



SO ORDERED.

SIGNED December 28, 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**

**SIXTH CONSENT ORDER AUTHORIZING THE INTERIM USE
OF CASH COLLATERAL, APPROVING PAYMENTS PURSUANT
TO A PLAN TERM SHEET 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

3190642

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, August 4, 2016, September 13, 2016, November 8, 2016 and December 20, 2016, pursuant to Bankruptcy Rule 4001; and, it appearing that the relief requested in the Motion to the extent granted by this Sixth Interim Order, is in the best interest of the Debtors, their estates and creditors, and that Business First has consented to entry of this Sixth Interim Order; and, after due deliberation and consideration;

On December 21, 2016, the Debtors, Business First and the Official Committee of Unsecured Creditors (the “Committee”) entered into and agreed to be bound by a term sheet (the “Plan Term Sheet”), attached hereto as Exhibit “B”, which sets forth the salient terms of a proposed consensual plan of liquidation of the Debtors’ estates that will be filed with the Court, and incorporates the terms of a global settlement with respect to the asserted secured claim of Business First and the Committee’s challenges thereto and the motion to compel a distribution filed by Business First in these cases; and,

The Debtors and the Committee have agreed to file a plan of liquidation, to be supported by Business First, based on the Plan Term Sheet.

IT IS HEREBY ORDERED THAT:

1. Motion Granted. 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 (“Sixth Interim Order”). Any objections to the Motion and/or entry of this Sixth Interim Order that have not been previously withdrawn or resolved are hereby overruled. Subject to the terms set forth below, this Sixth 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) February 3, 2017.

Notwithstanding anything contained herein, Business First shall have no obligation, pursuant to this Sixth 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 Committee with a report detailing the expenditures made and the use of the Cash Collateral pursuant to this Sixth Interim Order (or any extension thereof) by the fifth (5th) 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 Sixth 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 Orders [Docs. 89, 146, 241, 304 and 404] (the "Interim Orders") and continued by this Sixth 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 and Term Sheet Payments. As further adequate protection, and pursuant to Section 361(1) of the Bankruptcy Code, and in accordance with the Plan Term Sheet, the Debtors shall immediately pay to Business First the sum of \$1.2 million; and shall pay to Business First an additional \$100,000 from the Debtors' receipt of the Full Medicaid Payments ("FMP") due to the Debtors for the pre-Sale periods of July 2016 and August 2016 under various managed care agreements¹. The foregoing disbursements shall constitute conditional payments to Business First to be applied in accordance with the Loan Documents and the Plan Term Sheet; but which shall be subject to the claw-back rights of the Committee as set forth in the *Consent Order Regarding Conditional Disbursement of Funds* [Doc. 408] entered by the Court on December 7, 2016 and the Plan Term Sheet attached hereto. To the extent of any conflict or inconsistency between any provision of this Order and the Plan Term Sheet, the provisions of the Plan Term Sheet shall control.

The Debtors, Business First and the Committee shall use commercially reasonable best efforts to effectuate the transactions contemplated by the Plan Term Sheet.

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 Sixth 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

¹ The Debtors and Business First acknowledge that the adequate protection payments required to be made by the Interim Order [Doc. 89], Second Interim Order [Doc. 146], Third Interim Order [Doc. 241], Fourth Interim Order [Doc. 304] and Fifth Interim Order [Doc. 404] have been timely paid to Business First by the Debtors.

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 Sixth 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 seventh extended Interim Order) with respect to the Motion on or before February 3, 2017. Notwithstanding any termination provisions set forth herein, such provisions shall not be effective to the extent they are inconsistent with the Plan Term Sheet.

8 Reservation of Rights. Notwithstanding anything in this Sixth 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. 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 reasonable fees, disbursements, costs and expenses of professionals or professional firms (“Professionals”) retained by the Debtors or the Committee and 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, including any Success Fee or hourly fees due to SOLIC Capital Advisors, LLC (“SOLIC”) up to the amount stated in the Budget; and, (iv) to the extent allowed by the Bankruptcy Court at any time, all accrued and unpaid reasonable fees, disbursements, costs and expenses of Professionals retained by the Debtors or the Committee and accrued or incurred 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 that may be due under its engagement agreement as approved by the Bankruptcy Court² whether accrued or incurred at any time before or after the date and time of the delivery of the Notice of Event of Default up to the amount stated in the Budget; 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 Default (“Post-Default Fees”) 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 for the amount of Cash Collateral used to pay such Post-Default Fees, 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

² The Parties acknowledge that the Success Fee due to SOLIC has been paid in full.

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.

Notwithstanding anything herein to the contrary, no Prepetition Collateral, Postpetition Collateral, proceeds thereof, or Cash Collateral may be used by any party-in-interest to object to or contest in any manner, or raise any defenses to, the validity, perfection, priority or enforceability of the Obligations, the Liens, the Adequate Protection Liens, or the Superpriority Claims, or to assert or prosecute any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims or causes of action against Business First, after the date this Order is entered. This paragraph does not affect the use of Cash Collateral to pay fees for work performed prior to the date of the Fifth Interim Order [Doc. 404].

11. Final Hearing. The final hearing to consider approval of the Motion previously scheduled to be held on December 20, 2016, was converted by agreement of the parties to a Sixth hearing on interim relief. The final hearing now will be held before this Court on January 31, 2017, 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 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 January 24, 2017. 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.

