

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:)
)
PHARMACOGENETICS DIAGNOSTIC)
LABORATORY, LLC)
)
Debtor) CASE NO. 16-33404
_____)

**EMERGENCY MOTION FOR AUTHORITY TO USE CASH COLLATERAL,
AND TO PROVIDE ADEQUATE PROTECTION**

* * * * *

Comes the Debtor, Pharmacogenetics Diagnostic Laboratory, LLC (“PGXL” or the “Debtor”), by proposed counsel, and hereby moves the Court for entry of an order authorizing the use cash collateral and to provide adequate protection. In support of this Motion, the Debtor states as follows:

Jurisdiction

1. The Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (M) and (O). The statutory predicates for the relief requested in this motion are 11 U.S.C. §§ 105, 361, and 363 and Rules 4001(b) and 9014 of the Federal Rules of Bankruptcy Procedure.

2. Venue of these proceedings and the within motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On November 8, 2016 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107(a) and 1108¹ of

¹All statutes cited herein refer to the Bankruptcy Code unless otherwise specified.

the Bankruptcy Code, the Debtor continues to operate its business and manage its property as a debtor in possession.

4. PGXL is a Kentucky limited liability company founded in 2004 by Dr. Roland Valdes, Jr. and Dr. Mark W. Linder. Dr. Valdes is a professor and senior vice-chairman of the Department of Pathology and Laboratory Medicine, professor of biochemistry and molecular biology, and holds the appointment of Distinguished University Scholar at the University of Louisville. Dr. Linder is a professor in the Department of Pathology and Laboratory Medicine at the University of Louisville and is the director of Clinical Chemistry and Toxicology at the University of Louisville Hospital.

5. PGXL is a commercial and research laboratory for pharmacogenetics working to bring genetic drug sensitivity testing into the medical mainstream. It offers molecular diagnostic testing and interpretive services to physicians, clinics, and hospitals. PGXL's principal office is located at The Nucleus Building, 201 E. Jefferson Street, Suite 309, Louisville, Kentucky 40202.

6. In March 2011, University of Louisville Foundation, Inc. ("ULF") made a capital contribution to Debtor and was admitted as a member of it. Debtor's membership interests are owned as follows: Dr. Valdes, 59.68%, Dr. Linder, 8.15%, and ULF, 32.17%. Debtor's Board of Directors are: Dr. Valdes, Dr. Linder, Jason Tomlinson for ULF, and Robert Proulx as elected by the Board.

7. The Debtor currently employs approximately 21 employees.

8. The Debtor anticipates 2016 gross revenues of approximately \$8.8 million.

9. In addition to the maturity of its line of credit with Stock Yards Bank & Trust Company as detailed herein below, Debtor's primary reason for seeking Chapter 11 relief is the recent assessment against it by Medicare totaling approximately \$26 million.

10. By letter dated October 4, 2016, CGS Administrators, LLC (“CGS”), the Medicare contractor for region J15 (Medicare Part B) issued an overpayment demand to PGXL. The overpayment demand is the result of an audit conducted by AdvanceMed, the Zone Program Integrity Contractor (“ZPIC”) for Medicare Part B in Kentucky. AdvanceMed conducted a post-payment audit of thirty (30) patient records for claims with dates of service from January 1, 2012 through September 23, 2015. As a result of its review, AdvanceMed imposed a 100% denial rate for these claims, which it then extrapolated to the universe of claims submitted by PGXL during this same period. The extrapolation resulted in the \$26,333,173.00 overpayment demand issued by CGS. PGXL disagrees with the findings of AdvanceMed as well as the sampling and extrapolation performed. PGXL has engaged counsel to appeal the overpayment determination and has begun the administrative appeal process by requesting redetermination. There are five levels of administrative appeal of which redetermination is the first. The request for redetermination was filed on November 3, 2016. CGS has approximately sixty (60) days to issue a redetermination decision. Debtor believes that the ultimate liability, if any, will be significantly less than \$26 million.

Pre-Petition Banking Relationship with Stock Yards Bank & Trust Company

11. Stock Yards Bank & Trust Company (the “Bank” or “SYB”), has a claim against the Debtor arising from a Revolving Promissory Note dated February 6, 2015, in the original principal amount of \$3,500,000.00 (the “Note”). The Note matured by its terms on February 6, 2016. SYB granted certain extensions which amended the maturity date to September 5, 2016.

