

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

IN RE:

NORTHEAST GEORGIA
ANESTHESIA SERVICES, INC.
d/b/a ANCORA PAIN RECOVERY,
24 AMHERST, LLC, and
HOLLADAY HOLDINGS, LLC,

Debtors.

CHAPTER 11

CASE NO. 17-22189-JRS

CASE NO. 17-22188-JRS

CASE NO. 17-22190-JRS

***JOINTLY ADMINISTERED
UNDER CASE NO. 17-22189-JRS***

**MOTION FOR AN ORDER APPROVING SALE OF
CERTAIN OF THE DEBTOR'S ASSETS *NUNC PRO TUNC***

Northeast Georgia Anesthesia Services, Inc. ("Northeast"), Debtor and Debtor-in-Possession in one of the above-captioned cases, hereby moves the Court, pursuant to sections 105(a) and 363(f) and (m) of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, "**Bankruptcy Code**") and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**") for entry of an order approving the sale of certain of Northeast's assets, *nunc pro tunc* to April 20, 2018¹ ("**Motion**"). In support of this Motion, the Debtor represents as follows:

¹ Due to a miscommunication between Northeast's interim CEO and Northeast's counsel, Northeast did not obtain prior court approval to sell the property.

JURISDICTION & VENUE

This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105 and 363(f) and (m) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014 and the Local Rules for the United States Bankruptcy Court for the Northern District of Georgia ("**Local Rules**").

BACKGROUND

1.

Northeast filed its voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code on November 14, 2017 ("**Petition Date**"). Northeast is operating its businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2.

24 Amherst, LLC ("**Amherst**") is a Georgia limited liability company, its primary asset being a piece of commercial real property located at 24 Amherst Drive, Winder, Barrow County, Georgia ("**Amherst Property**"). Amherst rents the Amherst Property to Northeast, which operates a pain recovery practice at the property.

3.

Holladay Holdings, LLC (“**HHL**”) is a Georgia limited liability company, with its principal place of business located at 984 Old Forge Lane, Jefferson, Jackson County, Georgia. HHL owns three pieces of commercial real property, located at the following addresses: (1) 1503 Professional Court, Dalton, Georgia (“**Dalton Property**”); (2) 1620 Prince Avenue, Athens, Georgia (“**Athens Property**”); and (3) 1638 Prince Avenue, Athens, Georgia (“**HQ Property**”). HHL rents the Dalton and Athens Property to Northeast, which operates a pain and recovery practice in each of the properties. HHL rents the HQ Property to Northeast, where Northeast’s headquarters is presently located.

4.

Northeast does business as Ancora Pain Recovery, formerly did business as Spine Care & Pain Management, Athens Pain Management, Spine & Joint Pain Management, and The Center for Non-Surgical Spine Care & Pain Management, and is a pain recovery medical practice. Post-petition, Northeast operated 11 locations throughout north and middle Georgia. Northeast has locations in Athens, Augusta, Dalton, Dublin, Gainesville, Greensboro, Hiram, Rome, Suwanee, Warner Robins and Winder, Georgia. Since the filing of the case, Northeast has closed the Dublin and Hiram locations and is planning on closing the Warner

Robins and Augusta locations.

5.

After the closing of the Dublin location, Northeast endeavored to locate potential purchasers for the medical equipment and other personal property formerly located at the Dublin location. A true and correct listing of the personal property, including one C-ARM, which Northeast sought to sell from the Dublin location is attached hereto as Exhibit A (“**Assets**”).

6.

The C-ARM is subject to the lien of Leaf Funding, LLC (“**Leaf**”), and is subject to a cross-collateralization clause, related to which all of Leaf’s collateral secures its entire indebtedness. As of the Petition Date, Northeast was indebted to Leaf in amount over \$175,000.00.

7.

The balance of the personal property listed in Exhibit A is subject to the blanket lien of Pinnacle Bank, N.A. (“**Pinnacle**”), Northeast’s primary secured lender. As of the Petition Date, Northeast was indebted to Pinnacle in amount over \$2,200,000.00.

8.

Northeast entered into negotiations with at least two parties regarding the sale of the C-ARM, as well as related to one party all of the personal property listed in Exhibit A. When it appeared that the party interested in only the C-ARM was declining to proceed its offer to purchase the same, Northeast entered into a sale agreement with Mark Schwaiger, an unrelated third party in an arms-length transaction, to sell the Assets for a total of \$32,500.00, allocating \$27,500.00 toward the C-ARM and \$5,000.00 toward the balance of the Assets listed in Exhibit A.

9.

Northeast has requested consent to the sale from Leaf and Pinnacle. Both have consented to the sale.

10.

The sales proceeds are currently being held by Northeast in a segregated account, pending approval by the Court.

11.

Leaf's payoff related to the C-ARM is \$24,801.46, with the balance of the \$27,500.00 sales price allocated to the C-ARM, to be paid to Leaf to reduce Northeast's overall indebtedness owed to Leaf.

