

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § Chapter 11
§
HUMBLE SURGICAL HOSPITAL, § CASE NO. 17-31078-H2-11
LLC, et. al.,¹ §
§ Joint Administration Pending
Debtors §

EMERGENCY MOTION (I) FOR INTERIM AUTHORITY TO
USE CASH UNDER 11 U.S.C. §363 AND §105 AND
(II) REQUEST FOR A FINAL HEARING

AN EMERGENCY HEARING ON THIS MOTION IS SCHEDULED FOR MONDAY,
FEBRUARY 27, 2017 AT 3:30 PM IN COURTROOM 400, 515 RUSK, HOUSTON, TX
77002.

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF
YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE
MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY
CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE
MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 14
DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST
STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A
TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER
NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN
AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES
AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE
HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

** EMERGENCY RELIEF HAS BEEN GRANTED. YOU WILL HAVE LESS THAN 21
DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU
BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED; YOU
SHOULD FILE AN IMMEDIATE RESPONSE OR APPEAR AT THE SCHEDULED
HEARING.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

¹ The Debtors in these cases, along with the last four digits of their respective taxpayer ID numbers, are Humble Surgical Hospital, LLC (4960), Case No. 17-31078-H2-11; Humble Surgical Holdings, LLC (9350), Case No. 17-31079 -H2-11; K&S Consulting, ASC LP (5512), Case No. 17-31080-H2 -11; and K&S Consulting Management, LLC (5422), Case No. 17-31081-H2-11.

Humble Surgical Hospital, LLC (“HSH”), Humble Surgical Holdings, LLC (“Holdings”), K&S Consulting, ASC LP (“K&S ASC”), and K&S Consulting Management, LLC (“K&S Management”) (collectively the “Debtors”), file this *Emergency Motion (I) for Order Granting Interim Authority to Use Cash Collateral Under 11 U.S.C. §363 and §105 and (II) Request for a Final Hearing* (the “Motion”) and in support thereof, respectfully states as follows:

Summary and Emergency Basis

1. These Chapter 11 cases were each filed on February 24, 2017.
2. The Debtors hereby seek authorization to use cash collateral on an interim basis. Without such relief, the Debtors and its patients would suffer immediate and irreparable harm because the Debtors would be required to cease operations immediately, and the Debtors’ ability to dispose of assets as ongoing concerns in Chapter 11 would be eliminated.
3. The Debtors anticipate obtaining consent of parties with security interests and other rights in and to the Debtors’ cash collateral to the relief requested herein. A proposed Budget is attached hereto.

I. Jurisdiction and Venue

4. This Court has jurisdiction over these cases pursuant to 28 U.S.C. § § 157, 1334.
5. This is a core proceeding under 28 U.S.C. § 157(b)(2)(D).
6. Venue of the Debtor’s Chapter 11 case is proper in this district pursuant to 28 U.S.C. §§ 1409.

II. Background Information

A. Overview of the Debtor

7. The above captioned Chapter 11 bankruptcy cases were each filed on February 24, 2017 (“Petition Date”) under Chapter 11 of Title 11 of the Bankruptcy Code, 11 U.S.C.

§§101 et sq. (the "Bankruptcy Code"). The Debtors continue to manage their respective property as a debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

8. No trustee or examiner has been appointed in the Debtors' bankruptcy cases and no official committee of unsecured creditors has been established.

9. A detailed factual background of the Debtors' businesses and operations, as well as the commencement of these Chapter 11 cases, is more fully set forth in the *Affidavit of Chief Restructuring Officer, Jeffrey M. Anapolsky in Support of the Debtors' Chapter 11 Petitions and Requests for First-Day Relief* filed contemporaneously herewith and incorporated herein by reference. A summary of the factual background is listed below.

10. HSH is a Texas limited liability company operating a specialized surgical hospital in Humble, Texas. Holdings is a Delaware limited liability company with a sole purpose of owning an interest in HSH. Holdings owns 564 units in HSH, or approximately 60% of the membership interests. K&S ASC is a Texas limited partnership and is the sole member of Holdings. K&S Management is a Texas limited liability company and is the General Partner of K&S ASC.

