

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

IN RE:

PROGRESSIVE ACUTE CARE, LLC, et al.

CASE NO. 16-50740

CHAPTER 11

JOINTLY ADMINISTERED

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**SECOND LIMITED OBJECTION FILED BY THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS TO EMERGENCY MOTION FOR ORDER  
AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL**

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The Official Committee of Unsecured Creditors of Progressive Acute Care, LLC, *et seq.* (the “Committee”) files this Second Limited Objection to the Debtors’ Emergency Motion for Order Authorizing the Debtors to Use Cash Collateral and Scheduling a Final Hearing (the “Motion”) (ECF 16), and respectfully states as follows:

**Factual and Procedural Background**

1. On May 31, 2016 (the “Petition Date”), Progressive Acute Care, LLC; Progressive Acute Care Avoyelles, LLC; Progressive Acute Care Oakdale, LLC; and Progressive Acute Care Winn, LLC (the “Debtors”) each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Louisiana (the “Court”).

2. The Debtors’ Chapter 11 cases are being jointed administered in Case No. 16-50740 in the Court.

3. On the Petition Date, the Debtors filed the Motion seeking emergency relief granting them the use of Cash Collateral<sup>1</sup> based upon an interim budget that had been agreed

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<sup>1</sup> Capitalized terms not defined herein have the meaning given to them in the Motion.

upon by the Debtors and Business First Bancshares, Inc. d/b/a Business First Bank (“Business First”).

4. The Court granted the Motion on an interim basis and entered the “*Consent Order Authorizing the Interim Use of Cash Collateral and Granting Related Relief*,” (ECF 89) on June 13, 2016 (the “First Consent Order”). The First Consent Order authorized the Debtors to use Cash Collateral in accordance with a budget until payment in full of all obligations to Business First or the occurrence of a “Termination Event,” as defined therein. The First Consent Order granted certain adequate protection liens to Business First on an interim basis and required certain adequate protection payments by the Debtors to Business First. The First Consent Order also preserved all legal and equitable rights of the Debtors and Business First, and set a final hearing for June 28, 2016.

5. The U.S. Trustee’s Office filed its Notice of Appointment of Unsecured Creditors’ Committee on June 21, 2016. *See* ECF 102. The Committee filed its first Limited Objection to the Motion on July 28, 2016. *See* ECF 222.

6. The Court granted further interim relief and extended the final hearing date on the Motion several times by interim orders submitted with the consent of the Debtor, Business First, and the Committee. *See* ECF 146, 241, 304. The “*Fourth Consent Order Authorizing the Interim Use of Cash Collateral and Granting Related Relief*” (ECF 304) (the “Fourth Consent Order”) sets October 18, 2016 as the final hearing date for the Motion.

7. The Fourth Consent Order, like the other consent orders before it, reserves all legal and equitable rights of the Debtors, their estates, the Committee and Business First. *See* ECF 304, ¶ 8. Accordingly, the Committee maintains all rights to challenge the validity, extent, rank, and priority of Business First’s liens on any of the Debtors’ property, including any Cash

Collateral and including the “Adequate Protection Liens” granted by the First Consent Order and subsequent consent orders.

8. On August 31, 2016, this Court entered an order approving the sale of certain real estate, improvements, and related assets from the Debtors to Central Louisiana Hospital Group, LLC for the purchase price of \$10,550,000.00, subject to certain adjustments (as amended, the “Sale Order”). *See* ECF 290, 322. The Sale Order provides that all “Liens and Claims” on the sold assets, aside from certain permitted exceptions, “attach to the sale proceeds with the same validity, extent, rank, and priority each had as against the Purchased Assets themselves.” *See* ECF 322, p. 5. The Sale Order also preserves the right of the Debtor, the Committee, or any other party in interest to challenge Business First’s alleged liens on the sale proceeds:

Nothing in this Order shall be deemed an admission, acknowledgment, or allowance of the validity, extent, rank, or priority of any liens, claims, or interests that may attach to the proceeds of the Sale, and any and all rights, claims, defenses, and other challenges of the Debtors, the Official Committee of Unsecured Creditors, or any other parties-in-interest with respect to the validity, extent, rank, or priority of such liens, claims, or interests are hereby expressly preserved.

ECF 322, p. 6.

9. On September 27, 2016, Business First filed a proof of claim stating the amount of its alleged claim and the secured status of that claim (the “Business First POC”). The Business First POC, without attachments, is attached hereto as Exhibit 1, and is fully incorporated herein by reference. The Business First POC states that Business First is owed \$10,314,125.10 as of September 16, 2016, plus additional accruing interest and attorneys’ fees after that date. *See* Exh. 1, p. 4.

10. The Business First POC states that the value of property securing its claim totals \$21,805,364.00. *See* Exh. 1, p. 2. Accordingly, Business First contends that its claim is protected by an equity cushion in excess of \$11.5 million dollars.<sup>2</sup>

11. On October 11, 2016, the Committee commenced an adversary proceeding against Business First that seeks, *inter alia*, to avoid Business First's liens, determine the extent, validity and priority of Business First's liens, and surcharge of Business First's collateral, if any (the "Adversary Complaint"). *See Complaint for Annulment and/or Avoidance of Obligations and Liens, Avoidance of Preferential Transfers, Declaratory Judgment, Determination of Secured Claim, Disallowance of Claim, and Surcharge of Collateral* at (ECF 331), which is fully incorporated herein by reference. As of the date of this objection, the Court has not made a determination as to the extent of Business First's liens on the sale proceeds or the amount of Business First's claim.