####

Respectfully submitted by:

WILLIAM E STEFFES (LA Bar Roll No. 12426)
Steffes, Vingiello & McKenzie, LLC
13702 Coursey Blvd., Building 3
Baton Rouge, Louisiana 70817
Telephone: (225) 751-1751
Facsimile: (225) 751-1998
E-mail: *bsteffes@steffeslaw.com*
Counsel for Debtors

LONG LAW FIRM, L.L.P.
DAVID L. GUERRY (#14980)(Lead Atty)
SHARON S. WHITLOW (#21893)
MARK L. BARBRE (#30385)
4041 Essen Lane, Suite 500
Baton Rouge, Louisiana 70809
Telephone: (225) 922-5110
Facsimile: (225) 922-5105
Counsel for Business First Bank

- 10 -

3190642

United States Bankruptcy Court
Western District of Louisiana

In re:
Progressive Acute Care, LLC
Debtor

Case No. 16-50740-RRS
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0536-4

User: kcarpente
Form ID: pdf8

Page 1 of 2
Total Noticed: 1

Date Rcvd: Dec 28, 2016

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Dec 30, 2016.

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

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****

tr DIP

TOTALS: 1, * 0, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Dec 30, 2016

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 28, 2016 at the address(es) listed below:

Alan H. Goodman on behalf of Interested Party CHRISTUS Health alan.goodman@bswllp.com, kathy.moore@bswllp.com
Andrew H. Sherman on behalf of Creditor Committee Official Committee of Unsecured Creditors for Progressive Acute Care, LLC asherman@sillscummis.com
Armistead M. Long on behalf of Creditor Southern Textile Services, L.L.C. along@gordonarata.com, sroberts@gordonarata.com
Barbara B. Parsons on behalf of Debtor Progressive Acute Care Avoyelles, LLC bparsons@steffeslaw.com, akujawa@steffeslaw.com; bparsons@ecf.courtdrive.com
Bradley L. Drell on behalf of Creditor Pharmacy Service of Winnfield, Incorporated bdrell@goldweems.com, ddrago@goldweems.com; slouviere@goldweems.com
Brandon A. Brown on behalf of Creditor De Lage Landen Financial Services, Inc. bbrown@stewartrobbins.com, kheard@stewartrobbins.com
Gail Bowen McCulloch on behalf of U.S. Trustee Office of U. S. Trustee gail.mcculloch@usdoj.gov
Henry C. Perret, Jr. on behalf of Creditor DHP Iberia Rehab, L.L.C. hperret@perretlaw.com
J. Eric Lockridge on behalf of Creditor Committee Official Committee of Unsecured Creditors for Progressive Acute Care, LLC eric.lockridge@keanmiller.com, Brenda.seneca@keanmiller.com
John M. Landis on behalf of Creditor Sheridan Healthcare of Louisiana, Inc. jlandis@stonepigman.com, boneil@stonepigman.com
Joseph P. Hebert on behalf of Creditor Allen Emergency Group, LLC jphebert@liskow.com
Kimberly L. Humbles on behalf of Interested Party Louisiana Department of Health & Hospitals kimberly.humbles@la.gov
Mark J. Chaney, III on behalf of Creditor Wells Fargo Vendor Financial Services, LLC mchaney@mcglinchey.com, aparnell@mcglinchey.com
Mark P. Seyler on behalf of Creditor NES Louisiana, Inc. mseyler@barkleythompson.com
Michael H. Piper on behalf of Plaintiff Progressive Acute Care Avoyelles, LLC mpiper@steffeslaw.com, mpiper@ecf.courtdrive.com; schassaing@steffeslaw.com
Noel Steffes Melancon on behalf of Debtor Progressive Acute Care, LLC nsteffes@steffeslaw.com
Office of U. S. Trustee USTPRegion05.SH.ECF@usdoj.gov
Randall L. Wilmore on behalf of Creditor Siemens Financial Services, Inc. rwillmore@goldweems.com, atam@goldweems.com
Richard A. Aguilar on behalf of Creditor Wells Fargo Vendor Financial Services, LLC raguilar@mcglinchey.com, aparnell@mcglinchey.com
Richard J. Reynolds on behalf of Creditor Global Physicians Network, LLC rreynolds@ahgmt.com
Robin R. DeLeo on behalf of Creditor De Leo Law Firm Elaine@dreher-la.com
Ronald J. Savoie on behalf of Creditor Doerle Food Services LLC ronnie@jlaw.net, bob@jlaw.net; konrad@jlaw.net; kincaid@jlaw.net; terry@jlaw.net
Sharon S. Whitlow on behalf of Creditor Business First Bancshares, Inc. d/b/a Business First Bank ssw@longlaw.com, dawn@longlaw.com
Stephen D. Wheelis on behalf of Creditor CLECO Corporation steve@wheelis-rozanski.com
Steven E. Adams on behalf of Attorney Louisiana Department of Health and Hospitals sea2334@yahoo.com

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Thomas E. St. Germain on behalf of Stockholder DeAnna W Jensen Living Trust Dated Jan 26, 2012, Dr. Wade Jensen, Trustee ecf@weinlaw.com, wstgecfemail@gmail.com

Thomas J. Lutkewitte on behalf of Creditor TCF Equipment Finance, Inc.
tlutkewitte@favretlaw.com

Victoria Viator Theriot on behalf of Creditor Parallon Business Solutions, LLC
ttheriot@neunerpate.com

William E. Steffes on behalf of Debtor Progressive Acute Care Avoyelles, LLC
bsteffes@steffeslaw.com, akujawa@steffeslaw.com;bsteffes@ecf.courtdrive.com

TOTAL: 29