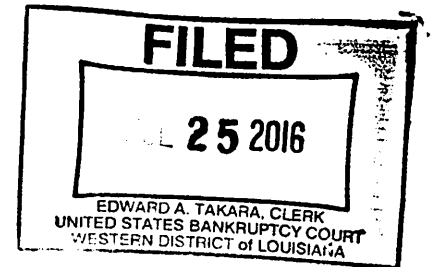


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
Lafayette Division



IN RE:

CASE NO. 16-50740

PROGRESSIVE ACUTE CARE, LLC, et al.

CHAPTER 11

DEBTORS

JOINTLY ADMINISTERED

MOTION IN OBJECTION TO DEBTOR DOCKET NO. 183 MOTIONS UNDER 11 U.S.C. SECTION 363(b) AND (f) AND 365 FOR: (I) PRELIMINARY ORDER (i) APPROVING BIDDING PROCEDURES AND STALKING HORSE BID AND FEE, (ii) PRESCRIBING NOTICE REQUIREMENTS, AND (iii) SETTING HEARING DATE, TIME AND PLACE FOR AUCTION SALE OF DEBTOR'S PROPERTY; AND, FOR (II) ORDER APPROVING SALE OF ASSETS AND ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES AND AMOUNTS OF CURE, IF ANY, RELATING THERETO

NOW INTO COURT, comes Richard Hylland, who has filed Proof of Claim No. 18 in this Case No. 16-50740 evidencing his position as a creditor of Progressive Acute Care, LLC ("PAC") (Richard Hylland referred to as "Claimant" herein). Claimant respectfully herby moves the Court to (i) disallow PAC's proposed and submitted request for a preliminary order approving certain bidding and notice procedures and a Stalking Horse Bid and fee, setting certain times to govern competitive bidding at an auction sale (the "Auction") of certain assets (being the real estate, equipment, inventory, accounts receivable, tangible personal property and intangible personal property (collectively "the Purchased Assets"), and specifically excluding cash and certain other assets of the Debtors' estates (collectively "the Excluded Assets"), and establishing the notice requirements; and, (ii) a final order approving the sale pursuant to Section 363 (b) and 363 (f) of the Bankruptcy Code, free and clear of all liens, claims, and encumbrances, and approving the assumption and assignment of certain executory contracts and leases as well as setting cure amounts, if any, related thereto pursuant to Section 365 of the Bankruptcy Code (the "Motion"), all as described in Debtor's Motion in Case No. 16-50740 Docket No. 183.

Background

1.

On May 31, 2016, PAC and its subsidiaries and affiliates Progressive Acute Care Avoyelles, LLC, Progressive Acute Care Oakdale, LLC and Progressive Acute Care Winn LLC (collectively "Debtors") filed voluntary petitions for relief under Chapter 11 of title 11 of the U.S. Code (Bankruptcy Code"). Debtor's continue to operate their businesses in the ordinary course as debtors-in-possession, pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2.

For years leading up to Debtor's Chapter 11 filing, both Debtor's Board and management were well aware of and informed on multiple occasions of Debtor's deteriorating financial position. In fact, even prior to Debtor's failed acquisition of Dauterive Hospital in New Iberia, LA, Debtor's Board and management was notified of the risks and heightened scrutiny such an acquisition would pose to Debtor's existing equity owners who are now subsequently in the dire situation of losing their entire cash investment as a result of Debtor's failed growth plan. As two examples of such notifications, among numerous others included in Proof of Claim No. 18, provided months before the failed Dauterive acquisition: (1) on December 9, 2012, Debtor management and inside Board Members Chairman Mike Hurlburt, CEO Dan Rissing and CFO Wayne Thompson were presented, at the request of Chairman Hurlburt, with a Summary Evaluation of Debtor's growth plan which included highlighting the weaknesses in management's capabilities including, but not limited to, Reporting and Management Control Processes, Governance and Board Processes, Growth Capabilities/Resources and Historical Investor/Debt Holder Relations Mindset & Transparency as well as specific Dauterive acquisition process evaluations in the areas of Assumption Bullet Proofing and Support, Financial Projection Processes, Integration Plans , among many others (Exh. A) and (2) On January 23, 2013, PAC Board Member Dan Newell was notified with an expansive correspondence of the additional actions and scrutiny required at

