

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY

John P. Leon JL4638 Subranni Zauber LLC 750 Route 73 South – Suite 307B Marlton, N.J 08053 (609) 347-7000; FAX (609) 345-4545 Attorneys for Debtor	
In Re: Miller Health Care, LLC Debtor	Case No.: 11-28615 Judge: _____ Chapter 11

DEBTOR’S MOTION AND CERTIFICATION FOR ORDER AUTHORIZING PAYMENT OF PRE-PETITION WAGES/SALARIES/DRAW, WITHHOLDING TAXES, DESIGNATED PAYMENTS, AND EMPLOYEE BENEFITS

Debtor Miller Health Care, LLC (the “Debtor”), respectfully requests that this Court enter an order pursuant to 11 U.S.C. § 105(a) authorizing the payment of wages, salaries, owner’s draw, withholding taxes, designated payments, employee benefits, and the reimbursement of employee expenses. In support of this Motion, the Debtor states:

BACKGROUND

1. Debtor filed this voluntary chapter 11 case on June 18, 2011. The Debtor will continue to operate its business in the ordinary course.
2. The Debtor is a New Jersey limited liability company that operates a nursing home in Lawrenceville, N.J.

CURRENT AND PAST PAYROLL OBLIGATIONS

3. The Debtor's employees are paid every two weeks, one pay period in arrears. Debtor's employees thus expect to be paid on June 27, 2011 for the two week pay period ended June 18, 2011. The Debtor estimates that approximately One Hundred Fifty Thousand (\$150,000) Dollars in gross accrued wages and salaries of Debtor's employees have not been paid as of the Petition Date (the "Pre-Petition Wages"), which amount includes my draw in the amount of \$7,500. In the ordinary course of the Debtor's business, the Pre-Petition Wages would be included in the next payroll checks that are to be issued to such employees from the Debtor's payroll accounts.

EMPLOYEE WITHHOLDING TAXES

4. Necessarily attendant to the payment of payroll obligations is the Debtor's obligation to pay federal and state withholding taxes (the "Withholding Taxes"). Historically, the Debtor has held such amounts in trust and paid them to the governmental authorities when they were due.

EMPLOYEE BENEFITS AND DESIGNATED PAYMENTS

5. Additionally, in the ordinary course of business the Debtor has established various employee benefit plans and policies for the benefit of its officers and employees that provide such persons with health insurance, vacation, holidays, sick time, and other similar benefits (collectively, the "Employee Benefits").

6. Furthermore, as a service to its employees the Debtor withholds certain amounts from its employees' paychecks for the benefit of designated recipients or purposes, including but not limited to the payment of garnishments, child support, union dues, United Way, life insurance, health

insurance, dental insurance, disability insurance, child care, and retirement savings plans (the "Designated Payments").

THE RELIEF REQUESTED AND THE REASONS THEREFOR

7. By this Motion the Debtor seeks authority to: (i) pay all of the Pre-Petition Wages; (ii) pay all current and accrued Withholding Taxes with respect to the Pre-Petition Wages and the Employee Benefits; (iii) pay all Employee Benefits related to the period prior to the Petition Date, and continue to pay all Employee Benefits and amounts related thereto; and (iv) continue to pay all Designated Payments.

8. It is essential to the continued operations of the Debtor's business and its anticipated plan of reorganization that Debtor retain its employees and maintain employee morale. If the employees are not paid, they will suffer extreme personal hardship and may be unable to pay their daily living expenses.

9. A significant deterioration in employee morale at this critical time undoubtedly will have a substantial adverse impact on the Debtor, the value of its assets and business and its ability to reorganize. The Debtor submits that the total amount to be paid if the authorization sought herein is granted is *de minimis* compared with the size of the Debtor's estate and the importance of those employees to the Debtor's rehabilitation effort.

10. The Debtor will maintain complete and accurate records of any amounts that it pays as wages, salaries, compensation, reimbursable business expenses and Employee Benefits.

