

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

IN RE:

PROGRESSIVE ACUTE CARE, LLC, et al

CASE NO. 16-50740

DEBTORS

CHAPTER 11

***EX PARTE* APPLICATION FOR ENTRY OF AN ORDER
AUTHORIZING THE EMPLOYMENT AND RETENTION OF THE LAW FIRM
OF SULLIVAN STOLIER, LC AS SPECIAL COUNSEL**

NOW INTO COURT, 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”) as debtors and debtors-in-possession (collectively, the “Debtors”), which seek entry of an order authorizing the retention of Jack M. Stolier and the law firm of Sullivan Stolier, LC (collectively “Stolier”) as special counsel to the Debtors pursuant to Section 327(e) of title 11 of the United States Code (“Bankruptcy Code”) and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”). In support of this Application, the Debtors respectfully state as follows:

Jurisdiction

1.

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 157(b). Venue is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2.

On May 31, 2016, each of the Debtors filed a voluntary petition for relief under chapter 11

of title 11 of the U.S. Code (“Bankruptcy Code”). A creditors’ committee has been appointed in the cases; and, the Debtors continue to operate their businesses in the ordinary course as debtors-in-possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3.

The Debtors own and operate three (3) community-based hospitals (“Hospitals”), ranging from 50-60 bed capacity, which provide inpatient, outpatient and emergency care, primarily for residents of the immediate regions of the Hospitals. The Hospitals are located in Marksville (PAC Avoyelles), Oakdale (PAC Oakdale) and Winnfield (PAC Winn). PAC is the sole member and manager of each of the three Hospital Debtors and the membership interests in the Hospital Debtors are its primary assets.

Relief Requested

4.

Pursuant to §327(e) of the Bankruptcy Code, Rules 2014(a) and 2016(b) of the Bankruptcy Rules, the Debtors seek an order from this Court authorizing the retention and employment of Stolier as special counsel in these chapter 11 cases. In making this application (“Application”), the Debtors rely upon, and incorporate by reference, the Affidavit of Jack M. Stolier (“Stolier Affidavit”), a copy of which is annexed hereto as Exhibit “A”.

Basis for Relief

5.

Section 327(e) of the Bankruptcy Code authorizes a debtor-in-possession to employ one or more attorneys to represent the debtor on specified special matters so long as those attorneys do not hold or represent an interest adverse to the estate with respect to the matters on which they are to be retained. See 11 U.S.C. §§ 327(e), 1106 and 1107. Upon approval of this Application,

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Stolier will serve as special health care counsel to the Debtors in connection with the preparation of various documents required for a sale of the Hospitals, and will advise the Debtors on the regulatory compliance requirements under various state and federal health care laws and statutes regarding same.

6.

Prior to the Petition Date, Stolier represented PAC in various health care matters. The Debtors believe that Stolier is uniquely qualified to act as special health care counsel during the pendency of these chapter 11 cases in a most efficient and timely manner. Employing Stolier will save the Debtors' estates resources and prevent having to waste resources in the process of educating new counsel on the organization and operations of the Debtors. If the Debtors are required to retain counsel other than Stolier in connection with the matters detailed herein, the Debtors and all parties-in-interest would be unduly prejudiced by the time and expense necessary to replicate Stolier's ready familiarity with the pending matters and operations of the Debtors.

7.

In addition, Stolier has over twenty-five (25) years of experience in healthcare law and its attorneys have extensive experience by holding or having held key government, institutional or academic positions and/or have advanced degrees in Public Health, Health Care, Administration, and Health Information Management.

8.

As such, the Debtors submit that Stolier is well qualified and uniquely able to provide the specialized legal advice sought by the Debtors on a going-forward basis, and Stolier's retention as special counsel is in the best interest of the Debtors and their estates.

Services to be Provided

9.

The Debtors seek to retain and employ Stolier as special health care counsel in these chapter 11 cases subject to the oversight and orders of this Court.

10.

