

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

**IN RE:** )  
 )  
**Iliana Neurospine Institute, LLC,** ) **CASE NO. 16-23444**  
 )  
 ) **CHAPTER 11**  
**Debtor.** )

**EMERGENCY MOTION FOR ORDER  
AUTHORIZING USE OF CASH COLLATERAL**

**TO: HONORABLE J. PHILLIP KLINGEBERGER  
UNITED STATES BANKRUPTCY JUDGE**

Iliana Neurospine Institute, LLC, debtor and debtor-in-possession (“Debtor” or “INI IN”) hereby submits this Emergency Motion for Order Authorizing Use of Cash Collateral ("Motion"), pursuant to sections 361 and 363 of Title 11 of the United States Code ("Bankruptcy Code") and Rule 4001 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") for the entry of an order authorizing the Debtor to use certain cash collateral. In support hereof, the Debtor respectfully represents as follows:

**I. BACKGROUND**

1. On December 8, 2016, (the “Petition Date”), the Debtor filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their assets as debtors-in-possession.
3. The Court has jurisdiction over this matter pursuant to 28 U.S. C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. No creditors' committee, trustee or examiner has yet been appointed in this case.

5. The statutory predicate for the relief requested herein is sections 361, 363, and 364 of the Bankruptcy Code.

6. Prior to the Petition Date, on November 29, 2016, the sole member of Debtor, Ronald Michael, M.D., also filed a voluntary petition for relief with this Court under Chapter 11 of the Bankruptcy Code.

7. Debtor is a "health care business" as defined in Section 101(27A) of the Bankruptcy Code. An application for joint administration of the bankruptcy estates will be filed with this Court in the near future.

**Description of Business of Debtor and Dr. Michael**

8. Dr. Michael is a neurosurgeon, who focuses his practice on providing care to his patients with personal injury and workers' compensation claims.

9. Illinois Neurospine Institute, P.C. ("INI IL"), was an Illinois professional corporation. On or about July 22, 2014, the assets of INI IL were merged into Iliana Neurospine Institute, LLC ("INI IN") which was the surviving entity.

10. Debtor is the entity through which Dr. Michael provides healthcare services, resulting in the creation of accounts receivable that fund its business operations. It is also the primary source of Debtor's income. No governmental or third party insurance is accepted by Dr. Michael, so the Debtor's income, and ultimately Dr. Michael's income, comes primarily from damages recovered through litigation recovery.

11. Prior to the merger, Dr. Michael was the president and employee of INI IL, and owned 100% of the outstanding shares of INI IL. Debtor owns 100% of the membership interest of INI IN.

12. Dr. Michael is a board certified specialist in neurological surgery. He earned A.B. and S.M. degrees from the University of Chicago in Biological Sciences and Biochemistry, respectively in 1981 and 1984. Dr. Michael graduated from the University of Illinois, Chicago College of Medicine in 1986 and completed a residency in neurological surgery at Northwestern University in 1993. Dr. Michael has been practicing medicine for approximately thirty (30) years, including seven years of residency training. The bulk of Dr. Michael's work involves spine surgery. He treats patients suffering from a variety of debilitating ailments, including degenerative and traumatic disc disease. Dr. Michael helps his patients manage their pain and improve their overall life.

13. Dr. Michael is on staff at a number of different surgical centers in the greater Chicago area, as well as three hospitals in Illinois. Dr. Michael maintains numerous offices: two in Chicago, Illinois, and two in Indiana.

14. In June 2011, Dr. Michael moved to Porter County, Indiana, and subsequently moved a significant portion of his medical practice to Indiana. His primary office is in Hammond, Indiana.

15. Debtor was formed in November 2012, and was an entity formed for healthcare purposes.

16. Dr. Michael is the sole surgeon employed by Debtor, and provides all such services offered to patients through Debtor. Currently, Debtor employs in excess of four (4) full-time employees; apart from Dr. Michael, INI IN employees perform administrative and clerical functions.

#### **Description of Purported Secured Creditor**

17. The Federal Deposit Insurance Corporation ("FDIC") is a Federal agency with an

office located at 300 S. Riverside Plaza, Suite 1700, Chicago, IL 60606. Upon information and belief, it was appointed receiver of First United Bank.

**History of the Relationship between Debtor, Predecessor Bank, and the FDIC,  
and Resulting Litigation**

18. The Debtor's account receivable are a result of Dr. Michael's diagnosis, treatment, and often expert testimony on behalf of patients involved in personal injury and/or workers' compensation cases. Payment is contingent and dependent upon a patient's recovery of damages. To ensure that Debtor can collect its A/R, Dr. Michael is required to dictate notes and complex narrative reports, do depositions, testify at trial, and make countless phone calls, otherwise the bills and records are barred at trial, and nothing is paid.

