



SO ORDERED,

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: February 8, 2017**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**PIONEER HEALTH SERVICES, INC.
ET AL.,**

CASE NO. 16-01119-NPO

JOINTLY ADMINISTERED

DEBTORS.

CHAPTER 11

**ORDER ON JOINT MOTION PURSUANT TO BANKRUPTCY RULE 9019(a)
TO APPROVE COMPROMISE WITH KINGSBRIDGE HOLDINGS, LLC**

This matter came before the Court for hearing on January 20, 2017 (the “Hearing”), on the Joint Motion Pursuant to Bankruptcy Rule 9019(a) to Approve Compromise with Kingsbridge Holdings, LLC (the “Settlement Motion”) (Dkt. 1524) filed by the debtor, Pioneer Health Services, Inc. (“Pioneer Health”), and Kingsbridge Holdings, LLC (“Kingsbridge”); the Objection of Capital One, National Association to Joint Motion Pursuant to Bankruptcy Rule 9019(a) to Approve Compromise with Kingsbridge Holdings, LLC [Dkt. 1524] (the “Objection”) (Dkt. 1583) filed by Capital One, National Association (“Capital One”); and Kingsbridge’s Reply in Support of Joint Motion Pursuant to Bankruptcy Rule 9019(a) to Approve Compromise (the “Reply”) (Dkt. 1596) filed by Kingsbridge in the above-referenced bankruptcy case (the “Bankruptcy Case”). At the Hearing, Craig M. Geno represented Pioneer Health, Eileen N. Shaffer represented Kingsbridge, Brian I. Swett represented Capital One, and Sean C. Kulka

represented the Official Committee of the Unsecured Creditors of the Debtor. At the end of the Hearing, the Court overruled the Objection and granted the Settlement Motion from the bench. This Order memorializes and supplements the Court's bench ruling.

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), and (O). Notice of the Settlement Motion was proper under the circumstances.

Facts

1. Pioneer Health is the parent company of numerous hospitals and healthcare facilities located through the southeastern United States. On March 30, 2016, Pioneer Health commenced the Bankruptcy Case by filing a voluntary chapter 11 petition (the "Petition") (Dkt. 1). On that same date, certain affiliates of Pioneer Health also filed voluntary chapter 11 petitions for relief, including: Pioneer Health Services of Patrick County, Inc. (Case No. 16-01120-NPO); Pioneer Health Services of Newton County, LLC (Case No. 16-01121-NPO); Pioneer Health Services of Stokes County, Inc. (Case No. 16-01122-NPO); Pioneer Health Services of Choctaw County, LLC, (Case No. 16-01123-NPO); Pioneer Health Services of Oneida, LLC (Case No. 16-01124-NPO); Pioneer Health Services of Monroe County, Inc. (Case No. 16-01125-NPO); and Medicomp, Inc. (Case No. 16-01126-NPO). Another affiliate of Pioneer Health, Pioneer Health Services of Early County, LLC (Case No. 16-01243-NPO) filed

for bankruptcy relief under chapter 11 on April 8, 2016. The bankruptcy cases of these affiliates have been administratively consolidated into the lead Bankruptcy Case.¹

2. On September 30, 2013, Pioneer Health,² as lessee, and Sunshore Leasing Corp. (“Sunshore”), as lessor, entered into the Master Lease Agreement (the “Master Lease”) (Dkt. 606-1 at 1-5) for the lease of certain equipment and furnishings. Attached to the Master Lease are three (3) lease schedules: Lease Schedule No. 130925-1 (“Lease Schedule No. 1”) (Dkt. 606-1 at 6-15), later amended on July 1, 2014; Lease Schedule No. 130925-2 (“Lease Schedule No. 2”) (Dkt. 606-1 at 16-22); and Lease Schedule No. 130925-3 (“Lease Schedule No. 3”) (Dkt. 606-1 at 23-29). Together with the Master Lease, they will be referred to as the “Kingsbridge Lease.”³

3. Pursuant to the Master Equity Purchase and Sale Agreement and Assignment of Lease between Sunshore and Kingsbridge, dated August 26, 2008, Sunshore sold and assigned its right, title, and interest in the Master Lease to Kingsbridge, as reflected in the Notice and