the Board and management level to overcome the heightened diligence oversight with an acquisition as risky as Dauterive including the following specific notifications, among numerous others, "As you are well aware in experiencing the historical capability and track record of PAC's management team in evaluating, funding and integrating its initial three hospital acquisitions, avoiding the mistakes made in these initial transactions will be critical to the success of a potential Dauterive transaction, particularly in light of the lightly leveraged factor at 3X+ the level of external bank debt used in the initial acquisitions." and "Avoiding a replay of post-transaction debt defaults that could destroy PAC shareholder value is paramount to your external Board member oversight and the continued Board guidance and evolution to mitigate the risk through implementing enhanced PAC financial management and projection capabilities." (Exh. A) Given Debtor's failure to manage and govern the Dauterive post-acquisition activities as highlighted above and detailed throughout Proof of Claim No. 18 included as Exhibit A, it should be no surprise that Debtor was required to file under Chapter 11 of the Bankruptcy Code. Subsequent to these notifications and despite the perils highlighted by Claimant and others related to the Dauterive acquisition, Debtor's management and Board continued to pursue and ultimately close the Dauterive transaction. To fund the Dauterive acquisition, Debtor's management and the Board chose to undertake a private placement memorandum process under the expedited Regulation D procedures in U.S. Securities and Exchange Commission securities regulations in addition to closing a bank debt arrangement with Business First Bank. Included in Exhibit A are various documents highlighting questionable processes utilized in connection with Debtor's private placement memorandum that will be addressed in separate future actions and/or motions both within and outside Debtor's Chapter 11 filing. In connection with Debtor's bank debt agreements with Business First Bank, although such agreements have not been provided to Claimant, it has been reported that Debtor's inside Board and management members Chairman Mike Hurlburt, CEO Dan Rissing and CFO Wayne Thompson entered into personal

guarantee arrangements with Business First for allegedly an amount of \$1 million each for a total of \$3 million. As supported by the attached Affidavit in Exhibit B, Claimant talked directly to Mr. Robert Bond ("Bond") of Business First Bank on July 18, 2016, designated bank contact for the PAC Bankruptcy, whereby Mr. Bond was asked the question "Is Business First Bank going to call the PAC management guarantees for the benefit of the bankruptcy estate in addition to the Debtor unsecured creditors and equity owners?" to which Mr. Bond replied "That is confidential information between the Debtor and Business First Bank, but given the sale process contemplated in the PAC bankruptcy it would be highly unusual for Business First Bank to take the step of seeking recovery under the management personal guarantees". Further, Mr. Bond was asked the question "If it were demonstrated that Debtor management had undertaken activities of an irregular nature in relation to the Business First Bank arrangements, would Business First Bank undertake recovery actions against Debtor management?" to which Mr. Bond replied "We are not aware of any irregularities related to Debtor's management". (Exh. B)

Via continued notification and pleading to both Debtor management and Board after closure of the Business First Bank debt agreement as early as late 2013 and early 2014 as detailed in Proof of Claim No. 18 attached as Exhibit A, Claimant provided numerous correspondence to Debtor of both actions required under "zone of insolvency" status as well as actions required in prompting the recovery of funds from Debtor management's personal guarantees for use in Debtor's dire financial situation for the benefit of its operations, unsecured creditors and equity owners. In fact, such notifications included the specific requests to Chairman Hurlburt and Debtor's Board on December 31, 2013 as follows "...In the event that Progressive management has overstated and now botched critical year one 2013/2014 financial projections for Dauterive Hospital and its existing operations as represented to Progressive's banks (in addition to equity investors through PPM documents), which will or could potentially cause Progressive to be under default or event of default of its bank and/or creditor agreements, management

and the Board are potentially obligated to comply with established “zone of insolvency” obligations to Progressive’s creditors”, “You have been keenly aware through numerous correspondence and discussions we had throughout 2012 regarding the crucial requirement that you and Progressive management provide full, accurate, honest, timely and transparent financial statements/disclosures/projections to equity investors under federal and state securities laws and banks and/or creditors under federal and state bank disclosure laws and other statutes.” and “Progressive’s legal counsel, auditors and D&O insurer counsel should be notified immediately if such event of default, “zone of insolvency” or legal compliance issues are or have been present to determine the ramifications on Board and/or management actions in 2013 and now into 2014.” (Exh. A) and on April 8, 2014 as follows “...as a material creditor of Progressive, I hereby demand Progressive, its Board and its management: (1) immediately inform Progressive’s broad creditor base of its current financial status and projected financial position through the life of its bank debt agreements and beyond in compliance with “zone of insolvency” and “financial reorganization” practices, if necessary; (2) take any and all necessary actions to ensure that Progressive’s creditors, including myself, are paid prior to preferential payments, tax distributions or compensation to inside equity holders and inside Board members; (3) inform Progressive’s banks, as applicable, of any obligations that they may have to undertake collection activities on all debt guarantees under existing credit agreements (including, but not limited to, guarantor collateral liquidation, judgment and garnishment procedures, if applicable) so that Progressive is funded with proceeds to pay its overdue payables”.(Exh. A)