19. On or about April 21<sup>st</sup>, 2006, Dr. Michael and INI IL, as Co-Borrowers, promised to pay First United Bank ("Bank"), the original principal amount of \$4,251,000.00, pursuant to a Promissory Note and related documents (the "Note"). The loan was not directly related to healthcare operations.

20. The Note matured on April 21, 2011.

21. Effective as of May 12, 2011, Dr. Michael entered into a Forbearance Agreement with the Bank, whereby the Bank agreed, until April 24, 2013, to forbear from enforcing any of its remedies against Dr. Michael.

22. On or about June 22, 2011, Dr. Michael executed a Change in Terms Agreement (the "Change Agreement") which, *inter alia*, acknowledged that INI IL was released and discharged from any and all liability, and reduced the principal amount of the Note to \$3,432,140.68.

23. Upon information and belief, the Bank was closed some time after the preparation of the Change Agreement, and the FDIC was appointed as Receiver of the Bank's assets.

24. Dr. Michael was in default of the Note owed to the Bank, as amended, as of January 2014.

25. The FDIC filed a lawsuit against Dr. Michael and INI IL on January 6, 2014 in the matter of Federal Deposit Insurance Corporation v. Illinois Neurospine Institute, P.C., et al, pending in the United States District Court Northern District of Illinois, sitting at Chicago, Illinois, under Case Number 1:14-cv-00064 (the "District Court Action"), naming the Debtor and INI IL as defendants. To the extent the Bank had protected security interests, the FDIC did not attempt to foreclose any such interests, nor did the FDIC attach any such documents to its Complaint in the District Court Action.

26. The FDIC obtained a default judgment against Debtor and INI IL, on June 24<sup>th</sup>, 2014, for \$3,704,572.65, plus \$16,636.20 in fees and court costs.

27. By virtue of the default judgment, the FDIC avoided the Change Agreement.

28. Issues related to whether a default judgment should have been entered are on appeal, but the District Court Action was not stayed pending the appeal.

29. The FDIC has engaged in post-judgment collection proceedings in the District Court Action, had filed a motion to appoint a Receiver over INI IL, and had issued a citation to discover assets in the District Court Action. A show cause hearing compelling Dr. Michael to appear and testify as to the assets of INI IL was set for 12/9/16 at 10:30 a.m.

30. The FDIC has effectively asserted that it has a judgment lien against the Debtor's assets by virtue of the citations issued in the District Court Action.

31. After considering all of the facts and circumstances surrounding their financial

situation and having sought the advice of legal counsel, the Debtor concluded that the best way to avoid the appointment of a Receiver and to remain in business and serve its patients was to file a Chapter 11 reorganization pursuant to 11 U.S.C. §101 et seq.

## **II. RELIEF REQUESTED**

32. The Debtor has an immediate need for the Use of Cash Collateral for the purpose of meeting necessary expenses incurred in the ordinary course of its business, including payroll. Without the use of Cash Collateral on a limited basis, the Debtor will not be able to pay its employees and other direct operating expenses, or to care for those in immediate need of its services. Inability to use Cash Collateral on a limited basis would result in a complete disruption of the Debtor's business, as Debtor's ability to generate income is wholly dependent upon Dr. Michael's continuing involvement in patient care, his testimony in lawsuits, and the negotiation of accounts receivable when a patient recovers damages. Accounts receivable often take many years to collect, as patients litigate to obtain a recovery of damages, so there is no flow of income from private health insurance or governmental payors. If Debtor were not allowed to use its cash collateral, it would cause irreparable harm to the Debtor's estate. Further, without income from Debtor, for surgical and other services performed for and through Debtor, Dr. Michael's Chapter 11 will also fail.

33. Debtor, through Dr. Michael, continues to care for patients who have suffered serious and permanent injuries. In addition to the inability to fund operations without the ability to use Cash Collateral, patient care might be compromised and lives may be jeopardized. The Debtor will be unable to operate, and to pay for the supplies, equipment, and services necessary to care for its patients, and the resources necessary to preserve accounts receivable.

34. Absent the continuing care of patients, monitoring of patient lawsuits, and Mr.

Michael's participation in lawsuits as an expert treating witness, Debtor's most significant asset, its accounts receivable, will evaporate, and Debtor will be unable to fund ongoing operations. Because Debtor must perform ongoing work to preserve litigation-related accounts receivable, the value obtained from the collection of Debtor's accounts receivable, Debtor's primary asset, following any shutdown is undoubtedly significantly less than the value of the Debtor's assets as a going concern; , the purported secured creditor would receive substantially less in the event of a distress liquidation than if the Debtor is able to preserve and continue to operate its business, because the collection of A/R is dependent on Mr. Michael's ongoing patient care and work to ensure negotiate and collect fees many years after the doctor/patient relation began. Further, a distress liquidation may jeopardize patient confidentiality issues.