The Debtors require knowledgeable counsel to serve as special health care counsel in the matters described above. Stolier has indicated its willingness to render the necessary professional services as special health care counsel to the Debtors in such matters.

11.

Stolier will not serve as bankruptcy and reorganization counsel to the Debtor.

12.

Stolier has not received any payments from PAC or any of the Debtors in the one-year period prior to the Petition Date.

Disinterestedness

13.

There is an outstanding balance owed to Stolier for unpaid pre-petition work in the amount of \$4,626.51. Stolier understands that it may not seek to collect said debt from the Debtors and is bound by whatever plan is ultimately confirmed herein.

14.

Stolier is not precluded from employment as special counsel under Section 327(e) as it neither holds nor represents any adverse interest to the Debtors or their estates with respect to the matters upon which it will be engaged.

15.

To the best of the Debtors' knowledge, information and belief, other than as disclosed above and in connection with these Chapter 11 cases, Stolier has no connection with the Debtors, the creditors of the Debtors, or any other party-in-interest in the Debtors' bankruptcy cases, or their respective attorneys or other professionals, or any employee of the Office of the United States Trustee. The Debtors' knowledge, information and belief regarding the matters set forth herein are based, and made in reliance upon, the Stolier Affidavit.

Terms of Employment

16.

Stolier has agreed to act as special health care counsel to the Debtors in connection with their chapter 11 cases and to render legal services to the Debtors as set forth above. The terms and scope of Stolier's proposed representation are set forth in the engagement letter ("Engagement") attached hereto as Exhibit "B".

17.

It is the policy of Stolier to charge its clients in all areas of service for all other expenses incurred in connection with the client's account. The expenses charged to clients include, among other things, mail and express mail charges, special or hand delivery charges, telephone conference calls, photocopying charges, travel expenses, computerized research, messengers, couriers, postage and other disbursements related to the representation. Stolier will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to other clients of Stolier. Stolier believes that it is equitable to charge these expenses to the client incurring such expenses.

18.

Subject to the Court's approval, and in accordance with section 330(a) of the Bankruptcy Code, Stolier intends to (a) be compensated on an hourly basis as follows: Jack M. Stolier - \$395, Louis Lupin - \$375, and Isabel Bonilla-Mathe \$275, and, any paraprofessional at \$110 per hour; (b) seek reimbursement of actual and necessary out of pocket expenses; and, (c) apply to the Court for payment of compensation and reimbursement of expenses. Stolier will maintain and submit with its fee applications detailed daily time entries explaining the services provided, as well as a categorized summary of all disbursements and expenses for which Stolier is seeking reimbursement.

19.

Stolier further requests a retainer of \$10,000.00 to hold in its client trust account as assurance of payment on future invoices. Stolier understands it may not transfer the funds or apply the funds to its invoices until it obtains court approval or has abided by the requirements in the order approving the *Motion for an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Doc. 147].

20.

Stolier will comply with all of the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any orders of this Court with respect to fee and expense reimbursement applications of professionals employed by a bankruptcy estate.

No Prior Request

21.

No prior request for the relief sought in this Application has been made to this or any other Court.

WHEREFORE, the Debtors respectfully request that this Court approve the retention and employment of Jack M. Stolier and the law firm of Sullivan Stolier, LC as special counsel in these chapter 11 cases; and, for such other and further relief as may be just and equitable.