¹ On April 6, 2016, the bankruptcy cases of *In re Pioneer Health Services of Patrick County, Inc.*, No. 16-01120-NPO; *In re Pioneer Health Services of Newton County, LLC*, No. 16-01121-NPO; *In re Pioneer Health Services of Stokes County, Inc.*, No. 16-01122-NPO; *In re Pioneer Health Services of Choctaw County, LLC*, No. 16-01123-NPO; *In re Pioneer Health Services of Oneida, LLC*, No. 16-01124-NPO; and *In re Pioneer Health Services of Monroe County, Inc.*, No. 16-01125-NPO, were administratively consolidated into the lead Bankruptcy Case. (Dkt. 44). The bankruptcy case of *In re Pioneer Health Services of Early County, LLC*, No. 16-01243-NPO, was administratively consolidated into the lead Bankruptcy Case on April 15, 2016 (Dkt. 92), and, lastly, the bankruptcy case of *In re Medicomp, Inc.*, No. 16-01126, was administratively consolidated into the lead Bankruptcy Case on June 29, 2016 (Dkt. 553).

² The Master Lease identifies “Pioneer Health Services, Inc., and Subsidiaries” as the lessee but does not name the “Subsidiaries.” (Master lease at 1, Dkt. 606-1).

³ A copy of the Kingsbridge Lease was introduced into evidence at the Hearing as an attachment to Debtor Exhibit 1. For ease of reference, the Court cites to the copy that was filed by Kingsbridge as an exhibit at docket number 606-1.

Acknowledgement of Assignments signed by Pioneer Health's chief financial officer on March 20, 2014, as to each lease schedule. (Dkt. 1524 at 2-3; Dkt. 606-1 at 10-13, 18-21, & 25-28).

Lease Schedule No. 1

4. Lease Schedule No. 1 concerned the following equipment and furnishings:

Item	Location of Equipment	Vendor	Description of Equipment
1	Pioneer Community Hosp. of Patrick Stuart, Virginia	Fidelity Power Systems	Kohler Power System
2	Pioneer Community Hosp. of Patrick Stuart, Virginia	BD Diagnostics Systems	BACTEC 9050 Blood Culturing System
3	Pioneer Community Hosp. of Patrick Stuart, Virginia	Direct Supply	Equipment and Furnishings
4	Pioneer Community Hosp. of Newton Newton, Mississippi	Coburns Supply	Water Heaters
5	Pioneer Medical Center of King King, North Carolina	Brady	Web-based digital controls for HAC-1 and HAC-2

(Dkt. 606 at 2-3).

5. Pursuant to Lease Schedule No. 1, Pioneer Health is required to make the following payments: ten (10) consecutive monthly payments of \$3,934.42, plus applicable taxes, followed by twenty-six (26) consecutive monthly payments of \$3,507.40, plus applicable taxes. (*Id.*).

6. Kingsbridge estimates the value of the equipment listed in Lease Schedule No. 1 to be \$55,050.00. (*Id.*).

Lease Schedule No. 2

7. Lease Schedule No. 2 involved the following medical equipment:

Item	Location of Equipment	Vendor	Description of Equipment
1	Pioneer Community Hosp. of Early County Blakely, Georgia	Olympus	Medical equipment, including gastrovideoscope, colonoscopes, Evis Exera II and III

(*Id.* at 4).

8. Under Lease Schedule No. 2, Pioneer Health is required to make thirty-six (36) consecutive monthly payments of \$4,099.09, plus applicable taxes. (*Id.*).

9. Kingsbridge estimates the value of the equipment listed in Lease Schedule No. 2 to be \$125,239.83. (*Id.*).

Lease Schedule No. 3

10. Lease Schedule No. 3 involved the lease of the following equipment:

Item	Location of Equipment	Vendor	Description of Equipment
1	Newton Regional Hosp. Newton, Mississippi	Mid-South Medical Imaging, LLC	Quantum Q-Rad Digital DRX-1

(*Id.* at 5).

11. Pursuant to Lease Schedule No. 3, Pioneer Health is required to make forty-eight (48) consecutive monthly payments of \$3,576.27, plus applicable taxes. (*Id.*).