11. HSH is a specialized surgical hospital providing services for patients in Humble, Kingwood, Atascocita, The Woodlands, and other communities in North Houston. Currently, with 25 board-certified physicians, HSH provides a full range of services including in-patient and outpatient surgeries in the areas of neuro-spine, general surgery, ear, nose and throat, orthopedics, ophthalmology, podiatry, pain management, nuclear medicine, non-invasive cardiology, and gastroenterology specialties. Many of HSH's services are provided on an outpatient basis, meaning that patient care is performed in accordance with a physician's orders on the same day that the patient is released from the hospital. Charges related to a surgery are

submitted for reimbursement by commercial payers and/or government programs and are invoiced to the patient for payment.

12. In addition to the surgery services, HSH provides ancillary services including a (i) radiology unit, (ii) diagnostic MRI unit, (iii) post-anesthesia care unit (PACU), (iv) inpatient unit with five beds and a 2:1 patient-to-nurse ratio, (v) emergency unit, and (vi) laboratory services. HSH currently has approximately 50 full-time employees.

13. As more fully described in the *Affidavit of Jeffrey M. Anapolsky in Support of the Debtors' Chapter 11 Petitions and Requests for First-Day Relief*, these bankruptcy cases were precipitated by an attempted garnishment action by Aetna related to a recent adverse District Court ruling and entry of final judgment by Judge Hughes against HSH of approximately \$41 million, plus interest. The Debtors immediately appealed this judgment to the Fifth Circuit Court of Appeals and expect that the ruling will be reversed, especially in view of the fact that, in a virtually identical case, Judge Hoyt awarded HSH final judgment in the amount of \$16.4 million, plus interest in damages, penalties and attorneys' fees against Cigna, an insurer that asserted similar claims against HSH. Due to Aetna's impending garnishment, the Debtors were faced with no other viable alternative, other than filing these bankruptcy cases.

B. Financing History

14. On July 10, 2013, HSH entered into a \$10 million Renewal Term Note (the "Regions Note") with Regions Bank². Holdings, K&S ASC, K&S Management and FM 1960 Properties LLC guaranteed the Regions Note. As of the Petition Date, the outstanding balance on the Regions Note is approximately \$1.5 million, plus costs, expenses and attorneys' fees.

15. Further, on July 10, 2013, the parties executed a Second Amended and Restated Loan Agreement, whereby the parties agreed to renew HSH's existing revolving line of credit up

² The Regions Bank Loans originated on August 12, 2010 and were subsequently renewed and modified.

to the lesser of \$3 million or the borrowing base, as computed as 31% of eligible commercial/managed care account receivable (as defined therein) ("Regions RLOC"). As of the Petition Date, the outstanding balance on the Regions RLOC is approximately \$1.9 million, plus costs, expenses and attorneys' fees. The Regions Note and Regions RLOC are collectively referred to hereafter as the "Regions Loans".

16. The Regions Loans are secured by a lien on substantially all the assets of HSH. Debtors Holdings, K&S Management and K&S ASC are guarantors of the Regions Loans, along with other non-Debtor parties. Additional detail on the Regions Loans is set forth in the *Affidavit of Chief Restructuring Officer Jeffrey M. Anapolsky in Support of the Debtors' Chapter 11 Petitions and Requests for First-Day Relief* filed contemporaneously herewith and incorporated herein by reference.

III. BASIS FOR REQUESTED RELIEF

A. Cash Collateral and Authority to Use

17. As stated above, prior to the Petition Date, the Debtors entered into the Regions Loans whereby a first lien and security interest in substantially all of the Debtors assets, including accounts receivable and cash (collectively "Collateral") were granted to the Secured Lender.

18. The Debtors hereby seek authority to use the cash collateral in connection with these bankruptcy cases to preserve the value of Debtors' businesses. A proposed 14-day budget is attached hereto as Exhibit "A".

19. Pursuant to the Bankruptcy Code, the Debtors are required to provide adequate protection to the Secured Lender with respect to Debtors' use of cash Collateral. Secured Lender is owed more than \$3.4 million with respect to the Regions Loans. While the terms of an

agreed order have not been finalized, the Secured Lender has agreed to the Debtors' use of cash Collateral and the Debtors expect that an agreed order will include, among others, the following:

A. Debtors may each use cash Collateral pursuant to an approved budget, with a 10% variance per line item and the ability to apply any unused budgeted funds at its discretion.

B. Secured Lender's prepetition liens will be adequately protected by replacement liens to the same extent and priority as their respective prepetition liens.

