

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

IN RE:	§	Chapter 11
	§	
MODIVCARE INC., <i>et al.</i> <sup>1</sup>	§	Case No. 25-90309 (ARP)
	§	
Debtors	§	(Jointly Administered)
	§	

**OBJECTION OF MARYBETH DURAN, AS PERSONAL REPRESENTATIVE  
OF THE ESTATE OF RICHARD CHAVEZ, TO THE FIRST AMENDED JOINT  
CHAPTER 11 PLAN OF REORGANIZATION OF MODIVCARE INC. AND ITS  
DEBTOR AFFILIATES  
[Relates to Dkt. 465]**

Marybeth Duran (Duran) as Personal Representative of the Estate of Richard Chavez (the Estate) files this objection (Objection) to the *First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates* [Dkt. 465] (Plan) and in support states as follows:

**I. BACKGROUND**

1. Duran is a pre-petition wrongful death claimant. Her claims are pending against Debtor ModivCare Solutions, LLC and other non-debtor defendants in Cause No. D-202-CV-2025-01137 in the Second Judicial District Court, Bernalillo County, State of New Mexico, styled as *Marybeth Duran, individually and as Personal Representative of the Wrongful Death Estate of Richard Chavez, deceased v. Lovelace Health System, LLC d/b/a Lovelace Medical Center, ModivCare Solutions, LLC, and Employees Does 1-X* (State Court Case).

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<sup>1</sup> A complete list of each of the 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 Debtors’ claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.’s principal place of business and the Debtors’ service address in the Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.



2. Duran filed a proof of claim in the Bankruptcy Case to preserve her claims. *See* POC No. 467.

3. On September 4, 2025, Debtors filed their original plan, which they subsequently amended on October 6, 2025 [Dkt. 465].

4. The Plan provides that all insurance policies shall “continue in full force and effect.” Plan, § 8.6(a). It further requires that holders of insured claims “exhaust[] all remedies with respect to such insurance policy” before receiving any distribution. Plan, § 8.6(d). However, the Plan does not provide any mechanism for the adjudication of unliquidated personal injury claims or wrongful death claims outside of the Bankruptcy Case. *See* 28 U.S.C. §§ 157(b)(2)(B), 1411. Instead, the Plan is limited to releasing and enjoining pending claims. *See* Plan, §§ 10.3, 10.5, 10.6.

5. Under the Plan’s terms, coverage determinations are centralized with Debtors. *See* Plan, ¶ 8.6(d) (conditioning distributions on whether “the Debtors determine that an Allowed Claim is covered in full or in part under one of the Debtors’ insurance policies” and whether “the Debtors in their sole discretion do not contest” an authorized insurer’s coverage determination). To the extent an insurance policy contains a self-insured retention (SIR), the Plan limits the allowed value of applicable claims to the amount of the SIR, irrespective of the availability or payment of insurance outside of the Bankruptcy Case. Plan, § 8.6(d). Further, the Plan conditions distributions on both (i) an authorized insurer issuing a formal determination that coverage is excluded or unavailable and (ii) the Debtors, in their sole discretion, electing not to contest that determination. Plan, § 8.6(d).

## II. ARGUMENTS AND AUTHORITIES

6. For confirmation of the Plan, Debtors must demonstrate by a preponderance of the evidence that the Plan complies with section 1129 of the Bankruptcy Code. *See In re Briscoe Enters., Ltd. II*, 994 F.2d 1160, 1165 (5th Cir. 1993) (“preponderance of the evidence is the debtor’s appropriate standard of proof both under § 1129(a) and in a cramdown.”); *In re Cypresswood Land Partners, I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009) (plan proponent bears the burden of proof); *In re J T Thorpe Co.*, 308 B.R. 782, 785 (Bankr. S.D. Tex. 2003) (same). Section 1129 requires Debtors to establish that their Plan complies with all applicable provisions of the Bankruptcy Code, is proposed in good faith, and is not proposed by any means forbidden by law. *See* 11 U.S.C. § 1129(a)(1), (3). Currently, Debtors have not met their burden of proof.

7. First, the Plan does not address or provide for the adjudication and liquidation of personal injury claims. Instead, the Plan is limited to releasing and enjoining pending claims. *See* Plan, §§ 10.3, 10.5, 10.6. As a personal injury claimant, the liquidation of Duran’s claims is expressly excluded from core proceedings arising under title 11. *See* 28 U.S.C. § 157(b)(2)(B). Duran reserves her right to adjudicate her claims, including her right to a jury trial, outside of the Bankruptcy Case. Under its current terms, the Plan fails to provide any mechanism for such adjudication.

8. Second, Duran timely opted out of the Plan releases. Duran incorporates those opt outs herein and expressly opts out of any third-party releases under the Plan. *See Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 216–27 (2024); *In re Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 424 (5th Cir. 2022).

9. Third, the Plan’s insurance provisions in § 8.6(d) impermissibly prejudice personal injury and wrongful death claimants by conditioning the allowance and

treatment of their claims on insurer- and Debtor-driven determinations. The Plan requires holders of insured claims to exhaust all remedies under the applicable insurance policies before receiving any distribution. Plan, § 8.6(d). The Plan also limits the allowed value of these claims to any applicable SIR, irrespective of the availability or payment of insurance proceeds outside the Bankruptcy Case. Plan, § 8.6(d). Further, the Plan conditions any distributions on Debtors' and insurers' discretionary coverage determinations. As such, the Plan strips claimants of rights they would ordinarily retain under state law to litigate coverage directly and to pursue collection against both the Debtors and applicable insurance.

10. Duran's objections and reservations stated herein apply equally to any further amended, modified, or restated plans filed by Debtors, unless expressly resolved by agreement or by order of the Court. Duran reserves the right to supplement or renew her objections as necessary in response to any subsequent amendments. Duran reserves the right to adopt and incorporate by reference any additional objections or responses filed by other parties with respect to the Plan.

### **III. PRAYER**

WHEREFORE, Marybeth Duran, as Personal Representative of the Estate of Richard Chavez respectfully requests that the Court deny confirmation of the Plan unless it is modified to preserve Duran's rights (i) to adjudicate her claims to final judgment or settlement outside the Bankruptcy Case, (ii) to collect against applicable insurance policies outside the Bankruptcy Case, (iii) to preserve her claim against the Debtors in the administration of the Bankruptcy Case, and (iv) grant Duran such other and further relief as the Court deems just and proper.

Respectfully submitted this 25th day of November 2025.

/s/ Ryan E. Chapple

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***ATTORNEY FOR MARYBETH DURAN,  
AS PERSONAL REPRESENTATIVE OF  
THE ESTATE OF RICHARD CHAVEZ***

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Objection to Plan has been served on counsel for Debtors, Debtors, the U.S. Trustee, and all parties receiving or entitled to notice through CM/ECF on this 25th day of November 2025.

/s/ Ryan E. Chapple

Ryan E. Chapple