35. A copy of the Debtor's internally prepared Monthly Budget is attached hereto as Exhibit "A" and incorporated herein by reference.

36. The Debtor agrees that all purported Cash Collateral now existing and hereafter acquired will be deposited and maintained by the Debtor's accounts (the "Accounts"), pending disbursement in the ordinary course of business of the Debtor.

37. The Debtor proposes to give the FDIC a first priority lien on and security interest in the Debtor-in-Possession's operating account, but only to the extent provided under it has a perfected pre-petition lien on the assets of Debtor by virtue of any post-judgment citation.

38. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor in possession may not use cash collateral without the consent of a secured party or court approval. Additionally, section 363(e) of the Bankruptcy Code provides that, upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest.

39. As adequate protection for (i) the use by the Debtor of any Pre-petition Collateral, including the Cash Collateral, (ii) any diminution in the value of the interests of the FDIC under the Pre-petition Loan Agreement in the Pre-petition Collateral and the Cash Collateral, and (iii) the granting of senior liens on the Pre-petition Collateral to secure the Post-petition Obligations, the Debtor proposes that:

- A. The FDIC will be granted, pursuant to sections 361 and 363 of the Bankruptcy Code, an allowed claim for the amount of any diminution in the value of any perfected interest it may have in the Pre-petition Collateral (including the Cash Collateral), having priority over any and all administrative expenses of the kind specified in sections 503(b) (except for necessary and appropriate administrative fees of Debtor's professionals) and 507(b) of the Bankruptcy Code.
- B. The FDIC will be granted, under sections 361 and 363 of the Bankruptcy Code, valid, binding, enforceable and perfected security interests in and liens on the Post-petition Collateral, but only to the extent of any diminution in the value of their perfected interest in any Pre-petition Collateral (including the Cash Collateral), subject and subordinate only to (i) except for necessary and appropriate administrative fees of Debtor's professionals; and (ii) valid, perfected, enforceable and unavoidable liens and security interests granted by the Debtor to any person or entity other than the Lenders, and which liens or security interests were superior in priority to the Lenders' pre-petition security interests in and liens upon such property of the Debtor on the Petition Date.



40. The Debtors request that the Court conduct an expedited hearing on the Debtor's Motion.

41. The ability of the Debtor to finance its operations and the availability to it of sufficient working capital is in the best interests of the Debtor and their respective creditors and estates, as well as the patients it serves. The relief requested herein is necessary in order to maintain ongoing operations and avoid immediate and irreparable harm and prejudice to the Debtor's estate and to all parties in interest in the Debtor's chapter 11 case. The Debtor has an urgent and immediate need for cash to continue to operate its business.

### **III. NOTICE**

42. The Debtor has provided notice of this Motion to: (a) the Office of the United States Trustee; (b) FDIC and its counsel; (c) the Debtor's twenty (20) largest unsecured creditors; (d) the Internal Revenue Service; (e) the United States Attorney; and (f) all known secured creditors. The Debtor submits that requisite notice of this Motion and the relief requested herein has been given in accordance with Bankruptcy Rule 4001, which notice is sufficient for all purposes under the Bankruptcy Code.

**WHEREFORE**, the Debtor respectfully requests entry of an order setting this Motion for Hearing pursuant to Bankruptcy Rule 4001, and at such hearing granting the relief requested; and granting such other further relief as the Court deems just and proper.

Respectfully submitted,

Iliana Neurospine Institute, LLC

By: /s/ Gordon E. Gouveia  
One of Its Attorneys

GORDON E. GOUVEIA, #7235-45  
GORDON E. GOUVEIA & ASSOCIATES  
433 W. 84<sup>TH</sup> DRIVE  
MERRILLVILLE, IN 46410

(219) 736-6020  
gm6020@aol.com

**CERTIFICATE OF SERVICE**

The undersigned, hereby certifies that on December 12, 2016 service of a true and complete copy of the foregoing was served upon the following parties in interest by placing same in the United States Mail, in envelopes, properly addressed and with sufficient postage affixed thereto as indicated by the attached matrix, or electronically at the e-mail addresses set forth below.

