue. However, the Reorganized Debtors are prepared to brief and litigate this issue should the Court require it.

13. HealthSpring has not cited a single case or other authority applying a heightened standard outside of the context of abandonment of hazardous property or involving a regulatory overlay. Nor could counsel for the Reorganized Debtors find any such case law or authority.

14. Indeed, courts have cautioned that this heightened standard should be applied very narrowly. In *Midlantic*, the Supreme Court, in dealing with a debtor’s attempt to abandon toxic, contaminated oil following rejection, expressly stated that application of the heightened standard is a “narrow” exception that should only be applied to “protect the public health and safety from *imminent and identifiable harm*.” *Midlantic Nat’l Bank v. New Jersey Dep’t of Environmental Protection (In re Quanta Resources Corp.)*, 474 U.S. 494, 507 n.9 (1986) (emphasis in original). Likewise, the court in *Pilgrim’s Pride*, in declining to apply the heightened standard to broiler grower agreements, recognized that such a public-policy carve-out “will be rarely applied,” lest “the business judgment rule applicable to contract rejection and many other decisions in the chapter 11 process . . . be swallowed by a public policy exception.” *In re Pilgrim’s Pride Corp.*, 403 B.R. 413, 424-5 (Bankr. N.D. Tex. 2009).

15. HealthSpring concedes that the heightened standard of review is an exceptional remedy. Objection ¶ 31. Yet HealthSpring has made little effort to demonstrate the effects of rejection here “may endanger public health or safety.” *Pilgrim’s Pride Corp.*, 403 B.R.at 426 n.30. Modivcare is a **broker** of **non-emergency** transportation services. Shepard Decl. ¶ 6. Modivcare is not in the business of or licensed to provide emergency medical care or emergency transportation services. Shepard Decl. ¶ 7. As such, and contrary to HealthSpring’s assertions, the termination of services through rejection – services that do not involve the provision of emergency medical transportation or emergency medical care to Members – does not create a risk of imminent danger to the lives of the Members. Other alternative transportation brokers and providers are available

throughout the country, and in the event of acute health emergencies, Members would not be using the Reorganized Debtors' services anyway – they would use local emergency transportation providers and emergency rooms. The nature of the services provided under the Rejected Contracts, while valuable and important, underscores that there is not an imminent, identifiable public-health threat warranting heightened review.⁵

16. Courts analyzing analogous issues have approved rejection of Medicare-related contracts where rates are set by Medicare using the business judgment standard notwithstanding objections about member impact and alleged provider disruption. For example, in *In re Health Plan of the Redwoods*, the court approved the debtor's exercise of business judgement in rejecting a federal contract with the Centers of Medicare and Medicaid Services. 286 B.R. 779, 780 (Bankr. N.D. Cal. 2002). The court held:

The court begins by noting that the debtor is exercising sound business judgment in seeking to reject the contract [with the federal Centers of Medicare and Medicaid Services]. First, rejection will put an end to continuing losses which have resulted from the contract. Second, rejection will allow the debtor to significantly reduce its overhead. Third, the debtor may be losing commercial business due to a perception that the commercial members are in effect subsidizing the Medicare members. This finding probably ends the discussion over whether the contract should be rejected, but the court will address the other issues raised in the objection . . . ***The court is of course concerned with the welfare of the debtor's members who are on Medicare. However, none of those persons will be left without medical coverage.*** Each will have the choice of staying with his or her current physician at increased cost or traveling somewhat further than present for health care at the current cost.

Health Plan of the Redwoods, 286 B.R. at 780 (emphasis added); see also *In re Extraction Oil & Gas, Inc.*, 622 B.R. 608 (Bankr. D. Del. 2020) (holding “absent a heightened standard such as bad

⁵ Further, HealthSpring's speculation about onboarding timelines for a replacement NEMT provider is irrelevant to whether the Reorganized Debtors properly exercised their business judgment in deciding to reject the Rejected Contracts. Once rejection is authorized, HealthSpring remains free to contract with any broker or provider it chooses. The Reorganized Debtors alerted HealthSpring of their intention to terminate the Rejected Contracts on December 18, 2025. Shepard Decl. ¶ 14. This means HealthSpring has had notice of the Reorganized Debtors' intentions for forty-three days.

faith or abuse of discretion the Debtors' business judgment will be not altered" when deciding to reject private commercial oil transportation contracts where rates were set by a federal regulator).

17. HealthSpring's position demonstrates a fundamental misunderstanding of section 365 of the Bankruptcy Code. Given the lack of any authority on point, the Court can rule as a matter of law that the heightened standard does not apply here. The Court should further rule that under the business judgment standard, the Reorganized Debtors have met their burden – based on the evidence from Mr. Shepard – of demonstrating that rejection is in the best interest of the estates.

RESERVATION OF RIGHTS

18. In this Reply and in the Shepard Declaration, the Reorganized Debtors have focused on the narrow legal and factual issues relating to whether (a) the Reorganized Debtors are validly exercising their business judgment in rejecting the Rejected Contracts and (b) the heightened standard should be applied to the Rejected Contracts. The Reorganized Debtors have not responded to many of the factual allegations from HealthSpring's Objection and witness declarations, because they are not relevant to the narrow issues raised by the Motion. To the extent the Court indicates, however, that it would like to hear more evidence from HealthSpring regarding the parties' contractual dispute and/or whether rejection would implicate public health and safety, the Reorganized Debtors reserve all rights to supplement their legal and factual arguments raised in this Reply and in the Shepard Declaration at a future date to fully rebut HealthSpring's allegations. Nothing herein shall be interpreted as an admission that any claim described herein is valid, and the Reorganized Debtors reserve all rights with respect thereto.

CONCLUSION

19. For the foregoing reasons, the Reorganized Debtors believe they have satisfied their burden of demonstrating that rejection of the Rejected Contracts was a proper exercise of the

business judgment rule. The heightened standard is not appropriate because rejection of the Rejected Contracts will not lead to immediate or irreparable harm to public health and safety. Accordingly, the Reorganized Debtors respectfully request the relief requested in the Motion.

CONCLUSION

20. For the reasons set forth herein, the Reorganized Debtors respectfully request that the Motion be denied.

Dated: January 30, 2026
Houston, Texas

Respectfully submitted,

/s/ George Klidonas

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CERTIFICATE OF SERVICE

I certify that on January 30, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ George Klidonas

George Klidonas