

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

IN RE:)	Chapter 11
)	
RED RIVER HEALTHCARE, LLC, <i>et al.</i>)	Case No. 15-51438
)	
DEBTORS.)	Jointly Administered ¹
)	

MOTION FOR CONTINUING USE OF CASH COLLATERAL

Comes Adam M. Back, solely in his capacity as the Chapter 11 Trustee (the “Chapter 11 Trustee”) for Debtors Red River Healthcare, LLC (“RRH”); Aaron K. Jonan Memorial Clinic, Inc. (“AKJ”); Asthma and Allergy Center, LLC (“A&A”); Pediatric Associates of Pikeville, LLC (“PAP”), and Salyersville Medical Center, LLC (“SMC”) [collectively, the “Debtors”], by counsel, and pursuant to 11 U.S.C. § 363, Fed. R. Bankr. P. 4001, and other applicable law, hereby moves the Court for the entry of an Order for Continued Use of Cash Collateral (the “Order”) and for authority to use cash collateral as set forth on the budgets attached hereto as collective **Exhibit A** (collectively, the “Budget”) and to provide adequate protection as set forth herein. In support hereof, the Chapter 11 Trustee respectfully states as follows:

JURISDICTION AND VENUE

1. On July 21, 2015 (the “Initial Debtors’ Petition Date”), Debtors RRH, AKJ, A&A, and PAP (the “Initial Debtors”) filed voluntary petitions for relief with this Court under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”).

¹ The cases being jointly administered under the lead case of *In re Red River Healthcare, LLC*, et al., Case No. 15-51438 are as follows: Aaron K. Jonan Memorial Clinic, Inc. (Case No. 15-51439), Asthma and Allergy Center, LLC (Case No. 15-70469), Pediatric Associates of Pikeville, LLC (Case No. 15-70470), and Salyersville Medical Center, LLC (Case No. 15-70818).

2. On July 30, 2015, the Court entered an Order authorizing the joint administration of the Initial Debtors' cases pursuant to Fed. R. Bankr. P. 1015(b) for procedural purposes, and established that all pleadings were to be filed under the lead case of Debtor RRH, Case No. 15-51438 [Doc. 38; Case No. 15-51438].

3. From the Initial Debtors' Petition Date until November 25, 2015, the Initial Debtors continued in possession of their property and managed their businesses and affairs as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. On November 25, 2015, this Court entered an Order directing the United States Trustee (the "U.S. Trustee") to appoint a Chapter 11 trustee in the Initial Debtors' cases [Doc. 158].

5. On December 2, 2015, the U.S. Trustee filed its Notice of Appointment of Chapter 11 Trustee [Doc. 162] notifying the Court that it selected Adam M. Back, Esq. as Chapter 11 Trustee in the Initial Debtors' cases, and also filed its Motion to Approve Appointment of Adam M. Back as Chapter 11 Trustee [Doc. 163].

6. On December 3, 2015, Adam M. Back filed his Notice of Acceptance of Appointment [Doc. 164] and on the same day, the Court entered its Order Approving Appointment of Chapter 11 Trustee [Doc. 167].

7. Subsequently, on December 21, 2015 (the "SMC Petition Date"), the Initial Debtors' affiliate SMC filed its voluntary petition for relief with this Court under Chapter 11 of the United States Bankruptcy Code.

8. On January 14, 2016, this Court entered an Agreed Order between SMC and the U.S. Trustee to appoint a Chapter 11 trustee in the SMC case [Doc. 27].

9. Also on January 14, 2016, the U.S. Trustee filed its Notice of Appointment of Chapter 11 Trustee [Doc. 29] notifying the Court that it selected Adam M. Back, Esq. as Chapter 11 Trustee in the SMC case, and also filed its Motion to Approve Appointment of Adam M. Back as Chapter 11 Trustee [Doc. 30].

10. On January 15, 2016, the Court entered the Agreed Order Approving Appointment of Adam M. Back as Chapter 11 Trustee [Doc. 31] and on January 19, 2016, Adam M. Back filed his Notice of Acceptance of Appointment [Doc. 32].