20. The only viable source of funding for post-petition operations is cash Collateral made available to the Debtors.

21. Without the use of cash collateral on an interim basis, the Debtors would suffer immediate and irreparable harm pending a final hearing on the Motion and would likely be required to cease operations immediately, causing harm to the Debtors and patients. This would also cause the Debtors to forfeit valuable licenses, which are to be transferred in accordance with applicable law in connection with asset sales, thereby significantly reducing the expected return from the contemplated sales.

22. The importance in cases like these of access to cash was recognized in *In re George Ruggieri Chrysler-Plymouth, Inc.*, 727 F.2d 1017 (11th Cir. 1984). The court in that case noted: "A debtor, attempting to reorganize in business under Chapter 11, clearly has a compelling need to use 'cash collateral' in its effort to rebuild." *Id.* at 1019. 31. The Debtors anticipate that the Secured Lender will consent to the proposed use of cash Collateral, subject to receiving replacement liens and perhaps other protections as provided in an agreed order. To the extent it does not consent, however, the Court may authorize the use of cash collateral by the

Debtors provided that the Court determines that any objecting entity's interest is adequately protected. 11 U.S.C. § 363(c)(2)(B) and (e).

23. Section 361 sets forth three non-exclusive examples of what may constitute adequate protection. They include providing the secured creditor with "additional or replacement liens" and other relief that provides the secured creditor with the "indubitable equivalent" of the secured creditor's interest in the cash collateral. Legislative history indicates that Congress intended to provide courts with flexibility to grant relief on a case-by-case basis.

24. Pursuant to the Motion, the Debtors propose to grant the Secured Lender replacement liens on post-petition accounts receivable, a recognized method for providing adequate protection as specified under sections 361 and 363.

25. In exchange for the use of cash Collateral, as adequate protection for the use of the cash Collateral, but only to the extent of the actual diminution in value of the pre-petition Collateral, the Debtors propose to grant to the Secured Lender replacement liens in the form of security interests and liens upon the same types and kinds of assets upon which they held a prepetition lien, subject only to valid, perfected, and enforceable prepetition liens (if any) which are senior as of the Petition Date, as well as an additional lien upon the Debtors' post-petition accounts and accounts receivables. The grant of replacement liens will only apply to the extent that the pre-petition Collateral was encumbered by valid and perfected liens and security interests (collectively, the "Replacement Liens"). The Replacement Liens will not attach to any avoidance actions under Chapter 5 of the Bankruptcy Code.

26. Without access to cash Collateral, operations will cease. The going concern of the Debtors' assets will plummet, receivable collections will dry up and key employees will quit.

From that standpoint, the overall collateral position of Secured Lender will deteriorate markedly, more than offsetting any erosion of the cash collateral.

27. Bankruptcy Rule 4001(c)(2) states that 14 days' notice must be given before final approval of such cash Collateral use is given. With this Motion, the Debtors are providing Secured Lender with 14 days' notice between the time of the filing of this Motion and request that the Court set a final hearing on this matter upon expiration of the 14 day notice period. The Debtors will suffer irreparable harm if the Motion is not immediately considered as they do not have the funds to continue operations. There is little harm to general unsecured creditors under this agreement since the Secured Lender already has a first lien on substantially all of the Debtors' assets. Thus, if the Debtors cannot fund operations, they will have to cease operating and Secured Lender may seek to enforce its remedies in their collateral subject to their respective liens, leaving nothing for unsecured creditors. Accordingly, emergency consideration of this motion is required.

28. The Debtors request that this Court enter the preliminary order attached hereto; set a final hearing on this Motion pursuant to Bankruptcy Rule 4001 if objections are filed, and at such hearing, authorize the Debtors to continue using its cash Collateral for the remainder of these Chapter 11 cases.

IV. Conclusion

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court:

- 1) Enter a preliminary order authorizing the use of cash Collateral pursuant to the proposed budgets for 14 days;
- 2) Set a final hearing on this Motion after expiration of fourteen (14) days' notice period required by Bankruptcy Rule 4001 if objections are filed;

- 3) At such final hearing, granting Debtors the authority to continue the use of cash Collateral until a plan is confirmed in these cases or the cases are dismissed, whichever happens earlier; and
- 4) Granting all such other and further relief as is just and proper.