Accordingly, from the partial facts summarized above and further detailed throughout Proof of Claim No. 18 included as Exhibit A, after proceeding with the failed acquisition of Dauterive Hospital and related funding therefore, Debtor’s management and Board were then fully aware of Debtor’s dire financial position for years prior to Debtor’s May 31, 2016 Chapter 11 filing, but failed to fully undertake virtually any of the actions Claimant requested until it was too late. Additionally, Debtor’s Business First

Bank has chosen to not pursue any Debtor management personal guarantee's to date, such failure to do so thereby detrimental to Debtor's unsecured creditors and equity holders.

3.

Debtor now incredibly proposes to the Bankruptcy Court, as its only viable alternative, that the Court approve an asset sale and liquidation process that makes no mention and apparently ignores Debtor management's guarantee obligations in addition to egregiously paying out and preferentially honoring the Debtor management employment contracts of Chairman Mike Hurlburt, CEO Dan Rissing, CFO Wayne Thompson and CLO Hector Lopez, the very management team who are completely in self-serving conflict of interest on this matter and who failed in managing Debtor's operations resulting in this Chapter 11 bankruptcy. Evidence of this egregious proposal to the Court is included throughout Debtor's Docket No. 123 and 183 filings by, among other examples, (1) Debtor's disputing of virtually all unsecured creditor claims except those of Debtors Board members James Case, Michael Genoff and Dan Newell and Inside Board management members Chairman Mike Hurlburt, CEO Dan Rissing and CFO Wayne Thompson and (2) via Debtor's proposed asset sale document, particularly Exhibit 5.9 of such document under the caption "Management Contracts", where Debtor's Board and management have required that the asset purchaser assume and pay out the management employment contracts of Chairman Mike Hurlburt, CEO Dan Rissing, CFO Wayne Thompson and CLO Hector Lopez, among others, to the detriment of Debtor's unsecured creditors and equity holders (see Exhibit C-Debtor's Dockets No. 123 and 183).

4.

In attempting to sway the Court to approve its only proposed solution of asset sale, Debtor dramatically provides the one-sided background of a "painstaking and extensive process" undertaken by its consultant SOLIC to try and successfully sell Debtor assets. By Debtor's own admission, this initial proposed sale of the Dauterive Hospital assets was a failure by Debtor's Board, management and SOLIC.

As Debtor wrote in Docket No. 183 "PAC completed the sale of Dauterive Hospital to Iberia Medical Center in January 2016, but at a much lower price than originally negotiated". (Exh. C) In further attempts to mislead the Court to approve its proposed Docket No. 183 motions, Debtor provides inconsistencies and dramatic cites related to the General Motors, Chrysler and Braniff Bankruptcy proceedings. Specifically, Debtor states in Docket No. 183 that "Because these Debtors are projected to suffer negative cash flow if they continue to operate the three remaining Hospitals through the long process of obtaining confirmations of Chapter 11 Plans that would provide for a sale of the Purchased Assets, exigent circumstances exist in this case that justify a sale of the Assets pursuant to Section 363 prior to confirmation of Chapter 11 plans for the benefit of Debtor's estate" while Debtor CFO Wayne Thompson, under penalty of perjury, declared in Official Form 202 included in Docket No. 123 that Debtor's Operating Income was over \$2.1 million for the year ended December 31, 2015. (Exh. C) Yet, as has been typical of Debtor management's "behind the curtain" approach, CFO Wayne Thompson provides no projections of post-2015 operating performance while also citing that Debtor's Crowe Horwath, LLP 2015 audit is "in progress" over 180 days delayed after year end. (Exh. C)

Incredibly again, by detailing the Stalking Horse Bid from Allegiance Health Management, Inc. included in Docket No. 183 that provides only a net \$10.5 million cash payment to Debtor's estate (while preferentially paying out Inside Board and management member Chairman Mike Hurlburt, CEO Dan Rissing and CFO Wayne Thompson employment agreements), Debtor is presenting the continued probable failure of Debtor's Board, management and SOLIC by the Stalking Horse Bid fetching only around 50% of the \$20.9 million appraised value declared by CFO Wayne Thompson, under penalty of perjury, in Docket No. 123 filed just less than 30 days ago on June 27, 2016. (Exh. C) It would seem to be no coincidence, as proposed by Debtor, its Board and management, that the \$10.5 million Stalking Horse Bid net proceeds to Debtor's estate, prior to assumption of certain employee liabilities and leases but excluding essentially all of Debtor's unsecured creditor debt, is virtually identical to the Business

