

**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 APPROVING ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS IN CONNECTION WITH THE ORDER AUTHORIZING
AND APPROVING BIDDING AND SALE PROCEDURES**

NOW INTO COURT, through undersigned counsel, comes Progressive Acute Care, LLC (“PAC”) as debtor and debtor-in-possession (the “Debtor”), which respectfully requests entry of an order pursuant to sections 105 and 365 of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving the assumption and assignment of a certain executory contract (the “Motion”). In support of this Motion, the Debtor respectfully represents as follows:

Jurisdiction

1.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105 and 365 of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules.

Background

2.

On May 31, 2016, the Debtor filed a petition for voluntary relief under chapter 11 of the Bankruptcy Code. A creditors' committee has been appointed in this administratively consolidated case; and, the Debtor continues to operate its business in the ordinary course as debtor-in-possession, pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3.

On July 14, 2016, the Debtor filed a *Motion Under 11 U.S.C. §§ 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 of Debtors' Property; and, for (II) Order Approving Sale of Assets and Assumption and Assignment of Certain Contracts and Leases and Amounts of Cure, if any, Related Thereto* [P-183] ("Sale Motion"), as amended on August 25, 2016 [P-282] (collectively the "Amended Sale Motion"). After notice and a hearing held on August 26, 2016, the Amended Sale Motion was granted pursuant to the final sale order [P-290] ("Final Sale Order") entered on August 31, 2016, and certain assets of the Debtors and related entities were sold to certain assignees of Central Louisiana Hospital Group, LLC ("CLHG").

4.

Through this Motion, the Debtor seeks to assume and assign to CLHG-Avoyelles, LLC, one of the assignees of CLHG, an executory contract entered into between it and Truven Health Analytics, Inc. ("Truven") on July 1, 2012 which was inadvertently not included on Exhibit A of the Final Sale Order (the "Contract") as same was amended.

Law and Argument

5.

Pursuant to 11 U.S.C. §365, the Debtor, subject to Court approval, may assume or reject any executory contract or unexpired lease of the Debtor prior to plan confirmation. A debtor-in-possession's decision to assume or reject an executory contract or unexpired lease is one of business judgment that a Debtor should exercise after determining which course of action will benefit the Debtor's estate. *Richmond Leasing Co. v. Capital Bank, NA.*, 762 F.2d 1303, 1309 (5th Cir. 1985). However, the Debtor cannot assume the executory contract or unexpired lease unless (i) all existing defaults in respect of the Lease are cured, or (ii) adequate assurance of a prompt cure or such defaults is provided. 11 U.S.C. §365(b)(1)(A).

6.

The Debtor desires to assume the Contract as necessary software is provided for the Debtor's use pursuant to the terms of the Contract. The Debtor has confirmed that CLHG-Avoyelles, LLC will promptly pay any cure amounts remaining under the contract with the exception of the amounts owed for July and August 2016, which have been paid by the Debtor. Furthermore, once the annual contract amount due is paid, no other performance will be due by CLHG-Avoyelles, LLC under the Truven contract so no additional adequate assurance of future performance is necessary under these circumstances.

7.

Under section 365(f) of the Bankruptcy Code, a trustee or debtor, after assuming a contract, may assign its rights under the contract to a third party. 11 U.S.C. § 365(f). As previously indicated, the Debtor sold certain assets to assignees of CLHG and desires to assign its rights under the Contract to CLHG-Avoyelles, LLC pursuant to the terms of the Final Sale Order.

WHEREFORE, the Debtor prays that the relief requested herein be granted and that it be permitted to assume and assign the contract entered into between it and Truven Health Analytics, Inc., and for such other relief as this Court may deem just and equitable.

Respectfully submitted by:

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