Respectfully Submitted:

By: /s/ Noel Steffes Melancon

William E. Steffes, #12426

Barbara B. Parsons, #28714

Noel Steffes Melancon, #30072

STEFFES, VINGIELLO, MCKENZIE, LLC

13702 Coursey Boulevard Building 3

Baton Rouge, LA 70817

Telephone: (225) 751-1751

Facsimile: (225) 751-1998

Email: nmelancon@steffeslaw.com

Counsel for Debtors

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

IN RE:

PROGRESSIVE ACUTE CARE, LLC, et al

CASE NO. 16-50740

DEBTORS

CHAPTER 11

**AFFIDAVIT OF JACK M. STOLIER IN SUPPORT OF THE
APPLICATION FOR AN ORDER AUTHORIZING EMPLOYMENT OF THE LAW
FIRM OF SULLIVAN STOLIER, LC AS SPECIAL COUNSEL**

Pursuant to section 329(a) of title 11 of the United States Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Bankruptcy Code”) and Rules 2014 and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”),

Jack M. Stolier hereby certifies as follows:

1. I am a member in the law firm of Sullivan Stolier, LC (“Sullivan Firm”).
2. I have reviewed and agree with all statements contained in the above-referenced Application by the Debtor for Entry of an Order Authorizing the Employment and Retention of the law firm of Sullivan Stolier, LC as Special Counsel (the “Application”); and, submit this Affidavit in support thereof.
3. The Debtors propose to retain the Sullivan Firm as special health care counsel to assist in the preparation of various sale documents and ensure compliance with state and federal health care regulations.
4. To the best of my knowledge, based on the information provided by the Debtors to me, and except as expressly set forth herein, neither I nor any partner, counsel or associate of the Sullivan Firm, nor the firm itself, in so far as I have been able to ascertain, have any disqualifying connection with the Debtors, their creditors, or any other party-in-interest in the Debtors’

bankruptcy cases, or their respective attorneys or other professionals, or any employee of the Office of the United States Trustee, with respect to the matters in which they are to be employed.

5. In accordance with Bankruptcy Code Section 327(a), neither I, nor any partner, counsel or associate of the Sullivan Firm, nor the firm itself, represents, will represent, holds or will hold any interest adverse to the Debtors or their Estates with respect to the matters upon which Sullivan Firm is proposed to be engaged through this Application.

6. The Debtors have agreed to pay legal fees to the Sullivan Firm on an hourly basis as set forth in the Application at rates that are based on the seniority and expertise of Sullivan Firm professionals and paraprofessionals.

7. This compensation arrangement is consistent with arrangements entered into by the Sullivan Firm for similar services provided for clients such as the Debtors for representation of the type and complexity described in the Application.

8. These hourly rates and any applicable hourly rates as may be agreed to by the Debtors and the Sullivan Firm are subject to periodic adjustments to reflect economic and other conditions.

9. It is the policy of the Sullivan Firm to charge its clients in all areas of service for all other expenses incurred in connection with the client's account. The expenses charged to clients include, among other things, mail and express mail charges, special or hand delivery charges, telephone conference calls, photocopying charges, travel expenses, computerized research, messengers, couriers, postage and other disbursements related to the representation.

10. Subject to the Court's approval, and in accordance with Section 330(a) of the Bankruptcy Code, the Sullivan Firm intends to (a) charge for its legal services in one-tenth (.10) hour increments in accordance with its agreed hourly rates in effect on the date services are

rendered; (b) seek reimbursement of actual and necessary out-of-pocket expenses; (c) be paid in accordance with the administrative order for interim compensation entered in this case; and, (d) apply to the Court for payment of compensation and reimbursement of expenses. The Sullivan Firm will maintain and submit with its fee applications detailed daily time entries for each individual service in one-tenth (.10) hour increments explaining the services provided, as well as a categorized summary of all disbursements and expenses for which the Sullivan Firm is seeking reimbursement.

11. The Sullivan Firm represented Progressive Acute Care, LLC (“PAC”) prior to the Petition Date in health care matters but did not receive any payments in the one year preceding the Petition Date. The Sullivan Firm is owed \$4,626.51 for services and expenses incurred by PAC prior to the Petition Date. By virtue of these outstanding fees and expenses, the Sullivan Firm is a creditor of PAC; and, the Sullivan Firm understands that it may not seek to collect said debt from any of the Debtors and is bound by whatever plan is ultimately confirmed herein.

12. The Sullivan Firm will comply with all of the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any orders of this Court with respect to fee and expense reimbursement applications of professionals employed by the bankruptcy estate.