12.

The balance of the sales proceeds, \$5,000.00, will be paid to Pinnacle to reduce the indebtedness owed to Pinnacle by Northeast.

13.

Northeast believes that the sales price as stated herein constitutes fair market value for the assets sold and will maximize value to Leaf and Pinnacle.

Relief Requested

Northeast is requesting, pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014, approving the sale *nunc pro tunc*, to Mark Schwaiger, which maximizes the value of these particular assets for Leaf and Pinnacle, and is, accordingly, in the best interests of the Estate, Northeast, and its creditors. Northeast therefore believes that the relief requested in this Motion should be granted.

By this Motion, Northeast seeks entry of an Order approving the sale of the Assets as described herein, and granting other related relief, including (a) a finding that the sale is in good faith as contemplated by 11 U.S.C. §363 (m); (b) authorization the distribution of \$27,500.00 to Leaf and \$5,000.00 to Pinnacle; and (c) scheduling a hearing on approval of the sale of the Assets to Mark Schwaiger (“**Sale Hearing**”).

Basis for Relief

Northeast is authorized, pursuant to 11 U.S.C. §363 (b) (1), to use, sell, or lease, other than in the ordinary course of business, property of the estate, after notice and a hearing. Pursuant to 11 U.S.C. §363 (f), Northeast seeks the Court's authority to sell the Assets free and clear of all interests, liens, claims and encumbrances, including but not limited to liens held by Leaf and Pinnacle, because Leaf and Pinnacle consent. Northeast believes that the Assets are not worth more than the purchase price stated herein.

Northeast seeks the protections afforded to a purchaser with regard to sale transactions pursuant to 11 U.S.C. §363 (m), which provides that any reversal or modification on appeal of an authorization of a sale does not affect the validity of the sale under such authorization to any entity which purchased the property in good faith.

Northeast submits that the sale to Mark Schwaiger, which is an arms-length transaction between unrelated parties, is reasonable and appropriate, and designed to insure fairness. Northeast believes based on its collective experience in the industry that the combined offer from Mark Schwaiger is the highest and best price it can obtain for the Assets. Thus, Northeast requests that the sale to Mark Schwaiger should therefore be entitled to the protections of 11 U.S.C. §363 (m). If the good

faith of Northeast or Mark Schwaiger is disputed, Northeast requests that such dispute be resolved by the Court at the hearing on this Motion.

Northeast requests that the Court approve the sale *nunc pro tunc*, due to the consent of the two lienholders, Leaf and Pinnacle. No other creditors interests are affected by this sale. Northeast further requests authority to use the proceeds from sale of the Assets to make payment to Leaf and Pinnacle in exchange for the release of their respective liens in the Assets.

WHEREFORE, Northeast prays that the Court:

- (a) authorize Northeast to sell the Assets pursuant to the terms set forth herein, free and clear of all liens;
- (b) schedule a Sale Hearing on May 22, 2018, at 1:30 p.m.;
- (c) find that Northeast and Mark Schwaiger have proceeded in good faith;
- (d) authorize Northeast to distribute the sales proceeds as set forth herein;
- (e) find that Northeast can transfer good title to the Assets to Mark Schwaiger free and clear of all liens, claims, encumbrances and interests; and

(f) grant such other and further relief as is just and proper.

Respectfully submitted, this 30th day of April, 2018.

Small Herrin, LLP
Counsel for Northeast Georgia Anesthesia Serv., Inc.

By: /s/ Anna M. Humnicky
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EXHIBIT A

Dublin Inventory - Office Equipment 02/16/18

QTY	ITEM	MAKE/MODEL	DESCRIPTION	PICTURE FILE NAME(S)	SERIAL #
1	Microwave Oven	NA	Black	IMG_0532	NA
1	Coffee Maker	NA	12 cup, Black	IMG_0532	NA
4	Telephone Handset	Avaya	Black		On File
1	Floor Fan		Gray	IMG_0541	NA
1	Flat Screen TV	Samsung UN40H5003AF	CINDY JOHNSON PURCHASE	IMG_0527	03803G4N275223
1	Desktop Printer Copier	Brother HL-L2360DW	Black	IMG_0482	U63883H5N127693
1	Desktop Printer Copier	Brother HL-L2360DW	Black	IMG_0482	U63883G4N275223
1	Desktop Printer Copier	Brother HL-L2340DW	Going to Warner Robins	IMG_0527	U63879L5N335185
1	Desktop Monitor	ACER G226HQL	Black	IMG_0485	1427024962462
1	Desktop Monitor	ViewSonic VS15032	Black	IMG_0477	TEQ150662963
2	Desktop Tower PC	Dell Optiplex 3020	Black	IMG_0477, IMG_0540	On File
1	Desktop Laser Printer	HP Color LaserJet M-506	All-In-One, NEEDS WORK	IMG_0487	PHBGQ04674
1	Desktop Printer Copier	Brother PT-H100	White	IMG_0488	
1	Label Printer	Dymo LabelWriter 450	Black	IMG_0481	
1	Paper Shredder	Casemate WM1270MA	Black - INOP/TRASH		
2	Laptop Computer	Lenovo		IMG_0480	On File
1	Laptop Computer	Dell			On File
1	Handwritten List	Cindy Johnson		IMG_0533 IMG_0534	