12. Kingsbridge estimates the value of the equipment subject to Lease Schedule No. 3 to be \$62,196.00. (*Id.* at 6).

Kingsbridge Lease

13. All three lease schedules granted Pioneer Health the following options at the end of the initial lease term: “(1) Return all equipment to Lessor; (2) Renew the lease at then Fair

Market Value; or (3) Purchase all, and not less than all, equipment for Fair Market Value.” (Dkt. 606-1 at 6, 16, 23).

14. After March 1, 2016, Kingsbridge received no post-petition payments from Pioneer Health. (*Id.* at 6).

15. On June 29, 2016, Kingsbridge filed a proof of claim for lease rejection damages in the total amount of \$394,306.84 (the “Proof of Claim”) (Claim No. 63-1).⁴ In calculating the total amount due, Kingsbridge included the accelerated balance of the rent due, plus taxes and late charges, and the fair market value of the equipment and furnishings, pursuant to certain termination and default provisions in the Master Lease. (Master Lease ¶ 8 & ¶ 10(b), Dkt. 606-1 at 2 & 3).

	Accelerated Balance of Rent Due Plus Taxes & Late Charges	FMV of Equipment	Totals
Lease Schedule No. 1	\$39,769.37	\$55,050.00	\$94,819.37
Lease Schedule No. 2	\$32,996.95	\$125,239.83	\$158,236.78
Lease Schedule No. 3	\$79,054.69	\$62,196.00	\$141,250.69
TOTALS	\$151,821.01	\$242,485.83	\$394,306.84

According to the Proof of Claim, the portion of Kingsbridge’s \$394,306.84 claim entitled to priority status under § 507(a)(2) is, as follows:

Kingsbridge Lease	Post-Petition Lease Payment	Rejection Date
Lease Schedule No. 1	\$28,059.20	11/16/2016
Lease Schedule No. 2	\$32,792.00	11/16/2016
Lease Schedule No. 3	\$25,033.89	10/12/2016
TOTAL	\$85,885.09	

(Claim No. 63-1 at 7).

⁴ Kingsbridge amended the Proof of Claim on December 15, 2016, to include the Kingsbridge Lease as an attachment. (Claim No. 63-2).

16. On July 8, 2016, Kingsbridge filed the Motion of Kingsbridge Holdings, LLC for an Order Requiring the Debtor to Assume or Reject Unexpired Leases and Compelling the Debtor to make Post-Petition Lease Payments and to Pay Administrative Expenses (“Motion to Compel”) (Dkt. 606). Pioneer Health filed the Answer (Dkt. 773) on August 8, 2016.

Proposed Settlement

17. On December 22, 2016, Pioneer Health and Kingsbridge filed the Settlement Motion, which resolves Kingsbridge’s claims under 11 U.S.C. § 365(d)(5) and § 503(b).⁵ In their approach to the settlement of Kingsbridge’s claim, they separately resolved the obligations in each lease schedule.

a. Settlement of Lease Schedule No. 1

18. With regard to Lease Schedule No. 1, the parties agreed that Lease Schedule No. 1 will be deemed rejected as of November 16, 2016, and that Pioneer Health will pay Kingsbridge \$19,000.00 pursuant to § 365(d)(5). (Dkt. 1524-1 at 3). In addition, Kingsbridge will sell to Pioneer Health the following equipment for the amounts indicated below:

Item	Location of Equipment	Vendor	Description of Equipment	Purchase Price
1	Pioneer Community Hosp. of Patrick Stuart, Virginia	Fidelity Power Systems	Kohler Power System	\$18,500.00
2	Pioneer Community Hosp. of Patrick Stuart, Virginia	BD Diagnostics Systems	BACTEC 9050 Blood Culturing System	\$2,150.00
3	Pioneer Community Hosp. of Patrick Stuart, Virginia	Direct Supply	Equipment and Furnishings	\$5,000.00
TOTAL				\$25,650.00

⁵ From this point forward, all statutory references are to the Bankruptcy Code found at title 11 of the U.S. Code.