### **Limited Objection**

12. The Committee does not object to the Debtor continuing to use cash that may be a creditor's Cash Collateral, provided that it does so in a reasonable and responsible manner. To that end, the Committee seeks a proposed budget from the Debtors for at least the next four to eight weeks of the case.

13. The Committee also seeks information about the amount of net proceeds available after the payment of the Wraparound Note referenced in the Sale Order. The Committee has made several requests to the Debtor for a waterfall analysis of sale proceeds. The Committee has

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<sup>2</sup> Part of Business First's equity cushion may relate to assets outside the Debtor's estates. For example, Business First claims a lien on property within the Chapter 7 estate for another debtor before this Court, Progressive Acute Care Dauterive, LLC, Case No. 16-50739. *See, e.g., Business First's Motion to Prohibit Use of Cash Collateral* [ECF 20], Case No. 16-50739.

been informed that the Debtor recently asked its financial advisor, SOLIC, to assist it in preparing the waterfall analysis, which the Committee appreciates.

14. The Business First POC shows that Business First is oversecured by more than \$11.5 million dollars. Accepting the Business First POC as true for purposes of this Motion only,<sup>3</sup> the Committee submits that a \$11.5 million equity cushion is more than sufficient to adequately protect whatever interests Business First may have in the Debtor's property, including any Cash Collateral. This equity cushion adequately protects Business First while the Debtor prepares a chapter 11 plan and the Adversary Proceeding is litigated.

15. Further, the Adversary Proceeding seeks annulment and/or avoidance of obligations and liens, avoidance of preferential transfers, recovery of property, related declaratory relief, and determination of Business First's secured status. The Court should not enter a final order that grants Business First any new liens or other relief while the Adversary Proceeding is pending.

16. The Committee reserves all rights preserved by the Fourth Consent Order.

### **Prayer**

Wherefore, the Committee prays that the Court enter an order allowing the Debtors to use Cash Collateral pursuant to a budget to be agreed upon between the Debtors, the Committee, and Business First, to cover a reasonable period during which the Debtors and the Committee will be able to prepare a proposed Plan and Disclosure Statement for solicitation, and with no further adequate protection payments to Business First. The Committee also prays for all other and further relief to which it may be justly entitled.

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<sup>3</sup> The Committee reserves all rights with respect to the valuation of Business First's purported collateral, the amount of Business First's claim, the extent of Business First's liens, and all related issues.

Respectfully submitted,

Date: October 11, 2016

/s/ J. Eric Lockridge

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***Co-Counsel for the Official Committee of Unsecured Creditors***

### **Certificate of Service**

I hereby certify that a copy of the foregoing *Second Limited Objection Filed By The Official Committee Of Unsecured Creditors To Emergency Motion For Order Authorizing The Debtors To Use Cash Collateral* was served on the Office of the U.S. Trustee, the Debtor through its counsel, and all parties requesting and receiving notice through the Court's CM/ECF System on October 11, 2016.

/s/ J. Eric Lockridge

Fill in this information to identify the case:

Debtor 1 Progressive Acute Care, LLC
Debtor 2 (Spouse, if filing)
United States Bankruptcy Court for the: Western District of Louisiana
Case number 16-50740

Official Form 410

Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy(Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor? Business First Bank
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor

2. Has this claim been acquired from someone else? [X] No [ ] Yes. From whom?

3. Where should notices and payments to the creditor be sent?
Where should notices to the creditor be sent? Business First Bank c/o Sharon S. Whitlow
Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)
Name: Business First Bank c/o Sharon S. Whitlow
Address: 4041 Essen Lane Suite 500, Baton Rouge, LA 70809
Contact phone: 225-922-5110
Contact email: ssw@longlaw.com

4. Does this claim amend one already filed? [X] No [ ] Yes. Claim number on court claims registry (if known)
Filed on MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim? [X] No [ ] Yes. Who made the earlier filing?

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 10,314,125.10 Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Promissory Note

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_

**Basis for perfection:** Mortgage and Commercial Security Agreements  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** \$ 21,805,364.00  
**Amount of the claim that is secured:** \$ 10,314,125.10  
**Amount of the claim that is unsecured:** \$ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_

**Annual Interest Rate** (when case was filed) 6.00 %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- No  
 Yes. Check one:

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Up to \$2,850\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).
- Wages, salaries, or commissions (up to \$12,850\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).
- Other. Specify subsection of 11 U.S.C. § 507(a)(    ) that applies.

Amount entitled to priority	
\$	_____
\$	_____
\$	_____
\$	_____
\$	_____
\$	_____

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 09/27/2016  
MM / DD / YYYY

/s/ Sharon S. Whitlow  
 Signature

Print the name of the person who is completing and signing this claim:

Name Sharon S. Whitlow  
First name Middle name Last name

Title Attorney

Company Long Law Firm  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4041 Essen Lane, Suite 500  
Number Street

Baton Rouge LA 70809  
City State ZIP Code

Contact phone 225-922-5110 Email ssw@longlaw.com

**Statement Required Pursuant to  
Bankruptcy Rule 3001 (c)(2)(A)**

Revolving Line of Credit Promissory Note:

Principal	\$	2,015,500.00	
Interest through 9/16/16		3,695.08	
Additional interest at a per diem of \$335.95		To be calculated	
Total	\$	2,019,195.08	

Term Promissory Note:

Principal	\$	8,121,910.25	
Interest through 9/16/16		57,065.31	
Additional interest at a Per diem of \$1,353.65		To be calculated	
Total:	\$	8,294,930.02	

Attorney's fees through 9/16/16	\$	115,954.46	
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Total Amount of Claim Through 9/16/16	\$	10,314,125.10	(plus additional interest and attorney's fees)
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