

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Lafayette Division**

IN RE:

CASE NO. 16-50740

PROGRESSIVE ACUTE CARE, LLC, et al.

CHAPTER 11

DEBTORS

JOINTLY ADMINISTERED

**MOTION FOR ORDER AUTHORIZING
MAINTENANCE OF EXISTING BANK ACCOUNTS**

NOW INTO COURT, through undersigned counsel, come Progressive Acute Care, LLC (“PAC”), Progressive Acute Care Avoyelles, LLC (“PAC Avoyelles”), Progressive Acute Care Oakdale, LLC (“PAC Oakdale”), and Progressive Acute Care Winn, LLC (“PAC Winn”), each a debtor and debtor-in-possession (collectively, the “Debtors”), who respectfully move this Court (the “Motion”) for entry of an Order under sections 363, 364, 1107 and 1108 of Title 11 of the United States Code (as amended, the “Bankruptcy Code”), authorizing the PAC Debtors to maintain certain of their existing bank accounts and their cash management system. In support of this Motion, the PAC Debtors respectfully represent as follows:

Jurisdiction

1.

This Court has jurisdiction over this Motion under 28 U.S.C. §1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

Venue

2.

Venue of these proceedings is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.

Background

3.

On May 31, 2016 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their property as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases.

4.

The Debtors own and operate three community-based hospitals (“PAC Hospitals”), which are located in the Parishes of Avoyelles, Oakdale and Winn, Louisiana.

5.

In connection with its business operations, the Debtors utilize a cash management system (“Cash Management System”), not uncommon among affiliated entities, which collects, transfers and disburses funds generated by the Debtors’ operations. PAC maintains an operating account, payroll account (“Payroll Account”), reserve account (“Holding Account”) and claims clearing account (“Claims Account”) at Business First Bank (“Business First”), which are used to process payments and disbursements for all of the Debtors. The Payroll Account is a zero balance account which has direct ACH deposits posted to it; receives automatic ACH debits; and, its continued use is necessary to prevent the interruption of employee payroll checks or unnecessary delay in obtaining same. In addition, PAC Avoyelles, PAC Winn and PAC Oakdale also maintain deposit accounts at Business First which receive Medicare, Medicaid and other governmental payments as well as certain commercial payments. PAC Oakdale and PAC Winn maintain operating accounts for local vendor payments and deposit accounts for certain commercial and direct patient payments at Sabine State Bank; and, PAC Avoyelles maintains an operating account for local

vendor payments and a deposit account for certain commercial and direct patient payments at The Cottonport Bank. The foregoing accounts of the Debtors (collectively, the “Bank Accounts”) and respective financial institutions are indicated on Exhibit A hereto.

The Debtors are indebted to Business First under the terms of a Business Loan Agreement dated April 30, 2013, as amended, (“Business Loan Agreement”) involving a term note and a revolving line of credit. Such indebtedness is secured by a multiple indebtedness mortgage in favor of Business First affecting the Debtors’ real estate, and a first lien on, *inter alia*, the Debtors’ accounts receivable. Pursuant to the Business Loan Agreement, each depository account maintained by any Debtor is required to be swept daily into the Holding Account maintained at Business First.

Relief Requested

6.

The Office of United States Trustee has established certain operating guidelines (and the Local Rules and/or Orders previously entered herein establish similar requirements) for debtors in possession that operate their businesses. One such provision requires that a chapter 11 debtor-in-possession open new bank accounts and close all existing accounts. The United States Trustee Guidelines also require that the new bank accounts only be opened at certain financial institutions designated as authorized depositories by the United States Trustee. These requirements are designed, among other things, to provide a clear line of demarcation between pre-petition and post-petition claims and payments and help to protect against the inadvertent payment of pre-petition claims by preventing the banks from honoring checks drawn before the Petition Date.

7.

Business First Bank and Sabine State Bank are designated as authorized depositories by the United States Trustee for this District. As of the Petition Date, The Cottonport Bank has not been designated as such an authorized depository; however, PAC proposes to maintain only a depository account there in which certain commercial and other non-governmental payments are made.

8.