12. The Note is guaranteed in its payment and performance by the three members of the Debtor, Dr. Roland Valdez, Dr. Mark Linder, and University of Louisville Foundation, Inc.

13. At the time of the bankruptcy filing, the amount of the SYB's claim under the Note was approximately \$2,975,000.00.

14. SYB claims a pre-petition security interest in the Debtor's property, including but not limited to accounts, chattel paper, inventory, equipment, instruments, general intangibles, investment property, documents, deposit accounts, letter of credit rights, trademarks, copyrights, patents, contracts, checking accounts, licenses and permits, computer programs, books, records, personal property, and proceeds ("Cash Collateral"). The Debtor states that it has \$1,135.56 in cash, \$1,886,661.22 in accounts receivable,² \$115,000.00 in inventory and \$373,000.00 in equipment. Debtor estimates that approximately \$310,000.00 of the accounts receivable is collectible. The Debtor estimates the going concern value of the SYB's claimed collateral is approximately \$799,135.00.

15. Debtor's use of SYB's Cash Collateral is essential for its continued operations, and SYB may be entitled to adequate protection against the deterioration, depreciation, conversion or loss and diminution in value of their Cash Collateral.

Relief Requested

16. As more fully set forth in the Debtor's projected budget attached hereto as Exhibit "A" (the "Budget"), the Debtor seeks authorization to use Cash Collateral on an interim basis through November 30, 2016 (the "First Interim Period"). The Debtor seeks to meet its ordinary and necessary post-petition expenditures through use of approximately \$123,832.39 of Cash Collateral.

17. The Debtor's use of Cash Collateral is imperative to ensure the Debtor's continued operations and to maximize creditors' recovery. Use of Cash Collateral preserves the

² Of this amount, approximately \$55,455.00 is current, \$155,124.38 is less than 30 days, \$205,643.81 is 30-60 days, \$145,573.63 is 60 to 90 days, and \$1,334,864.40 is over 90 days.

value of Debtor's assets, and without such use the value of the Debtor's assets will immediately and substantially diminish. Absent authorization to use the Cash Collateral, there would be no reasonable prospect that the Debtor would be able to reorganize successfully in this Chapter 11 case.

18. Entry of the proposed Order is in the best interests of the estate and its creditors because use of Cash Collateral will minimize disruption of the Debtor as a "going concern," and increases the possibilities for a successful reorganization.

19. SYB is entitled, pursuant to Sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the cash collateral to the extent of the diminution in value thereof.

20. As and for adequate protection in consideration of the Debtor's continued possession and use of cash collateral, the Debtor shall grant to SYB, replacement liens on all collateral of the same type and priority as SYB held as valid and properly perfected liens prior to the petition date.

21. As and for adequate protection in consideration of the Debtor's continued possession and use of cash collateral, the Debtor shall pay \$1,000.00 to SYB, which shall protect them from impairment.

22. No previous motion for the relief sought herein has been made to this or any other court.

Notice

23. No trustee, examiner or statutory creditors' committee has been appointed in this Chapter 11 case. Notice of this Motion has been provided to: (1) all secured creditors who are not represented by counsel; (2) all counsel of record for parties in interest; (3) the U.S. Trustee;

(4) the Debtor's 20 Largest Unsecured Creditors as designated in the Debtor's Petition; (5) all governmental units having claims; and (6) all persons who filed a request to receive such notices.

Debtor submits that such notice is sufficient under the circumstances.

Conclusion

WHEREFORE, the Debtor respectfully requests that the Court enter an order (1) authorizing the use of Cash Collateral; (2) establishing adequate protection for the use of Cash Collateral; and (3) granting the Debtor other just relief.

Respectfully submitted,

/s/James E. McGhee III

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Proposed Counsel for the Debtor

CERTIFICATE OF SERVICE

It is hereby certified that on November 9, 2016, a true and correct copy of the foregoing was (a) mailed electronically through the U.S. Bankruptcy Court's ECF system to the electronic addresses as set forth in the ECF system to the U.S. Trustee and all other persons receiving electronic notifications in this case, and (b) except for parties receiving notice through ECF, mailed, emailed, or faxed to (1) all secured creditors who are not represented by counsel; (2) all counsel of record for parties in interest; (3) the U.S. Trustee; (4) the Debtor's 20 Largest Unsecured Creditors as designated in the Debtor's Petition; (5) all governmental units having claims; and (6) all persons who filed a request to receive such notices; (c) served by first class mail and certified mail to:

/s/ James E. McGhee III

JAMES E. MCGHEE III

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