13. The Sullivan Firm will comply with all requirements for appearance in this Court as special counsel for the Debtor.

14. No promises have been made by the Sullivan Firm, nor any partner, counsel or associate thereof, with respect to sharing any compensation the Sullivan Firm may receive in connection with its representation of the Debtors as proposed in the Application.

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Jack M. Stolie

JACK M. STOLIER

Sworn to and subscribed before me at Baton Rouge, Louisiana, this 7th day of July, 2016.

/s/ Catherine Noel Steffes Melancon

NOTARY PUBLIC

Name: Catherine Noel Steffes Melancon

Number: LA Bar No. 30072

My commission expires upon death.

SULLIVAN | STOLIER

SULLIVAN STOLIER KNIGHT LC
909 POYDRAS STREET, SUITE 2600
NEW ORLEANS, LOUISIANA 70112
P. 504.561.1044
F. 504.561.8606

JACK M. STOLIER
lstolier@sullivanstolier.com

July 6, 2016

**Confidential Attorney/Client Communication
Via Certified Mail**

Daniel Rissing, CEO
Progressive Acute Care
2210 7th Street
Mandeville, LA 70471

RE: Terms of Representation
Our File No: 4607-02

Dear Mr. Rissing:

We are pleased that you have retained Sullivan Stolier LC (the "firm" or "we") in the above referenced matter. This letter will set forth the scope and terms of our engagement in this matter between Progressive Acute Care, ("Company") and the firm. Specifically, you have requested that the firm provide the Company with health care counsel in a Chapter 11 bankruptcy reorganization. Further, the firm understands that the engagement and future payments are conditioned upon bankruptcy court approval of same. If, for any reason, you disagree with any of the terms or conditions stated in this letter, please contact us immediately.

As counsel for the Company, we will strive to render the legal services requested by the Company in conformity with the ethical standards imposed by the Rules of Professional Conduct for Lawyers as adopted by the Louisiana Supreme Court. To avoid errors in communication and the incurring of unauthorized expenses, we will accept instructions concerning this engagement or any additional work only from you or a designee.

Limitation of Representation:

Our representation is limited to matters described above, and we owe and undertake no duty of ongoing representation in this or other matters. Our duties to the Company under this engagement will end when we have completed our specific assignments. Any future representation and any obligation to notify the Company of any deadlines occurring after completion of the work described above, including any deadline for any future filings, recordation, reinscription, renewal, termination, notice, exercise of rights or other actions are not a part of this engagement. We hereby expressly disclaim any responsibility for any such action unless such future representation or obligation is covered by a separate engagement memorialized in writing between the Company and the firm.

NEW ORLEANS

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LAFAYETTE

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Fees:

The firm's fees are based primarily on the billing rate and time spent by each attorney and legal assistant devoting time to the engagement. The firm's billing rates for attorneys currently range from \$225 to \$495 per hour; paralegals and law clerks are billed at the rate of \$110 per hour. My hourly rate for the work associated with this matter will be \$395 per hour.

Factors other than time may be taken into consideration in determining the total time charged by the firm. These factors include, but are not limited to, the complexity or novelty of the matter, time constraints imposed by the Company, the likelihood that acceptance of an assignment may preclude or limit the firm's ability to accept assignments from other clients or potential clients, the responsibility or risk assumed by the firm, and unforeseen circumstances arising during the course of representation. Our hourly rates are subject to adjustment on an annual basis. You will be notified in advance of any adjustment to our hourly rates for this engagement.

Client-Specific Costs:

In the course of representing the Company, we will incur certain expenses, (such as photocopies, filing fees, court costs, witness fees, deposition transcripts, long distance telephone charges, travel expenses, computerized legal research, expert charges, third-party vendor charges, copying or production of records, postage, mileage) specific to the representation. We will include such client-specific costs itemized on the monthly invoice.