The Debtors seek a waiver of the United States Trustee's ("UST") requirement (and any requirement under the Local Rules or Orders previously entered herein) that the Accounts be closed and permission to use the Accounts and operate their Cash Management System in a manner consistent with the Debtors' prepetition practices and Loan Agreements. This system represents an essential business practice yielding significant benefits to the PAC Debtors, including, among other things, the ability to monitor and control funds; ensure the maxim availability of funds; and, reduce administrative expenses of the Debtors collectively by facilitating the movement of funds and the timely development of current account balances. Given the complex nature of the Cash Management System, the costs and delay associated with establishing a new system would put additional financial strain on the Debtors. In addition, the Debtors receive electronic fund transfers from Medicare and other governmental payers and for payment of operating expenses. If the UST requirements are enforced in this case, the Debtors would have to re-establish the receipt of electronic payments from Medicare and other governmental payers, which would cause significant disruption in the Debtors' businesses and likewise impair their efforts to reorganize. Finally, payroll checks could be delayed which would undermine employees' faith in the entity and also hamper efforts to reorganize.

9.

Through this Motion, the Debtors request a waiver of the account closure requirement only – and, then only to the following accounts: the local Sabine Operating Accounts and Cottonport Operating Accounts will be promptly closed by, respectively, PAC Avoyelles, PAC Oakdale and PAC Winn pursuant to the UST requirements. Further, the Debtors have the ability to either imprint or stamp the required debtor-in-possession information that customarily appears on checks on those accounts to which this Motion applies.

10.

If the Debtors are not permitted to maintain their Bank Accounts and Cash Management System, their operations will be severely impaired, as sufficient funds may not be collected timely from certain accounts receivable for payment of the Debtors' post-petition operating expenses. Moreover, considerable resources would unnecessarily be required to implement a new cash management system. Thus, the Debtors believe the existing Cash Management System including maintenance of the Bank Accounts is in the best interest of the Debtors and their estates.

11.

This relief has routinely been granted in this district and in other bankruptcy courts in Louisiana. See *In re Piccadilly Restaurants, LLC*, Case No. 12-51127 (Bankr. W.D.La 2012); *In re Louisiana Riverboat Gaming Partnership, et al.*, Case No. 12-12013 (Bankr. W.D.La 2012); *In re New Louisiana Holdings, LLC*, Case No. 14-50756 (Bankr. W.D.La 2014); *In re Harvest Oil & Gas, LLC*, Case No. 15-50748 (Bankr. W.D.La 2015); *In re Bass, Ltd.*, Case No. 11-51393 (Bankr. W.D.La 2011); *In re The Babcock & Wilcox Company*, No. 00-10992 (Bankr. E.D. La. 2000); *In re Gulf States LTAC of Covington.*, No. 09-11116 (Bankr. E.D. La. 2009); *In re SA-PG-OCALA*,

LLC, et al., Case No. 14-50756 (Bankr. W.D.La 2014); and In re Rock Glen Healthcare, Inc. d/b/a Rock Glen Nursing and Rehabilitation Center, No. 12-10320 (Bankr. M.D. La. 2012).

12.

Pursuant to section 105(a) of the Bankruptcy Code, the Debtors seek a waiver of the requirements of section 345(b) of the Bankruptcy Code. As discussed above, the Accounts are maintained with three financial institutions which are financially stable, two of which are U.S. Trustee-approved depositories (Business First and Sabine Bank). Consequently, a waiver of the requirement to comply with section 345(b)'s investment guidelines should pose no risk to the Debtors' estates or creditors.

13.

Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money of estates, such as the Debtors' cash, in a manner that "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a).

14.

The Debtors maintain that good cause exists for allowance of continued use of the Cash Management System and Bank Accounts in accordance with their past business practices.

15.

WAIVER OF BANKRUPTCY RULES 6004(A) AND 6004(H)

Bankruptcy Rule 6003(b) empowers a court to grant relief within the first 21 days of the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Ultimately, because of the nature of the Debtors' operations, any disruption to the Cash Management System or Bank Accounts would seriously harm the Debtors and their estates. The Debtors have thus established the "immediate and irreparable harm" standard of Bankruptcy Rule

6003(b). For the reasons set forth above, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

16.

NOTICE

Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtors and their counsel; (iii) all parties who have formally appeared and requested notice in this proceeding pursuant to Bankruptcy Rules 2002; (iv) counsel for and the members of any official committees appointed by this Court; and, (v) the twenty (20) largest unsecured creditors of the Debtors on a consolidated basis. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter an Order authorizing the Debtors to maintain their Bank Accounts and Cash Management System; and, granting such other and further relief as the Court deems appropriate.

Respectfully Submitted:

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