11. The Debtor submits that the payment of all Pre-Petition Wages, salaries, commissions, other compensation, withholding taxes, the reimbursement of all business expenses and the payment of all Employee Benefits in accordance with current practice is in the best interests of all parties and

will enable the Debtor to continue to operate its business in an economic manner without disruption. Those payments and the continuation of the Employee Benefit programs will be crucial to the well-being of the Debtor's employees who are vital to its ongoing business and the success of the entire reorganization effort.

12. The Debtor has on deposit, or will deposit, sufficient funds in its payroll and general accounts to meet all current wage, salary, commission, expense reimbursement and Employee Benefit obligations and outstanding checks and fund transfers related thereto. Accordingly, the banks in which such accounts are maintained will not be prejudiced by the entry of any order directing them to honor checks and fund transfers related to the foregoing.

13. Furthermore, as indicated above, the amounts withheld as Designated Payments effectively constitute trust funds held for the benefit of the Debtor's employees. Accordingly, those funds technically are not property of the Debtor's estate and should be paid to the designated recipients or for the designated purposes. Failure to do so may unnecessarily derail the Debtor's reorganization process by needlessly raising collateral issues and causing a significant deterioration in employee morale.

14. Under section 507(a)(4) of the Bankruptcy Code, each employee of the Debtor may be granted a priority for:

allowed unsecured claims, but only to the extent of \$11,725 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the Debtor's business, whichever occurs first, for –

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or

services for the debtor in the ordinary course of the Debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor....

11 U.S.C. § 507(a)(4). Likewise, under section 507(a)(5) of the Bankruptcy Code, employees may ultimately be granted a priority claim for allowed unsecured claims for contributions to an employee benefit plan –

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the Debtor's business, whichever occurs first, but only

(B) for each such plan, to the extent of –

(i) the number of employees covered by each such plan multiplied by \$11,725; less

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection [regarding certain wages, salaries, or commissions], plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

11 U.S.C. § 507(a)(4).

15. The Debtor's books and records indicate that no employee is owed Pre-Petition Wages and salaries (net of all deductions for employment taxes) in excess of the amounts allowable as priority claim under the sections set forth above.

16. No trustee, examiner or creditors committee has been appointed in this case. Notice of this Motion has been given to the United States Trustee, and each of the Debtor's 20 largest unsecured creditors. Because of the exigencies of the circumstances, the hardship that would be suffered by the Debtor's employees and the irreparable harm to the Debtor that will ensue if the relief requested herein is not granted, the Debtor submits that no other notice need be given.

17. No previous request for the relief requested herein has been made to this Court.

18. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

WHEREFORE, the Debtor respectfully requests entry of an Order authorizing the relief requested herein and granting the Debtor such other and further relief as is just and appropriate under the circumstances.

/s/ Thomas Miller
By: Thomas Miller

Dated: June 18, 2011

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**ORDER AUTHORIZING DEBTOR
TO PAY PRE-PETITION WAGES, SALARIES,
WITHHOLDING TAXES, DESIGNATED PAYMENTS, AND EMPLOYEE BENEFITS**

The relief set forth on the following page two is hereby **ORDERED**:

The court has considered the motion (the "Motion") of the debtor Miller Health Care, LLC. (the "Debtor"), for entry of an order authorizing the payment of wages, salaries, withholding taxes, designated payments, employee benefits, and the reimbursement of employee expenses. It appears that the relief requested in the Motion is in the best interest of the Debtor, its estate and creditors. Notice of the Motion has been given to the United States Trustee, and the Debtor's 20 largest unsecured creditors; in light of the circumstances and the nature of the relief requested, no other notice of the Motion and the relief requested therein need be given; and sufficient cause appearing therefor,

1. The Motion is granted; and
2. The Debtor is authorized to pay all wages, salaries, withholding taxes, designated payments, and employee benefits that accrued before the petition was filed in this case, not to exceed total payments of \$150,000.00.
3. Any bank with which Debtor has an account is authorized to honor checks issued by the Debtor before or after the Petition Date in payment of wages, salaries, withholding taxes, designated payments, expense reimbursements, or employee benefits, that accrued before the petition was filed in this case.
4. Notwithstanding anything herein to the contrary, the relief granted in this Order shall be limited to the statutory caps set forth in 11 U.S.C. Sections 507(a)(4) and (a)(5).