



SO ORDERED.

SIGNED August 8, 2016.


ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE

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

**THIRD CONSENT ORDER AUTHORIZING THE INTERIM
USE OF CASH COLLATERAL AND GRANTING RELATED RELIEF**

Upon the *Emergency Motion for Order Authorizing the Debtors to Use Cash Collateral and Scheduling a Final Hearing* (the “Motion”) [P-16] filed by 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”), pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”);

The Motion came before the Court upon the Debtors’ request to use any cash or cash proceeds (collectively, and otherwise defined in Section 363(a) of the Bankruptcy Code, the “Cash

Collateral”) which are subject to the liens and security interests (collectively, the “Liens”) of Business First Bank (“Business First”) pursuant to, among other things, a Business Loan Agreement between Business First and the Debtors dated April 30, 2013, as amended (together with all security agreements, promissory notes, deeds of trust, instruments, certificates, and other documents related thereto, and all amendments to any of the foregoing, the “Loan Documents”);

This Court having reviewed the Motion and all matters brought to its attention at the preliminary hearing held on June 2, 2016 and again at hearings held on June 28, 2016, and on August 4, 2016, pursuant to Bankruptcy Rule 4001; and, it appearing that the relief requested in the Motion to the extent granted by this Third Interim Order, is in the best interest of the Debtors, their estates and creditors, and that Business First has consented to entry of this Third Interim Order; and, after due deliberation and consideration;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis *nunc pro tunc* as of May 31, 2016 (“the Petition Date”) on the terms set forth in this order (“Third Interim Order”). Any objections to the Motion and/or entry of this Third Interim Order that have not been previously withdrawn or resolved are hereby overruled. Subject to the terms set forth below, this Third Interim Order is valid and binding on all parties in interest and shall be immediately and fully effective upon its entry.

2. Use of Cash Collateral. The Debtors are authorized, pursuant to section 363(c)(2)(A) of the Bankruptcy Code to use Cash Collateral in accordance with the updated budget attached hereto as Exhibit A (“Budget”), for a period from the Petition Date through and including the earliest to occur of (the “Termination Date”): (a) the payment in full or refinance of all of the Debtors’ obligations under the Loan Documents in their entirety, (b) the occurrence of a

“Termination Event” (as hereinafter defined), or (c) September 13, 2016.

3. Notwithstanding anything contained herein, Business First shall have no obligation, pursuant to this Third Interim Order or otherwise, to allow the Debtors to use any Cash Collateral following the Termination Date except with respect to the “carve out” provisions contained in this Order. The Debtors reserve the right to seek Court approval of the continued use of Cash Collateral after the Termination Date.

4. Reporting of the Debtors. The Debtors shall continue to provide Business First and the Official Committee of Unsecured Creditors (the “Committee”) with a report detailing the expenditures made and the use of the Cash Collateral pursuant to this Third Interim Order (or any extension thereof) by the fourth Wednesday of each month. Without limiting the foregoing, the Debtors shall continue to produce all financial statements, reports, and other documents required under the Loan Documents in the manner and the timeframes specified in those documents. Upon reasonable written notice to the Debtors, Business First (and/or its agents) shall have the right to examine and audit the Debtors’ books and records.

5. Adequate Protection Lien. In addition to all existing security interests and liens granted to or for the benefit of Business First in and upon the Debtors’ pre-petition property, as adequate protection for (a) the use of the Cash Collateral pursuant to the terms of this Third Interim Order, any final order approving use of cash collateral or any subsequent order or pursuant to Section 363(c) of the Bankruptcy Code, or (b) the imposition of the automatic stay pursuant to Section 362(a) of the Bankruptcy Code, and without the necessity of any further act or documentation, Business First has been and continues to be granted, pursuant to Section 361(2) of the Bankruptcy Code, perfected liens and security interests on the Debtors’ post-petition properties of the kind and nature that Business First holds in the Debtors’ pre-petition property (the

“Replacement Collateral”), to the extent Business First does not already have the same, in the same priority as Business First held in the Debtors’ pre-petition property. The replacement liens and securities granted to Business First by the prior Interim Order [Doc. 89] (the “Interim Order”) and continued by this Third Interim Order (i) shall attach and become valid, enforceable and fully perfected without any action by the Debtors or Business First, and no filing or recordation or other act that otherwise may be required under federal or state law in any jurisdiction shall be necessary to create or perfect such liens and security interests, and (ii) shall be, and shall at all times remain, senior in rank and priority to any and all other liens on the Replacement Collateral other than valid, perfected and enforceable liens existing on the Petition Date, if any, which are senior to the Liens on such property in favor of Business First. If Business First hereafter requests the Debtors to execute and deliver to Business First financing statements, security agreements or other instruments or documents considered by Business First to be necessary or desirable to further evidence the perfection of the liens and security interests granted herein, the Debtors are authorized and directed to execute and deliver such documents.