(Dkt. 1524-1 at 3-4). Michael Morgan (“Morgan”) of Healthcare Management Partners, LLC, Pioneer Health’s chief restructuring officer, testified at the Hearing that the equipment and furnishings that Pioneer Health proposes to purchase from Kingsbridge are essential to the ongoing operations of Pioneer Community Hospital of Patrick in Stuart, Virginia (“Patrick Hospital”), owned by Pioneer Health’s affiliate, Pioneer Health Services of Patrick County, Inc. (Case No. 16-01120-NPO, Dkt. 87). The Kohler Power System is an emergency back-up generator that provides electricity in the event of a power outage, the blood culturing system is used to detect bacteria in blood specimens, and the furnishings provide seating to hospital patients guests. All of this equipment and furnishings, if returned to Kingsbridge, would have to be replaced at a cost in excess of the purchase price proposed by Kingsbridge. For example, Morgan testified at the Hearing that the cost to replace the Kohler Power System, which Kingsbridge has agreed to sell for \$18,500.00, was between \$125,000.00 and \$150,000.00. As the final part of the settlement, the parties agreed that Kingsbridge will be granted relief from the automatic stay in order to recover and sell the remaining equipment listed in Lease Schedule No. 1, which consists of items 4 and 5:

Item	Location of Equipment	Vendor	Description of Equipment
4	Pioneer Community Hosp. of Newton Newton, Mississippi	Coburns Supply ⁶	Water Heaters
5	Pioneer Medical Center of King King, North Carolina	Brady	Web-based digital controls for HAC-1 and HAC-2

(Dkt. 606 at 2; Dkt. 1524-1 at 4).

⁶ In the Motion to Compel, Kingsbridge identified Coburns Supply as the vendor of the water heaters but in the Settlement Motion, the parties identified FEI-Jackson as the vendor. Because it makes no difference to the outcome of the pending matter, it is unnecessary for the Court to resolve this discrepancy.

b. Settlement of Lease Schedule No. 2

19. With regard to Lease Schedule No. 2, the parties agreed that Lease Schedule No. 2 will be deemed rejected as of November 16, 2016, and that Pioneer Health will pay Kingsbridge \$18,000.00 pursuant to § 365(d)(5) (Dkt. 1524-1 at 4). In addition, Kingsbridge will sell to Pioneer Health for \$65,000.00 the equipment listed in Lease Schedule No. 2, as follows:

Item	Location of Equipment	Vendor	Description of Equipment	Purchase Price
1	Pioneer Community Hosp. of Early County Blakely, Georgia	Olympus	Medical equipment, including gastrovideoscope, colonvideoscopes, Evis Exera II and III	\$65,000.00

(*Id.*). Pioneer Health will pay Kingsbridge \$65,000.00 in twelve (12) monthly payments of \$5,750.00 each, with the first and last two (2) payments to be made within ten (10) business days of the entry of an order approving the settlement. (*Id.*). Should Pioneer Health fail to timely make payments, Kingsbridge will have an allowed administrative claim of \$65,000.00, less any payments made, plus attorney’s fees and costs, and Pioneer Health will agree to surrender the equipment. The parties also agreed that Pioneer Health will bear responsibility for all past due state and county personal property taxes charged after December 1, 2016. (*Id.*). Finally, the parties agreed that, to the extent necessary, Kingsbridge will be granted relief from the automatic stay to file a UCC-1 financing statement reflecting its security interest in the equipment. (Dkt. 1524-1 at 5).

c. Settlement of Lease Schedule No. 3

20. With regard to Lease Schedule No. 3, the parties agreed that Lease Schedule No. 3 was rejected as of October 12, 2016. (Dkt. 1524-1 at 5; Dkt. 1293). In settlement of the

amounts due under § 365(d)(5), Pioneer Health will pay Kingsbridge \$10,728.81 within ten (10) days of the Court's approval of the settlement and an additional \$7,152.54 within ten (10) business days of plan confirmation. (Dkt. 1524-1 at 5).

21. The parties agreed that Kingsbridge will have until thirty (30) days after the sale of the equipment to file a proof of claim for any lease rejection damages, without prejudice to any party objecting to said claim at a future date. (*Id.*).

