

**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

DEBTORS' OPPOSITION TO MOTION TO APPOINT TRUSTEE

NOW INTO COURT, through undersigned counsel, come Progressive Acute Care, LLC (“PAC”), Progressive Acute Care Avoyelles (“PAC Avoyelles”), LLC, 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 oppose the *Motion to Appoint Trustee* (“Motion”), filed by certain equity interests of PAC (collectively, the “Investors”), DeAnna W. Jensen Living Trust Dated Jan 26, 2012 (Dr. Wade Jensen, Trustee), Dan Kensinger, Ray Sherman, Steve Stokesbary, Steve Meyer, Grant Shumaker, and Tom Jacobson for the reasons set forth below:

1.

Each of the Debtors filed a voluntary petition for relief under title 11 of the U.S. Code (“Bankruptcy Code”) on May 31, 2016 (“Petition Date”). PAC, as sole member and manager, authorized the chapter 11 filings of PAC Avoyelles, PAC Winn and PAC Oakdale. PAC’s chapter 11 filing was authorized by its Board of Directors and by a super-majority vote of PAC’s equity holders.

2.

Through the *Motion*, the Investors seek appointment of a trustee to oversee administration of the Debtors’ estates. In support of such relief, the Investors make various allegations of

misrepresentation and conflicts of interests against PAC's management and/or its Board of Directors; however, such allegations relate primarily, if not exclusively, to Investors' claims of lost investments stemming from PAC's acquisition of Dauterive Hospital. The *Motion* is void of allegations sufficient to justify the costly appointment of a trustee; and, appears to serve no other purpose than to punish those individuals whom the Investors blame for their losses. Such purpose, however, does not support dilution of the limited assets which remain available to creditors of the Debtors' estates.

3.

Specifically, the Investors allege “[a]ppointment of a Chapter 11 trustee is appropriate because of the misrepresentation and overly optimistic projections of the financial condition of the Debtors by PAC management, duress and/or undue pressure used by PAC management and the board to force the equity unit owners to vote in favor of this bankruptcy proceeding, the failure of the board or management to pursue causes of action and collection of the guaranties against PAC management, and the conflicts of interest PAC management has as a result of the guaranties.”

4.

At the outset, the Debtors deny any allegations of intentional or negligent acts by the Board or management of the Debtors. The Debtors further note that through the Motion the Investors acknowledge authorizing the PAC Board to file these chapter 11 cases. While the Investors allege that they were not represented by counsel at the meeting to vote on such filings, they were provided with advance notice of the meeting and, thus, an opportunity to obtain counsel if desired.

5.

Secondly, with regard to the allegations related to PAC management's conflict of interests and the failure of the Board or management to pursue personal causes of action and collection of

guarantees against PAC's management, any such issues have been resolved. On October 6, 2016, the Debtors and the Committee filed a joint motion seeking entry of a consent order granting the Committee leave, standing and authority to commence, prosecute and, if necessary, settle any and all claims of the Debtors against current and former insiders of the Debtors. Through that filing and anticipated order, any conflicts of interest relating to potential claims against PAC's management or its Board will have been eliminated.

6.

In addition, as set forth in the Committee's Objection to Motion to Appoint Trustee [P-333] ("Committee's Objection"), the allegations contained in the *Motion*, even if true, do not rise to the standard required for appointment of a trustee under Bankruptcy Code Section 1104(a). The Debtors hereby adopt and incorporate herein all legal arguments set forth in the Committee's Objection.

7.

Finally, although the Investors had advance knowledge of the bankruptcy filings, they waited nearly four (4) months – *after the sale of significantly all assets of the estates* - to file the *Motion*. Given the current status of the case, *i.e.*, post-closing, and the fact that the *Motion* is supported by allegations of *pre-petition acts*, the Investors' delayed request for appointment of a trustee is neither warranted nor reasonable. As set forth more fully in the Committee's Objection, the Investors fail to offer clear and convincing evidence to support the extraordinary relief sought.

WHEREFORE, the Debtors respectfully request that this Court deny the Motion to Appoint Trustee.

Respectfully submitted by:

/s/ Barbara B. Parsons

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