



SO ORDERED.

SIGNED this 1st day of March, 2018.

Benjamin A. Kahn
BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)	
)	Case No. 17-10775
MOREHEAD MEMORIAL HOSPITAL,)	
)	Chapter 11
Debtor.)	
)	

**ORDER GRANTING EMERGENCY MOTION FOR
AUTHORITY TO USE CASH COLLATERAL**

THIS MATTER came before the Court for hearing on February 22, 2018 (the “Hearing”) upon the *Emergency Motion for Authority to Use Cash Collateral* filed on February 12, 2018 by Morehead Memorial Hospital (the “Debtor”), the above-captioned debtor and debtor-in possession (the “Motion”) [Docket No. 595]. Prior to the Hearing, the Bankruptcy Administrator, the North Carolina Department of Health and Human Services, Division of Medical Assistance (“DMA”), Berkadia Commercial Mortgage, LLC (“Berkadia”), and the Department of Housing and Urban Development (“HUD”) filed responses or objections to the Motion (the “Responses”). Based on the Motion, the Responses, consideration of the entire file,

the consent of Berkadia and HUD, and for good and sufficient cause otherwise shown, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Debtor is authorized to use Berkadia and HUD's cash collateral ("Berkadia Cash Collateral") to pay \$197,451 into the North Carolina Medicaid Gap Assessment Program. DMA shall hold the \$197,451 in escrow pending further Order of this Court.

2. The Debtor's request in the Motion for authority to have used Berkadia Cash Collateral in the amount of \$224,286 during the first two weeks of January 2018 to pay administrative priority healthcare claims of the Debtor's former employees that accrued post-petition but prior to the date on which the Debtor sold substantially all of its assets ("Healthcare Claims") and to use an additional \$158,979 to pay Healthcare Claims, for a total amount of \$383,265, is denied as moot because paragraph 22(b) of the Cash Collateral Orders¹ authorizes payment of the Healthcare Claims as a Trailing Expense.

3. The Debtor is also authorized to use Berkadia Cash Collateral to pay up to \$24,000 (the "Broker Fee") to Arthur J. Gallagher Risk Management Services, Inc., the Debtor's insurance broker, to terminate certain insurance policies covering the Debtor and obtain refunds on behalf of the Debtor.

4. The Debtor is also authorized to use Berkadia Cash Collateral to pay \$35,460 (the "Extension Fee") to Travelers Insurance Company to extend the claims reporting period under the Debtor's Directors & Officers insurance policy for one year.

5. The Debtor is also authorized to use Berkadia Cash Collateral to pay \$830 (the "Printer Fee") to purchase a printer for the estate executive of the Debtor.

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Seventh Interim Order (I) Authorizing Use of Cash Collateral Pursuant to Sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001, (II) Granting Adequate Protection, (III) Scheduling Further Hearing, and (IV) Granting Related Relief entered on December 20, 2017 [Docket No. 480].

6. The Debtor's request in the Motion to use Berkadia Cash Collateral to pay \$20,000.00 in quarterly fees pursuant to 28 USC § 1930(a)(6) is denied as moot because the Carve-Out contained in paragraph 22(b) of the Cash Collateral Orders authorizes the Debtor to make this quarterly fee payment.

7. Notwithstanding anything to the contrary contained in the Cash Collateral Orders, the Debtor is authorized to use Berkadia Cash Collateral to pay the Retained Professionals the amount of allowed professional fees and disbursements incurred by the Retained Professionals before the closing of the sale of substantially all of the Debtor's assets. For the avoidance of doubt, all of the professional fees and disbursements that have been allowed either before or as a result of the hearings on February 22, 2018 are permitted by paragraph 22(b) of the Cash Collateral Orders (the Carve-Out) so long as such professional fees and expenses do not exceed the Est. Professional Accrual line item for the week that the Debtor closed its sale of substantially all of its asset and the Debtor is authorized to pay the same.

8. The Debtor is authorized to use the Berkadia Cash Collateral to pay Donlin Recano \$26,061.58 provided from August 2017 to January 2017 and invoiced to date ("Donlin Racano Expense").