Capital One's Objection

22. The only response to the Settlement Motion was the Objection filed by Capital One. Before the bankruptcy filings, Capital One provided revolving loans to Pioneer Health Services of Patrick County, Inc.; Pioneer Health Services of Newton County, LLC; Pioneer Health Services of Stokes County, Inc.; Pioneer Health Services of Oneida, LLC; Pioneer Health Services of Monroe County, Inc.; and Pioneer Health Services of Early County, LLC, and a term loan to Pioneer Health Services of Stokes County, Inc., as set forth in detail in the Final Order (I) Authorizing the Debtors to Use Cash Collateral of Certain Prepetition Secured Parties; (II) Granting Adequate Protection to Certain Prepetition Secured Parties; and (III) Granting Related Relief (Dkt. 543) entered on June 27, 2016. In the Objection, Capital One challenged the terms of the settlement solely with regard to the proposed resolution of Pioneer Health's obligations under Lease Schedule No. 1. According to Capital One, if approved, the Settlement Motion will allow Pioneer Health to spend \$44,650.00 of Capital One's cash collateral for equipment to be used at Patrick Hospital, even though "[t]here is no indication that the Debtors' proposed out-of-budget expenditure today to purchase capital assets for the Patrick [Hospital] using Capital One's cash collateral protects Capital One in any way." (Obj. at 4).

23. In the Reply, Pioneer Health disputes Capital One's contentions and urges this Court to view the settlement as a global resolution of the parties' dispute regarding the Kingsbridge Lease and not solely as a settlement of the dispute regarding Lease Schedule No. 1. (Reply at 8).

Discussion

A bankruptcy court may approve a compromise or settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, but it should do so only when the settlement is "fair, equitable and in the best interest of the estate." *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980) (internal quotations omitted). In determining whether a settlement is fair and equitable, "[a] bankruptcy court must evaluate: (1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise." *Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015). These other factors include: (1) the best interests of the creditors, with proper deference to their reasonable views and (2) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion. *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917-18 (5th Cir. 1995). The authority to approve a compromise and settlement is within the discretion of the bankruptcy court. *In re Myers*, 546 B.R. 363, 376 (Bankr. S.D. Miss. 2016).

A. Probability of Success in Litigation

In determining Pioneer Health's probability of success or failure in litigation, it is unnecessary for the Court to conduct a "mini-trial" of the facts or the merits underlying the

parties' dispute. *Off. Comm. of Unsecured Creditors v. Cajun Elec. Power Co-Op, Inc.*, 119 F.3d 349, 356 (5th Cir. 1997). Rather, the Court need only canvass the factual and legal issues raised by the parties. Otherwise, an exhaustive investigation and determination of the underlying issues would undermine the important role of settlement in expediting the administration of the bankruptcy estate. Here, the issues addressed in the settlement are framed by the Motion to Compel, in which Kingsbridge asks the Court to: (1) require Pioneer Health to assume or reject the Kingsbridge Lease pursuant to § 365(d)(2) and in the event that Pioneer Health assumes the Kingsbridge Lease, require Pioneer Health to cure all arrears due and owing and provide adequate assurance of future performance; and (2) direct Pioneer Health to pay Kingsbridge the monthly payments due under the Kingsbridge Lease in accordance with § 365(d)(5) and § 503(a) and require Pioneer Health to continue making monthly payments to Kingsbridge until such time as the Kingsbridge Lease is assumed or rejected. In settlement of Kingsbridge's claims, Pioneer Health will reject the Kingsbridge Lease, pay Kingsbridge \$54,881.35 in satisfaction of its administrative claims under § 365(d)(5) and § 503(b),⁷ and purchase the leased equipment and furnishings that it deems essential to its ongoing business operations for a total of \$90,650.00.

Generally, an unexpired lease of non-consumer personal property may be assumed or rejected in a chapter 11 case at any time before confirmation of a plan. 11 U.S.C. § 365(d)(2). Unless and until the lease is assumed or rejected, however, a debtor-in-possession must perform all obligations owing under the lease, including the obligation to pay rent "first arising from or after 60 days after the order for relief. . . until such lease is assumed or rejected." 11 U.S.C. § 365(d)(5). A lessor may also recover rental payments that accrue during the interim period

⁷ In the settlement, Kingsbridge has thirty (30) days after the sale of the equipment and furnishings to file a proof of claim for any rejection damages.

between the date of the petition and the date that § 365(d)(5) lease payments first become due, if the lessor shows that the debtor gained some benefit from the property in accordance with § 503(b). *See VFS Leasing Co. v. Wyo. Sand & Stone Co. (In re Wyo. Sand & Stone Co.)*, 393 B.R. 359, 361 (Bankr. M.D. Pa. 2008).