First Credit agreement amount of \$10.5 million as also declared by CFO Thompson in Docket No. 123 under penalty of perjury. As Bond of Business First Bank provided, the bank has not called Debtor Insider management guarantees for the benefit of Debtor's estate, unsecured creditors and equity holders. Apparently, the bank would be comfortable with a Stalking Horse Bid at 50% of appraised value for Debtor's assets of \$20.9 million as declared by CFO Wayne Thompson instead of also calling the management guarantees for the benefit of Debtor's estate, unsecured creditors and equity holders.

RELIEF REQUESTED

5.

Given the substantial losses being faced by the Debtor's unsecured creditors and equity investors who relied on the competence, judgment, legality and integrity of Debtor's Board and management (each of whom are now conflicted with self-interest, self-dealing protection motivations in these Case 16-50740 proceedings), only to be exposed to the failure of Debtor's Board and management in achieving any success with Debtor's growth and value creation plan resulting in the horrific prospects of total investment loss unless this Court allows certain appropriate recovery and evaluation mechanisms to proceed and be implemented in this Chapter 11 forum,

WHEREFORE: Claimant respectfully requests that the Court disallow any preferential treatment, recovery or employment agreement value to be accrued to the Debtor's Insider Board members Chairman Mike Hurlburt, CEO Dan Rissing, CFO Wayne Thompson and CLO Hector Lopez and Board members James Case, Michael Genoff and Dan Newell via the broad self-serving provisions of Debtor's proposed Motions in Docket No. 183.

Further, Claimant respectfully requests that Debtor's proposed Stalking Horse Sale process as proposed in Docket No. 183 be disallowed in its entirety and that Debtor's Board be replaced with a new Board consisting of independent and competent members who would be free to undertake a credible evaluation of Debtor's Board and management activities, future prospects and estate value

maximization beyond Debtor's Board and management's single alternative self-serving proposals to the Court in its Docket No. 183 motions, absent the influence of Debtor's conflicted Board and management team. Claimant also respectfully requests that the new Board or a Court appointed Trustee be given the latitude to conduct any and all forensic evaluations necessary to uncover inappropriate, illegal or incompetent activities, if any, it chooses to pursue given the facts it uncovers. In the event a new Board or a Court appointed Trustee does pursue actions against Debtor's Board or management as individuals for the benefit of Debtor's estate, unsecured creditors and equity owners, Claimant also respectfully requests that the Court undertake rulings in this Case No. 16-50740 as allowed by federal bankruptcy statutes and precedents to preserve any and all recovery mechanisms, including Debtor's D&O insurance policy recovery proceeds, if any, among others, for the benefit of Debtor's estate, unsecured creditors and equity owners.

Further, whether the Court disallows Debtor's Motions in Docket No. 183 or not, Claimant respectfully requests the Court to require Business First Bank to either recover amounts potentially due under the terms of any and all Debtor management guarantees or, in the alternative, the Court should reduce Business First Bank's debt recovery by at least the amount of the guarantees available from Debtor's Insider management members. Failure to do so could potentially allow Business First Bank as only one creditor to potentially recover 100% of Debtor's proposed Stalking Horse Sale proceeds or Debtor's future operating cash inflows while other creditors and equity owners were left at least \$3 million short, all because of the discretionary, self-dealing, unilateral actions of Business First Bank. Additionally, in the event Business First Bank does call the guarantees or reduce its debt, Claimant respectfully requests under the terms of such actions that the Court preclude Business First Bank from being relieved of additional creditor liabilities, if any, to Debtor's estate, unsecured creditors or equity owners for its actions or inactions to date or in the future.

RESERVATION OF RIGHTS

Claimant reserves all rights with respect to Debtor, its officers and directors, advisors, attorneys and consultants, among others, including, but not limited to, the rights to administrative claims against the Debtor, the rights to compensation and/or damages from Debtor's Board members and officers, consultants, advisors, attorneys, consultants, banks, asset purchasers and/or their lenders or investors, among others, in addition to any and all other claims that Claimant may pursue.

Respectively submitted by

RICHARD HYLLAND

By  _____

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