9. On account of the Debtor's use of Berkadia Cash Collateral set forth above, Berkadia and HUD are hereby granted the following adequate protection pursuant to Sections 361 and 363(e) of the Bankruptcy Code:

(a) Replacement Collateral and Replacement Liens for Berkadia. The Debtor hereby grants, assigns, and pledges to Berkadia and HUD, to the extent of any diminution of Berkadia and HUD's interest in the Debtor's property since the Petition Date, valid, perfected, and enforceable liens and security interests (the "Berkadia Replacement Liens") in all of the

Debtor's accounts receivable created from and after the Petition Date and all of the Debtor's right, title, and interest in, to, and under the Berkadia Pre-Petition Collateral, to the same extent and with the same priority as existed on the Petition Date, and the proceeds, products, offspring, rents, and profits of all of the foregoing, all as may otherwise be described in the Berkadia Secured Financing Agreements (collectively, the "Berkadia Replacement Collateral"). For the avoidance of any doubt, the Berkadia Replacement Collateral shall include any proceeds hereafter received by the Debtor arising from the North Carolina Medicaid Gap Assessment Program and from the termination of its insurance agreements.

(b) The Debtor also hereby grants, assigns, and pledges to Berkadia and HUD Berkadia Replacement Liens on unencumbered property of the Debtor's estate (excluding Chapter 5 avoidance actions or any proceeds thereof) solely to the extent of the actual amount of Berkadia Cash Collateral used to pay (1) the Broker Fee, (2) the Extension Fee, (3) the Printer Fee, and (4) the Donlin Recano Expense (such unencumbered property to constitute Berkadia Replacement Collateral).

(c) Automatic Perfection of Berkadia Replacement Liens. The Berkadia Replacement Liens granted under this Order shall be valid, perfected, and enforceable against the Berkadia Replacement Collateral as of the Petition Date without further filing or recording of any document or instrument or the taking of any further actions, and shall not be subject to dispute, avoidance or subordination. Notwithstanding the automatic perfection of the Berkadia Replacement Liens granted pursuant to this Order, Berkadia and HUD are hereby authorized, but not required, to file financing statements and other similar instruments in any jurisdiction, and to take any other action it deems necessary or appropriate in order to validate, evidence, or perfect such Berkadia Replacement Liens. A certified copy of this Order may, in Berkadia's or HUD's

discretion, be filed with any filing offices in addition to, or in lieu of, such financing statements or other similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing. The Debtor is authorized and directed to execute and deliver all instruments and documents prepared by Berkadia or HUD and to pay all reasonable fees and expenses that are reasonably required or necessary to facilitate any such filings or recordings elected to be made by Berkadia or HUD.

(d) Priority of Berkadia Replacement Liens. The Berkadia Replacement Liens granted hereunder shall be subject and subordinate in priority to the Carve-Out and to any liens, security interests, and other encumbrances, existing as of the Petition Date, or that attach to the Berkadia Replacement Collateral after the Petition Date, that are senior, valid, perfected, enforceable, and unavoidable, that are granted with Berkadia's or HUD's consent, or that are otherwise senior to the pre-petition liens in favor of Berkadia or HUD. The Berkadia Replacement Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Case, or in any subsequent proceeding affecting the Debtor, including any conversion of the Debtor's Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code.

(e) Taxes. The Debtor shall and hereby agrees to pay all post-petition federal, state, and county taxes (other than real property taxes) as and when due.

(f) Super-priority Administrative Expense Claim for Berkadia. Subject and subordinate only to the Carve-Out, to the extent that the stay under Section 362 of the Bankruptcy Code or the use, sale, or lease of the Berkadia Prepetition Collateral results in a decrease in Berkadia's interest in the Berkadia Prepetition Collateral or Berkadia Replacement Collateral, are hereby granted and entitled to status as an administrative expense claim (the "Berkadia Super-Priority Claim") pursuant to Section 507(b) of the Bankruptcy Code, with

priority over all other administrative expense claims, now existing or hereafter arising, of the kind specified in or ordered pursuant to Sections 105, 326, 330, 331, 351, 503(b), 507(a), and 1114 of the Bankruptcy Code.

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