6. Adequate Protection Payments. As further adequate protection, and pursuant to Section 361(1) of the Bankruptcy Code, the Debtors shall pay to Business First, on or before June 15, 2016, and monthly thereafter on or before the 5th day of each successive month, accrued unpaid interest at the contractual non-default rate as set forth in the Loan Documents on the revolving line of credit with Business First evidenced by, among other things, that certain promissory note in the original principal amount of \$3,000,000.00 dated May 5, 2015, as amended (“LOC Note”); in addition, on or about June 15, 2016, the Debtors have paid Business First one monthly contractual installment of \$82,010.00 on that certain promissory note executed on April 30, 2013, in the original principal sum of \$20,700,000.00, with an original maturity date of May 5, 2018, as

amended (“Term Note”), identified as Loan No. 3700105, and shall pay additional contractual monthly installments on said Term Note in the same amount on or before September 5, 2016, and on the 5th day of each successive month thereafter.¹

7. Termination Events. The occurrence of any of the following shall constitute a “Termination Event” under this Order except to the extent Business First waives in writing its rights and remedies in respect of such Termination Event: (a) the Debtors fail to timely comply with any terms, covenants, provisions, or agreements contained in this Third Interim Order; (b) the Debtors fail to comply with any terms, covenants, provisions, or agreements contained in the Loan Documents pertaining to insurance coverage on the property and collateral securing the LOC Note and/or the Term Note and the payment of taxes and assessments imposed upon the Debtors or their properties, income or profits that, if unpaid, might become a lien or charge upon the property and collateral securing the LOC Note and/or the Term Note; (c) the entry of an order dismissing any of the Debtors’ Chapter 11 cases; (d) the entry of an order converting any of the Debtors’ Chapter 11 cases to one under Chapter 7; (e) the entry of an order appointing a Chapter 11 trustee, chief responsible officer, or examiner with powers over the operation and business of any Debtor (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code); (f) the Debtors’ assertion that any of the terms and conditions of this Third Interim Order are not valid and binding; (g) if, on an aggregate cumulative basis, cash disbursements exceed the cash disbursements projected in the Budget, provided, however, that there shall be an allowed 15% variance to the aggregate cumulative amount of cash disbursements scheduled to be made pursuant to the Budget; or (h) if this Court has not entered a final order (or a fourth extended Interim Order)

¹ The Debtors and Business First acknowledge that the adequate protection payments required to be made by the Interim Order [Doc. 89] and Second Interim Order [Doc. 146] through August 4, 2016, have been timely paid to Business First by the Debtors.

with respect to the Motion on or before September 13, 2016.

8 Reservation of Rights. Notwithstanding anything in this Third Interim Order to the contrary, all legal and equitable rights, if any, of the Debtors, their estates, the Committee and Business First are preserved and deemed not waived, including but not limited to:

- (a) The Debtors' rights to seek a surcharge under 11 U.S.C. § 506(c);
- (b) The right of Business First to object to any future requests for authorization to use cash collateral, to seek relief from the automatic stay of 11 U.S.C. §362 or to file any other motion for relief under the Bankruptcy Code;
- (c) The right of Business First to resist and defend against any attempts to seek a surcharge under 11 U.S.C. § 506(c) or to assert rights of setoff, compensation and/or recoupment under 11 U.S.C. § 553 or otherwise;
- (d) The Debtors' rights to assert that the proceeds of all accounts receivable and on hand and in bank accounts do not constitute "cash collateral" as defined in Section 363, and that Business First is not entitled to adequate protection for the use thereof;
- (e) The Debtors' rights under Sections 510, 544, 545, 547, 548, 549, 550, 551, and 552 of the Bankruptcy Code to avoid and/or prime any lien of Business First on the proceeds of all accounts receivable and the cash from on hand and in bank accounts; and,
- (f) All rights of Business First with respect to any guarantors or co-obligors of the indebtedness evidenced by the Loan Documents, including, without limitation, the LOC Note and/or the Term Note.

9. Borrowing Base Covenant. In addition to the Termination Events provided above, if the Debtors fail to maintain the Borrowing Base Ratio (“Ratio”) for the LOC Note advances as set forth in the Loan Documents, Business First shall have the option of giving the Debtors notice of an occurrence of a default on the Ratio (“Notice”); if the Debtors fail to cure such default on the Ratio within seven (7) business days from receipt of such Notice by either (1) generating sufficient Eligible Receivables to meet or exceed the required Ratio or (2) making a principal reduction on the LOC Note to meet the required Ratio, Business First may move the Court for relief from the automatic stay imposed by Section 362 of the Bankruptcy Code and the Debtors agree not to oppose such motion.