United States Trustee @ [ustpregion10.so.ecf@usdoj.gov](mailto:ustpregion10.so.ecf@usdoj.gov)  
See Attached Matrix

/s/ Gordon E. Gouveia

Gordon E. Gouveia

Label Matrix for local noticing  
0755-2  
Case 16-23444-jpk  
Northern District of Indiana  
Hammond Division  
Mon Dec 12 15:49:37 EST 2016

(p)BANK OF AMERICA  
PO BOX 982238  
EL PASO TX 79998-2238

CED Medical, LLC  
c/o Michael T. Sawyer  
830 E. Sidewalk Rd.  
Chesterton, IN 46304-9662

(p)DISCOVER FINANCIAL SERVICES LLC  
PO BOX 3025  
NEW ALBANY OH 43054-3025

Enterprise Rent-A-Car  
PO Box 405738  
Atlanta, GA 30384-5700

FDIC  
Chicago Regional Office  
300 S. Riverside Plaza  
Suite 1700  
Chicago, IL 60606-6615

FNB Omaha  
PO Box 3412  
Omaha, NE 68103-0412

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608 165th Street  
Suite 201  
Hammond, IN 46324-1352

Indiana Attorney General's Office  
Indiana Government Center South  
302 W. Washington St., 5th Floor  
Indianapolis, IN 46204-4701

Indiana Employment Security Division  
10 North Senate Street  
Indianapolis, IN 46204-2201

1st United Bank  
700 Exchange  
Crete, IL 60417-2005

Barnes & Thornburg LLP  
11 S. Meridian St.  
Indianapolis, IN 46204-3535

CITI  
P.O. Box 6241  
Sioux Falls, SD 57117-6241

ELCO Administrative Services  
PO Box 360200  
Strongsville, OH 44136-0004

FDIC  
1310 Courthouse Road  
Arlington, VA 22201-2508

FDIC  
Timothy E. Divis, Regional Counsel  
200 N. Martingale Rd.  
Schaumburg, IL 60173-2033

Nancy J. Gargula  
One Michiana Square Building  
Suite 555  
100 East Wayne Street  
South Bend, IN 46601-2394

Illinois Attorney General  
100 West Randolph Street  
Chicago, IL 60601-3271

Indiana Department of Revenue  
Bankruptcy Section - MS 108  
100 N. Senate Ave., N240  
Indianapolis, IN 46204-2231

Internal Revenue Service  
P. O. Box 7346  
Philadelphia, PA 19101-7346

5/3 Bank CC  
5050 Kingsley Dr.  
Cincinnati, OH 45227-1115

CED Medical, LLC  
c/o Michael Massucci  
5521 West Lincoln Hwy, Suite 101  
Crown Point, IN 46307-1118

Chase Card  
PO Box 15298  
Wilmington, DE 19850-5298

Elan Financial Services  
4325 -17th Ave. SW  
Saint Louis, MO 63166

FDIC  
Charles Yi, General Counsel  
550 - 17th St., NW  
Washington, DC 20429-0001

FDIC  
Timothy E. Divis, Regional Counsel  
300 S. Riverside Plaza  
Suite N1710  
Chicago, IL 60606-6625

Gordon E. Gouveia  
433 W. 84th Drive  
Merrillville, IN 46410-6247

Illinois Department of Revenue  
P.O. Box 64388  
Chicago, IL 60664-0388

Indiana Department of Revenue  
Bankruptcy Section - MS 108  
100 North Senate Avenue, N240  
Indianapolis IN 46204-2231

Lake County Treasurer  
Attention: Bankruptcy Clerk  
2293 North Main Street  
Crown Point IN 46307-1854

Office of the U.S. Attorney  
5400 Federal Plaza  
Suite 1500  
Hammond IN 46320-1843

Office of the United States Attorney  
5400 Federal Plaza, Ste. 1500  
Hammond, IN 46320-1843

Pinnacle Healthcare, LLC  
Haroon Ansari Naz, R.A.  
9301 Connecticut Dr.  
Crown Point, IN 46307-7486

Porter Regional Hospital  
15708 Collection Center Drive  
Chicago, IL 60693-0157

Progressive  
5600 E. Virginia St., Suite B  
Evansville, IN 47715-2657

Jennifer Prokop  
Office of the United States Trustee  
100 E. Wayne Street Suite 555  
South Bend, IN 46601-2363

Sean E. Kenyon  
Hoepfner Wagner & Evans LLP  
103 E. Lincolnway  
Valparaiso, IN 46383-5637

Secretary of Treasury  
15th & Pennsylvania  
Washington DC 20220-0001

Securities & Exchange Commission  
Bankruptcy Section  
175 W. Jackson Blvd., Suite 900  
Chicago IL 60604-2815

Superior Ambulance of Chesterton  
395 W. Lake St.  
Elmhurst, IL 60126-1508

Jason M. Torf  
Horwood Marcus & Berk Chartered  
500 W. Madison St.  
Suite 3700  
Chicago, IL 60661-4591

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Bank of America  
PO Box 982238  
El Paso, TX 79998

(d)BankAmerica  
PO Box 982238  
El Paso, TX 79998

Discover Bank  
PO Box 15316  
Wilmington, DE 19850

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)FDIC

(d)Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

(u)Mary Khalili Jawaro  
Al Gabe - George Abu Joudeh Buil  
Brommana AO 00000

End of Label Matrix  
Mailable recipients 40  
Bypassed recipients 3  
Total 43