A comparison of the amounts that are due Kingsbridge as administrative expenses pursuant to § 365(d)(5) and § 503(b), as reflected in the Proof of Claim, and the amounts that Pioneer Health agreed to pay Kingsbridge in settlement of these claims shows a total reduction of its administrative claim of \$31,003.74, as demonstrated below:

	Post-Petition Lease Payments	Settlement Amount	Amount of Reduction
Lease Schedule No. 1	\$28,059.20	\$19,000.00	\$9,059.20
Lease Schedule No. 2	\$32,792.00	\$18,000.00	\$14,792.00
Lease Schedule No. 3	\$25,033.89	\$17,881.35	\$7,152.54
TOTAL	\$85,885.09	\$54,881.35	\$31,003.74

As to the purchase of the equipment, Kingsbridge’s estimated fair market value of all of the equipment listed in Lease Schedule No. 1, as of the Petition date, is \$55,050.00. For three (3) of the five (5) items listed in Lease Schedule No. 1, Pioneer Health proposes to pay \$25,650.00, which is less than one-half of the estimated fair market value for all five (5) items of equipment. Kingsbridge’s estimated fair market value of the equipment listed in Lease Schedule No. 2, as of the Petition date, is \$125,239.83. For this equipment, Pioneer Health proposes to pay \$65,000.00, which is almost one-half of its estimated fair market value. The purchases thus appear to be fair and reasonable, and the settlement as a whole benefits the estate. The Court next considers the likelihood that Pioneer Health might obtain a more favorable resolution of Kingsbridge’s administrative claims in litigation.

1. Severability

Under § 365(b), a debtor may assume an unexpired lease only if, at the time of the assumption, the debtor “cures, or provides adequate assurance that the debtor will promptly cure [any] default” and provides adequate assurance of future performance under the lease. 11 U.S.C. § 365(b). To accomplish results similar to those reached in the settlement, Pioneer Health would have to assume Lease Schedule No. 1 and Lease Schedule No. 2, and reject Lease Schedule No. 3. Doing so, however, could raise an objection by Kingsbridge that the Kingsbridge Lease constitutes a single unexpired lease which, for purposes of § 365(d)(5), must be either assumed or rejected in its entirety. *See Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins.*, 83 F.3d 735, 741 (5th Cir. 1996) (citation omitted). If a single lease is “divisible” or “severable” under applicable state law, however, courts generally allow the single lease to be separately assumed or rejected. *Id.* “Where a lease . . . contains several different agreements, and the lease . . . can be severed under applicable non-bankruptcy law, section 365 allows assumption or rejection of the severable portions of the lease.” *In re Wolflin Oil, L.L.C.*, 318 B.R. 392, 397 (Bankr. N.D. Tex. 2004) (quotation omitted). At this juncture, it is premature for the Court to rule on the divisibility of the Kingsbridge Lease, but a cursory examination of the law is necessary nevertheless for purposes of the Settlement Motion.

As to the applicable state law in this matter, the Court notes that the Master Lease contains the following choice-of-law provision: “This Lease has been delivered for acceptance by Lessor in Tampa, Florida and shall be governed by the laws of the State of Florida.” (Master Lease at 4, Dkt. 606-1 at 4). Thus, the Court applies the law of Florida for purposes of the Settlement Motion.

Under Florida law, whether multiple obligations in an agreement are severable is a question of the parties' intent based upon the substance and language of the agreement at issue. *Byrd v. Gardinier, Inc. (In re Gardinier)*, 831 F.2d 974, 976 (11th Cir. 1987). The *Gardinier* Court, applying Florida law, noted three (3) factors that should be considered in analyzing whether obligations within an agreement are severable: (1) whether the nature and purpose of the obligations are different; (2) whether the consideration for the obligations is separate and distinct; and (3) whether the obligations of the parties are interrelated. *Id.* at 976. Applying these factors, each lease schedule could be considered a separate agreement because each one pertains to different property and contains a different rent calculation. The structure of the Master Lease, however, may suggest that the parties intended the lease schedules to form a single integrated transaction. Even if Lease Schedule No. 1 and Lease Schedule No. 2 could be severed from the Master Lease and Lease Schedule No. 3, Pioneer Health only needs some of the equipment and furnishings covered in Lease Schedule No. 1. To retain only what is essential to its business operations, Pioneer Health would have to sever each of the obligations in Lease Schedule No. 1. Because the rental payment is based upon the lease of all five (5) items of equipment and furnishings, it would be difficult for Pioneer Health to succeed in litigation to retain only three (3) of the items. The settlement, however, allows Pioneer Health to retain only some of the leased property without having to assume all of the obligations as to all of the equipment and furnishings in Lease Schedule No. 1. This analysis of the severability issue supports approval of the settlement.