10. Carve Out and Super Priority. Upon the occurrence of a Termination Event, to the extent that there are not sufficient, unencumbered assets or cash deposits or reserves in the Debtors’ respective estates to pay such amounts set forth below in this paragraph, all liens on Cash Collateral securing the claims of Business First, including the replacement liens and security interests granted in Paragraph 5 herein shall be subject and subordinate to payment of the following: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C §1930(a) plus interest pursuant to 31 U.S.C. §3717; (ii) all reasonable fees and expenses incurred by a patient care ombudsman, if required and if appointed under section 333 of the Bankruptcy Code in an aggregate amount not to exceed \$10,000; and, (iii) to the extent allowed by the Bankruptcy Court at any time, and subject to the Budget, all accrued and unpaid fees, disbursements, costs and expenses of professionals or professional firms (“Professionals”) retained by the Debtors or the Committee accrued or incurred at any time before or on the date and time of the delivery by Business First of a notice of a Termination Event (“Notice of Event of Default”), whether allowed by the Court prior to or after delivery of a Notice of Event of Default; plus fees, costs and expenses

incurred by the Professionals after the date of the Notice of Event of Default in an amount not to exceed \$75,000 in the aggregate; plus any Success Fee due to SOLIC Capital Advisors, LLC (“SOLIC”) that may be due under its engagement agreement as approved by the Bankruptcy Court whether accrued or incurred at any time before or after the date and time of the delivery of the Notice of Event of Default; provided, however, that nothing in this Order shall be construed to impair the right of any party to object to any fees, expenses, reimbursement or compensation sought by any such Professionals or any other person or entity. To the extent, if any, that Cash Collateral is used to pay fees, costs, and expenses of Professionals incurred after the date of the Notice of Event of Default² resulting in a diminution of the value of the Cash Collateral Securing the claim of Business First, Business First is granted an allowed super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities and indebtedness of the Debtors, whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia*, section 364(c)(2) and (d)(1) of the Bankruptcy Code (the “Superpriority Claim”), provided, however, the Superpriority Claim shall be subject to the “carve outs” set forth above.

11. Final Hearing. The final hearing to consider approval of the Motion previously scheduled to be held on August 4, 2016 was converted by agreement of the parties to a third hearing on interim relief. The final hearing now will be held before this Court on September 13, 2016, at 10:00 a.m. CDT (the “Final Hearing”). Pursuant to Bankruptcy Rule 4001(b)(3), counsel to the Debtors shall provide notice of the Final Hearing and a copy of this Interim Order to (a) the United States Trustee, (b) counsel for Business First, (c) the members of the official Unsecured Creditors’

² Exclusive of the Success Fee, if any, that may be due SOLIC in its capacity as an investment banker.

Committee and counsel for same; (d) those parties in interest that have requested notice pursuant to Bankruptcy Rule 2002(g); and, (e) parties claiming a lien or security interest in the Debtors' property. Any objections to the relief sought at the Final Hearing shall be in writing, state the basis therefor, and be filed and served on counsel for the Debtors and counsel for Business First no later than September 6, 2016. Notwithstanding anything herein to the contrary, nothing herein shall be deemed to waive or limit any rights, claims or defenses that may be asserted by the Committee in connection with the Final Hearing, all of which are expressly reserved and preserved.

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Respectfully submitted by:

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| Week Ending: Week # | 8/5/16 | 8/12/16 | 8/19/16 | 8/26/16 | 9/2/16 | Total |
|---|----------------------|--------------------|----------------------|--------------------|-------------------|----------------------|
| | 1 | 2 | 3 | 4 | 5 | 5 Weeks |
| | Budget | Budget | Budget | Budget | Budget | Budget |
| Beginning Cash Balance | \$990,869 | \$322,306 | \$668,421 | \$175,702 | \$1,722 | \$990,869 |
| Cash Receipts | | | | | | |
| <i>A/R Receipts</i> | | | | | | |
| Avoyelles | 218,642 | 218,642 | 218,642 | 218,642 | 87,457 | \$962,023 |
| Oakdale | 167,874 | 167,874 | 167,874 | 167,874 | 67,150 | \$738,645 |
| Winn | 159,743 | 159,743 | 159,743 | 159,743 | 63,897 | \$702,871 |
| Physician billing at Oakdale & Winn | 13,820 | 13,820 | 13,820 | 13,820 | 5,528 | \$60,807 |
| TOTAL A/R Receipts | \$560,079 | \$560,079 | \$560,079 | \$560,079 | \$224,031 | \$2,464,346 |
| <i>Other Receipts</i> | | | | | | |
| DSH Funding | 0 | 36,382 | 0 | 0 | 0 | \$36,382 |
| 2013 Cost Report Recoupment | (24,988) | 0 | 0 | 0 | 0 | (\$24,988) |
| TOTAL Other Receipts | (\$24,988) | \$36,382 | \$0 | \$0 | \$0 | \$11,394 |
| Total - Cash Receipts | \$535,091 | \$596,461 | \$560,079 | \$560,079 | \$224,031 | \$2,475,740 |
| Operating Cash Disbursements | | | | | | |
| Salaries & Taxes | (577,092) | 0 | (577,092) | 0 | 0 | (\$1,154,185) |
| Benefits (Health, Dental, Vision, AD&D) | (203,934) | (15,877) | (201,243) | (233,768) | 0 | (\$654,822) |
| Supplies | (90,876) | (70,935) | (85,704) | (67,650) | 0 | (\$315,165) |
| Prof. Fees (Hospitalists, Pathology, etc.) | (57,755) | (32,177) | (51,177) | (44,189) | 0 | (\$185,298) |
| Contract Services | (47,173) | (73,903) | (71,210) | (67,501) | 0 | (\$259,787) |
| Repairs & Maintenance | (9,525) | (5,000) | (8,000) | (5,000) | 0 | (\$27,525) |
| Rents / Leases | (33,236) | (14,656) | (24,072) | (4,100) | 0 | (\$76,064) |
| Utilities | (38,825) | (30,298) | (25,800) | (18,200) | 0 | (\$113,123) |
| Insurance (D&O, Malpractice, & Gen Liability) | 0 | 0 | 0 | (89,150) | 0 | (\$89,150) |
| Taxes (Sales Tax) | (1,724) | 0 | (1,000) | 0 | 0 | (\$2,724) |
| Contingency | (7,500) | (7,500) | (7,500) | (17,500) | 0 | (\$40,000) |
| Total - Cash Disbursements | (\$1,067,640) | (\$250,345) | (\$1,052,798) | (\$547,059) | \$0 | (\$2,917,842) |
| OPERATING CASH FLOW | (\$532,550) | \$346,116 | (\$492,719) | \$13,020 | \$224,031 | (\$442,102) |
| Business First Bank ("BFB") | | | | | | |
| Debt Payment - Interest on LOC | (10,413) | 0 | 0 | 0 | (10,413) | (\$20,827) |
| Debt Payment - P&I on Term Loan | 0 | 0 | 0 | 0 | (82,010) | (\$82,010) |
| Total BFB Payments | (\$10,413) | \$0 | \$0 | \$0 | (\$92,423) | (\$102,837) |
| Bankruptcy Expenses | | | | | | |
| SVM (BK Counsel) | 0 | 0 | 0 | (58,000) | 0 | (\$58,000) |
| SOLIC (Financial Advisor & Investment Banker) | (89,600) | 0 | 0 | (29,000) | 0 | (\$118,600) |
| Garden City Group (Claims Agent) | (36,000) | 0 | 0 | (25,000) | 0 | (\$61,000) |
| Kean Miller / Sills Cummis (Counsel for UCC) | 0 | 0 | 0 | (75,000) | 0 | (\$75,000) |
| Quarterly U.S. Trustee Fees | 0 | 0 | 0 | 0 | 0 | \$0 |
| Total Bankruptcy Expenses | (\$125,600) | \$0 | \$0 | (\$187,000) | \$0 | (\$312,600) |
| TOTAL NON-OPERATING DISBURSEMENTS | (\$136,013) | \$0 | \$0 | (\$187,000) | (\$92,423) | (\$415,437) |
| Ending Cash Balance | \$322,306 | \$668,421 | \$175,702 | \$1,722 | \$133,330 | \$133,330 |

Notice Recipients

District/Off: 0536-4
Case: 16-50740

User: eprice
Form ID: pdf8

Date Created: 8/8/2016
Total: 7

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

tr DIP

TOTAL: 1

Recipients of Notice of Electronic Filing:

| | | |
|-----|-------------------------|-------------------------------|
| ust | Office of U. S. Trustee | USTPRegion05.SH.ECF@usdoj.gov |
| aty | Barbara B. Parsons | bparsons@steffeslaw.com |
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TOTAL: 5

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db Progressive Acute Care, LLC Post Office Box 5309 Abita Springs, LA 70420

TOTAL: 1