11. On February 24, 2016, the Court entered its Order authorizing, for procedural purposes only, the joint administration of SMC's case with the Initial Debtors' cases jointly administered under the lead case of Debtor RRH [Doc. 199; Case No. 15-51438; Doc. 57; Case No. 15-70818].

12. This Court has jurisdiction over these Chapter 11 cases under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

13. The Debtors are entities which maintain their principal places of business in Breathitt County, Magoffin County, Powell County, and Pike County, Kentucky. Accordingly, venue for the Debtors' Chapter 11 cases is proper in this District under 28 U.S.C. §§ 1408 and 1409.

RULE 4001(b) STATEMENT

14. The factual detail required by Fed. R. Bankr. P. 4001(b) set forth in the Debtors' Expedited Motion for Interim Use of Cash Collateral and to Schedule Final Hearing [Doc. 16; Case No. 15-51438] filed on or about July 24, 2015, is hereby incorporated by reference as if fully set forth herein.

RELIEF REQUESTED

15. The Internal Revenue Service, the Commonwealth of Kentucky, and the Kentucky Division of Unemployment Insurance (collectively, the “Cash Collateral Creditors”) may claim an interest in cash collateral, respectively, pursuant to tax liens filed of record in the Breathitt, Magoffin, Pike, and Powell County Clerk’s Offices.

16. On February 24, 2016, this Court entered its Order Authorizing Continued Use of Cash Collateral (the “February Cash Collateral Order”) [Doc. 197]. Pursuant to the terms of same, the Trustee was authorized to provide a monthly carveout of \$8,000 to his counsel for each of January, February, March, and April, 2016. This authorization for use of cash collateral expired on April 30, 2016.

17. On June 13, 2016, this Court entered the Agreed Order Authorizing Continued Use of Cash Collateral (the “June Cash Collateral Order”) [Doc. 215]. Pursuant to the terms of same, the Trustee was authorized to provide a monthly carveout of \$8,000 to his counsel for each of May, June, July, August, September, and October 2016. This authorization for use of cash collateral expired on October 30, 2016.

18. During this time, the Trustee and his counsel have been diligently working to negotiate and/or resolve the significant claims asserted against the Debtor(s) by the Kentucky Cabinet for Health and Family Services (“CHFS”), in an effort to formulate the terms of a consensual plan. The Trustee is in discussions with Attorney Mathew Kleinert and others at CHFS concerning prepetition litigation filed against various Debtors concerning the Medicaid reimbursement rates and claims made by CHFS concerning same. The Trustee has also been in discussions with Mr. Kleinert and Brandon Fyffe, AUSA representing the Centers for Medicare and Medicaid Services (“CMS”), in an effort to formulate the terms of consensual plans for each

of these Debtors. Since Mr. Fyffe's reassignment, the Trustee has had conversations with Callie Owen, AUSA, about CMS's positions regarding reimbursement rates and the proofs of claim filed by CHFS. The Trustee continues to work to obtain over \$180,000 collectively owed to the Debtors—but primarily owed to AKJ—for services provided prepetition yet unpaid due to accounting and/or software issues. Additionally, the Trustee is working with his professionals and the Debtors' employees to improve operations.

19. The Chapter 11 Trustee requests herein the authority to use Cash Collateral for an additional four month term, through and including February 28, 2017, in a manner substantially similar to the usage previously authorized by the Court via the February and June Cash Collateral Orders. As used herein, "Cash Collateral" shall mean (i) all cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents derived from any secured creditor's collateral; and (ii) proceeds, rents, or profits of any secured creditor's collateral, including without limitation all amounts (A) received by the Debtors in the collection of the Debtors' prepetition account receivables and received by either the Debtors or their assignees, and (B) generated by the Debtors' operations, both prepetition and postpetition, and received by the Debtors or their assignees. Upon information and belief, the value of the collateral does not exceed the Cash Collateral Creditors' interests.

20. The Chapter 11 Trustee's proposed budgets for each of November and December 2016, and for each of January and February, 2017, are included as part of the Budget attached hereto as collective **Exhibit A**.

21. The Chapter 11 Trustee does not intend to grant a carveout for legal services provided to the Debtor by DelCotto Law Group.