2. "True" Lease or Security Agreement?

Pioneer Health next asserts that it could attempt to reclassify the Kingsbridge Lease as a disguised security agreement, which arguably would entitle Kingsbridge only to an unsecured

claim for the post-petition use of its equipment and furnishings, not to the rights of a lessor under § 365(d)(5). Whether a lease is intended as a security agreement or as a “true” lease is a matter of state law. *Butner v. United States*, 440 U.S. 48, 55 (1979). The Court, therefore, turns again to the law of Florida.

Under Florida’s version of the Uniform Commercial Code, a lease, notwithstanding its label, is a security agreement *per se* if the lease contains a non-termination clause and the lessor does not retain a substantial residual equity interest in the leased property. FLA. STAT. ANN. § 671.201(37). Here, the Master Lease contains the following non-termination clause: “THIS IS A NON-CANCELABLE LEASE AGREEMENT.” (Master Lease ¶ 6, Dkt. 606-1 at 2). Each of the lease schedules, however, grants Pioneer Health the option to purchase the equipment at the end of the lease term at “fair market value.” (Dkt. 606-1 at 6, 16 & 23). Under Florida law, “[a]dditional consideration is not nominal if . . . the price is stated to be the fair market value of the goods at the time the option is performed.” FLA. STAT. ANN. § 671.201(37). For this reason, the Kingsbridge Lease may not satisfy the second prong of Florida’s test and, therefore, may not be presumed to be a disguised security agreement. The inquiry, however, would not end here. The option to purchase leased property at fair market value does not necessarily mean that an agreement is a “true” lease. For example, what if the fair market value of the leased property is negligible? Once the presumption is found inapplicable, the true nature of a transaction under Florida law requires an examination of all the facts and circumstances.

In that regard, the Kingsbridge Lease contains some characteristics of a security agreement. For example, Pioneer Health is responsible for paying all taxes, making all necessary repairs, and maintaining insurance, and, moreover, Pioneer Health assumes the risk of loss or damage to the equipment. (Dkt. 606-1 at 1-2). On the other hand, the Master Lease flatly

provides, “This Agreement is, and is intended to be, a Lease.” (Dkt. 606-1 at 4). In short, Pioneer Health would have to overcome complex legal issues to reclassify the Kingsbridge Lease as a security agreement. In the settlement, Kingsbridge describes the Kingsbridge Lease as a “true” lease but allows Pioneer Health to retain only the equipment necessary for its continued operations. This analysis of the true nature of the Kingsbridge Lease supports approval of the settlement.

B. Complexity, Duration & Expense of Litigation

Delaying approval of the settlement in favor of litigation could increase Pioneer Health’s liability to Kingsbridge for lease payments in an amount that exceeds the purchase price of the equipment and furnishings. Indeed, the lease payments due under Lease Schedule No. 1 alone exceed \$25,000.00. The expense of litigation could also exceed the amount that Pioneer Health proposes to pay Kingsbridge, especially considering the number of professionals involved in the Bankruptcy Case. Moreover, litigation of Kingsbridge’s administrative expense claim could chill Pioneer Health’s efforts to sell Patrick Hospital. Morgan testified at the Hearing that Patrick Hospital would not meet health industry standards without an emergency back-up generator and that a violation of those standards would make any sale of Patrick Hospital more difficult. Given the cost to Pioneer Health of further delays, the expense of litigation, and the adverse impact on Pioneer Health’s attempt to liquidate its assets, the Court finds that this factor weighs in favor of the settlement.