Retainer:

Firm policy requires the payment of an advance retainer for each new client. Therefore, please include a check payable to the firm in the amount of \$10,000. The retainer will be kept in trust, and as the retainer is used, additional retainer funds will be required.

The amount of the retainer does not constitute a limit on, or estimate of, the firm's fees for this representation. To the extent that the fees and costs invoiced by the firm in its representation hereunder do not exceed the retainer amount unearned by the firm and therefore remaining in the firm's trust account, we will refund the unearned portion of the retainer without interest.¹

Invoices:

The firm issues invoices for services rendered plus expenses advanced to our clients on a monthly basis. Payment is requested upon receipt of the invoice. We reserve the right to terminate our relationship with the Company in the event the Company does not timely pay our invoice.

¹ Please note that all interest earned on retainers and other client funds deposited in the firm's trust account are governed by orders issued by the Louisiana Supreme Court. The orders require that all interest earned on client funds be transferred to the Louisiana State Bar Association for allocation by it to organizations that fund legal services for the indigent.

Protected Health Information:

To the extent that you or another Company representative furnishes us with any protected health information ("PHI"), as defined at 45 CFR 164.501, we agree to comply with the Health Insurance Portability and Accountability Act's ("HIPAA") privacy regulations and security regulations. We agree to provide the Company with notice in the event PHI is disclosed in a manner inconsistent with HIPAA's regulations.

Conflicts of Interest:

We have performed a conflict of interest inquiry and did not discover any conflict of interest that would prevent us from undertaking this representation. However, the firm currently represents clients that operate throughout the United States. Thus, a conflict of interest could arise in the future if a client were to become adverse to another firm client. We screen each client assignment with potential adversary implications. If we detect a conflict of interest, we will bring it to the Company's attention and attempt to resolve the conflict in an open and ethical manner. As a result, the Rules of Professional Conduct or firm policy may require that we decline a particular proposed assignment, and in rare instances, our ethical obligations may require that we terminate our relationship with one or both parties involved in the conflict.

Record Retention Policy:

At the conclusion of the representation, any original company documents provided to the firm will be returned to you. It is the firm's policy to maintain all closed files for a period of five years. Please advise the firm in writing if you wish to take possession of your closed files after the five-year period; otherwise, the firm will destroy the records in accordance with its record-retention policy.

Termination of the Attorney/Client Relationship:

The Company may terminate its relationship with the firm at any time and for any reason. Conversely, we reserve the right to withdraw as the Company's attorney, but only after giving reasonable notice to you, and further, such withdrawal shall always be subject to the ethical restrictions imposed by the Rules of Professional Conduct referred to above. In addition, it is the firm's policy that after 120 days of no activity on a file, we will send you a disengagement letter. However, termination of the attorney/client relationship would not affect the Company's obligation to pay the firm's fees for services rendered or expenses advanced by us on the Company's behalf prior to such termination or withdrawal. The Company's failure to honor the payment schedule set forth herein will serve as automatic grounds for withdrawal by the firm.

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Conclusion

The Company shall notify the firm if it does not wish the firm to proceed with the engagement for any reason, and the firm reserves the right to withdraw from the representation in accordance with the Rules of Professional Conduct.

Please contact me if you have any questions regarding these arrangements.

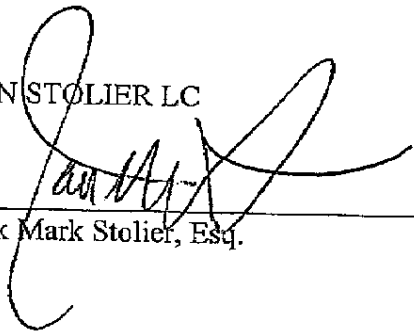
We look forward to this representation and thank you for selecting our firm

Sincerely,

SULLIVAN STOLIER LC

By: _____

Jack Mark Stolier, Esq.



JMS/lfv

ACCEPTED BY: ..

Daniel Rissing, CEO

July 6, 2016