22. The Trustee will work with counsel for the IRS in an effort to tender an agreed order regarding cash collateral use in a manner substantially similar to the usage previously authorized by this Court in the February and June Cash Collateral Orders.

23. The Chapter 11 Trustee's need to use Cash Collateral is essential to continuation of these Chapter 11 proceedings and to ensure continued going-concern operations to maximize the recovery to all creditors. Without the use of Cash Collateral as a means of providing working capital, the Chapter 11 Trustee cannot ensure that the Debtors meet their ongoing obligations incurred in the ordinary course of business. In short, the Debtors are unable to operate without the use of Cash Collateral and the entry of an Order is necessary to avoid immediate and irreparable harm to the Debtors' operations, their creditors, and other parties in interest.

24. To preserve the value of the Debtors' assets, the Chapter 11 Trustee requires the continuing use of Cash Collateral, and without such use, the value of the Debtors' assets will immediately and substantially diminish and the Debtors would be forced to cease their operations.

25. Section 363(c)(2) of the Bankruptcy Code provides that a debtor "may not use, sell or lease cash collateral . . . unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section." 11 U.S.C. § 362(C)(2).

26. Upon information and belief, the Debtors are unable to otherwise obtain funds, either unsecured or secured, in an amount necessary for the maintenance and preservation of the Debtors' assets from sources other than as provided by the use of Cash Collateral pursuant to the terms of the Order requested herein or such other order as the Court may approve.

27. Good cause has been shown for the entry of the Order. Among other things, entry of the Order will allow the Chapter 11 Trustee to ensure the Debtors maintain their operations and preserve their assets and to maximize recovery to all creditors. Further, the use of Cash Collateral will allow the Chapter 11 Trustee to pay the Debtors' wages and other expenses necessary to maintain the Debtors' ongoing operations.

28. Additionally, the Chapter 11 Trustee requests a carveout of Cash Collateral in the sums set forth in its monthly budgets for the anticipated professional fees of the Chapter 11 Trustee and for U.S. Trustee fees. The carveout is essential for the Debtors to pay the Chapter 11 Trustee's attorneys or other professionals in these Chapter 11 proceedings. If a Committee is appointed in these cases, the Chapter 11 Trustee will seek permission for a carveout to pay fees associated with the operation of a Committee.

29. The Chapter 11 Trustee proposes entry of the Order pursuant to the Budgets. The Chapter 11 Trustee proposes using Cash Collateral pursuant to the Budgets, subject to the ability to exceed the Budgets by up to a total of twenty percent (20%) of projected expenses. As adequate protection for any diminution in the value of the Cash Collateral Creditors' interests in the Cash Collateral, pursuant to 11 U.S.C. §§ 361 and 363, the Chapter 11 Trustee proposes to grant them the Replacement Liens, subject only to any valid and enforceable, perfected, and non-avoidable liens of other secured creditors. The Chapter 11 Trustee agrees to provide and the Internal Revenue agrees to accept those cash adequate protection payments as approved by the Court via that certain Agreed Order [Doc. 68]. The Chapter 11 Trustee is willing to negotiate adequate protection payments with the other Cash Collateral Creditors as appropriate.

30. As further adequate protection, the Chapter 11 Trustee shall continue to account for all cash use, and the proposed cash use is being incurred to preserve property of the Estates.

WHEREFORE, the Chapter 11 Trustee respectfully requests entry of an Order for the continuing use of cash collateral through and including February 28, 2017.

NOTICE

Please take notice that unless an objection to the foregoing, properly noticed for hearing, is filed within twenty-one (21) days of the date of service of this pleading, an Order granting the relief requested may be entered without a hearing.

Respectfully submitted,

STOLL KEENON OGDEN PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 16th day of December 2016, electronically upon all parties having entered an appearance in this case in accordance with the method established under this Court's CM/ECF Administrative Procedures, and to all parties listed on the March 23 Master Service List [Doc. 202-1] previously approved by this Court, in accordance with the delivery method indicated thereon.

/s/ Jessica L. Middendorf
Counsel for the Chapter 11 Trustee