C. Bests Interests and Wishes of Creditors

Capital One opposes the settlement terms only as to Lease Schedule No. 1. Under those proposed settlement terms: (1) Lease Schedule No. 1 will be deemed rejected as of November 16, 2016; (2) Pioneer Health will pay Kingsbridge \$19,000.00 pursuant to § 365(d)(5); (3)

Kingsbridge will sell to Pioneer Health the equipment located at Patrick Hospital for \$25,650.00; and (4) Kingsbridge will be granted relief from the automatic stay to recover the equipment located at the hospitals in Newton, Mississippi, and King, North Carolina.

Capital One opposes the settlement on the ground it will require Pioneer Health to spend \$44,650.00⁸ for equipment to be used at Patrick Hospital that will not generate any material income for the estate. Capital One's concern arises out of Pioneer Health's efforts to sell substantially all of its assets, including Patrick Hospital. Because Patrick Hospital has a mortgage loan obligation to Virginia Community Capital, Inc. of approximately \$6 million, Capital One believes that the assumption of that loan obligation by any purchaser will consume a significant portion of the sale proceeds.

As a preliminary matter, Pioneer Health urges the Court to evaluate the settlement as a whole rather than in piecemeal fashion, which is the approach adopted by Capital One in the Objection. Pioneer Health insists that the settlement of Lease Schedule No. 1 depends on the resolution of Lease Schedule No. 2 and Lease Schedule No. 3. In other words, to undo the settlement of Lease Schedule No. 1 is to undo the settlement as a whole. Moreover, Pioneer Health points out that Capital One incorrectly attributes the full payment of \$19,000.00 for past due lease payments under § 365(d)(5) only to the three (3) items of equipment located at Patrick Hospital but the \$19,000.00 payment covers lease payments for all five (5) items of equipment listed in Lease Schedule No. 1. As to the reasonableness of that amount, it is nearly \$10,000.00 less than the amount allegedly due under § 365(d)(5).

The Court agrees that there are benefits to a global settlement of all claims that may justify the approval of a settlement when an evaluation of each component part may not. The

⁸ \$44,650.00 = \$19,000.00 + \$25,650.00.

Court does not agree, however, that the component parts of a settlement should be ignored altogether. Here, the Court finds that the proposed § 365(d) lease payment and purchase price of the equipment and furnishings are reasonable. The purchase of the equipment and furnishings from Kingsbridge, at or below market value, limits Pioneer Health's future lease obligations to Kingsbridge while preserving Patrick Hospital's ongoing business operations. Capital One's concerns regarding the potential sale of Patrick Hospital, at best, are speculative and premature. Any agreement to purchase Patrick Hospital could require the purchaser to pay for the equipment and furnishings separately or could carve out the equipment and furnishings from the sale. Moreover, Pioneer Health has agreed to grant Capital One a lien on the purchased equipment to protect its interest. The Court is only required to take into account the views of Capital One to the extent they are reasonable. Given the overall benefit to the estate, Capital One's Objection does not support rejection of the settlement in its entirety.

D. Arms-Length Negotiations

The Court finds that the settlement was the result of arms-length bargaining and not the result of fraud or collusion. No evidence to the contrary was presented at the Hearing.

Conclusion

Given Kingsbridge's argument that the Kingsbridge Lease is a "true" lease that must be assumed or rejected in its entirety and that under § 365(d)(5) and § 503(b) Kingsbridge is apparently entitled to payments of \$85,885.09, the Court finds that the settlement reflects the best opportunity for Pioneer Health to resolve the Motion to Compel in a way that will allow Pioneer Health to retain equipment and furnishings essential to the ongoing operations of Patrick Hospital. Pioneer Health's prospects for litigating a more favorable alternative to the settlement are unlikely, and the cost of delay and the expense of litigation could rise to an amount greater

than the settlement amount. Although Capital One opposes the settlement, its concerns can be adequately addressed in any purchase agreement. The overall intent of the creditors will be well served by the settlement. For the above reasons, the Court finds that the Objection should be overruled and the Settlement Motion should be granted on the condition that Pioneer Health grant Capital One a lien on the leased property purchased for use by Patrick Hospital.

IT IS, THEREFORE, ORDERED that the Settlement Motion is hereby granted subject to Pioneer Health granting Capital One a lien on the equipment and furnishings purchased for use by Patrick Hospital.

##END OF ORDER##