Dublin Inventory - Office Furnishings 02/16/18

QTY	ITEM	MAKE/MODEL	DESCRIPTION	PICTURE FILE NAME(S)	SERIAL #
2	Exam Room Chair	NA	Mauve Fabric, Black Arms	IMG_0492	NA
15	Waiting Room Chair	NA	Black Pleather, Wood Legs	IMG_0495	NA
1	Counter Arm Chair	Black Fabric and Frame	Wheels, Chrome Footrest	IMG_0508	NA
3	Work Chair - Rolling	Black Mesh Back & Seat	Black Frame, Chrome Acct	IMG_0510	NA
3	Work Chair - Rolling	Black Mesh Back	Black Fabric Seat	IMG_0509	NA
4	Exam Room Chair	Purple Fabric	Wood Arms and Legs	IMG_0501	NA
6	Exam Room Stool	Black Vinyl, Rolling	Adjustable, Chrome Frame	IMG_0501	NA
4	Exam Room Table	Brown Wood, 1 Drawer		IMG_0501	NA
2	Vertabrae Models	Plastic w/Metal Stands		IMG_0501	NA
2	Waiting Room Table	Black Metal Frame	Wood Bottom & Top Shelf	IMG_0498	NA
1	Kitchen Utility Table	Tan PVC, Rolling	3 Shelf	IMG_0532	NA
1	Breakroom Table	Folding, White Plastic	Gray Legs	IMG_0541	NA
2	Folding Chair	Black Metal		IMG_0541	NA
8	Wall Décor	Various	Prints, Wall Accents	IMG_0496 IMG_0497 IMG_0507	IMG_0503 IMG_0504
6	Floor Décor	Various	Tables, Plants, Accents	IMG_0499 IMG_0502 IMG_0512	NA
1	Magazine Holder - Wall		Red, Metal Wire & Door	IMG_0500	NA
1	Computer Stand	Varidesk - Desktop	Adjustable, Black	IMG_0514	NA
1	WhiteBoard	Wall Mounted	Aluminum Frame	IMG_0516	NA
4	Bulletin Board	Wall Mounted	Cork, Aluminum Frame	IMG_0506	NA

Dublin Inventory - Medical Equipment					
QTY	ITEM	MAKE/MODEL	DESCRIPTION	PICTURE FILE NAME(S)	SERIAL #
1	C-Arm	OEC 9800 - Mobile	Inspected 2017	IMG_0478, IMG_0515	89-0817
1	Welch Allen Vitals Unit	Not listed	Has Thermometer	IMG_544, IMG_545	None Found
1	Welch Allen Vitals Unit	Spot Vital Signs	No Thermometer	IMG_0484	None Found
1	HEALTH o METER Scale	Not listed	Electronic/Battery	IMG_0486	None Found
3	Exam Table Stepstool	Not listed	Chrome/Black Footpad	IMG_0505	NA
1	Procedure Prep Tray	Not listed	Chrome	IMG_0511	NA
3	Supplies Cart - Rolling	Not listed	Chrome	IMG_0513	NA
2	Supply Shelf - Rolling	Not listed	6 shelf, Adjustable	IMG_0517, IMG_0531	NA
1	Apron Holder, Rolling	Not listed	Black Base, Cream Top	IMG_0518	NA
2	Lead Aprons	Not listed	Black	IMG_0518	NA
1	Steam Vial Incubator	3M - Attest, 116	White, 56C	IMG_542, IMG_0543	150508
1	Vacuum Aspirator	MADA 172 BSII	Complete	IMG_538, IMG_539	SU14A01013
1	AED	Zoll AED+Plus	Battery Low	IMG_0525, IMG_0537	X12A532885
1	AED	CSC, Braveheart 9300E	Battery Low	IMG_0524, IMG_0536	4175401
1	Procedure Table	NA	Rolling	IMG_0522	NA
1	Lead Shield	NA		IMG_0526	NA
1	Lead Shield	Gonad Shield	Lt Teal	IMG_0522	NA
1	Crash Cart	Craftsman, 5 Drawer	Red, Rolling, Lockable	IMG_0528, IMG_0529	NA
1	Crash Cart	Husky, 4 Drawer	Black, Rolling, Lockable	IMG_0530	NA
1	Autoclave	Ritter UltraClave, M9-022		IMG_0520, IMG_0535	V1323591
3	Exam Tables		Wooden Frame, Vinyl Top	TBA	NA