DATED: February 24, 2017

Respectfully submitted,

HOOVER SLOVACEK LLP

By: /s/ Melissa A. Haselden

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PROPOSED ATTORNEYS FOR DEBTORS and
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CERTIFICATE OF CONFERENCE

I hereby certify that I have contacted Charles Adams, counsel for Regions Bank about the relief requested herein and an agreement has not been reached.

/s/ Edward L. Rothberg
EDWARD L. ROTHBERG

EXHIBIT "A"

PROPOSED 14-DAY BUDGET

Humble Surgical Hospital, LLC
14-Day Cash Collateral Forecast

	Day 1 24-Feb	Day 2 25-Feb	Day 3 26-Feb	Day 4 27-Feb	Day 5 28-Feb	Day 6 1-Mar	Day 7 2-Mar	Day 8 3-Mar	Day 9 4-Mar	Day 10 5-Mar	Day 11 6-Mar	Day 12 7-Mar	Day 13 8-Mar	Day 14 9-Mar	Day 15 10-Mar
Beginning Cash Balance	\$ 236,468	\$ 153,675	\$ 153,675	\$ 153,675	\$ 179,177	\$ 235,347	\$ 30,632	\$ 91,116	\$ 111,337	\$ 111,337	\$ 111,337	\$ 168,435	\$ 228,730	\$ 288,067	\$ 348,097
Net Operating Cash Receipts															
Operating Cash Receipts	65,922	-	-	65,922	65,922	65,922	65,922	65,922	-	-	65,922	65,922	65,922	65,922	65,922
Total Net Operating Cash Receipts	\$ 65,922	\$ -	\$ -	\$ 65,922	\$ 65,922	\$ 65,922	\$ 65,922	\$ 65,922	\$ -	\$ -	\$ 65,922	\$ 65,922	\$ 65,922	\$ 65,922	\$ 65,922
Cash Outflows															
Payroll	\$ 140,125	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 140,125
Rent	-	-	-	-	-	233,945	-	-	-	-	-	-	-	-	-
United Healthcare Insurance	-	-	-	34,852	-	-	-	-	-	-	-	-	-	-	-
ER Physicians	-	-	-	-	-	-	-	40,262	-	-	-	-	-	-	-
Management Fees	-	-	-	-	-	30,000	-	-	-	-	-	-	-	-	-
Medical Supplies	4,030	-	-	4,030	4,030	5,176	4,030	4,030	-	-	4,030	4,030	5,176	4,030	4,030
Outside Services	571	-	-	571	4,884	571	571	571	-	-	571	571	571	571	571
Equipment lease	434	-	-	434	434	434	434	434	-	-	3,818	623	434	434	699
Utility	-	-	-	129	-	107	-	-	-	-	-	-	-	453	3,372
Payroll Services	1,742	-	-	-	-	-	-	-	-	-	-	-	-	-	1,742
Repairs and Maintenance	228	-	-	228	228	228	228	228	-	-	228	228	228	228	228
Wage Garnishments	1,152	-	-	-	-	-	-	-	-	-	-	-	-	-	1,152
Miscellaneous	87	-	-	87	87	87	87	87	-	-	87	87	87	87	87
Office Supplies	67	-	-	67	67	67	67	67	-	-	67	67	67	67	67
Taxes	258	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Vehicle Expenses	11	-	-	11	11	11	11	11	-	-	11	11	11	11	11
Credentialing	10	-	-	10	10	10	10	10	-	-	10	10	10	10	10
Total Cash Outflows	\$ 148,715	\$ -	\$ -	\$ 40,420	\$ 9,752	\$ 270,637	\$ 5,439	\$ 45,701	\$ -	\$ -	\$ 8,823	\$ 5,628	\$ 6,585	\$ 5,892	\$ 152,094
Net Operating Cash Flow	\$ (82,793)	\$ -	\$ -	\$ 25,502	\$ 56,170	\$ (204,715)	\$ 60,483	\$ 20,221	\$ -	\$ -	\$ 57,099	\$ 60,294	\$ 59,337	\$ 60,030	\$ (86,172)
Ending Cash Balance	\$ 153,675	\$ 153,675	\$ 153,675	\$ 179,177	\$ 235,347	\$ 30,632	\$ 91,116	\$ 111,337	\$ 111,337	\$ 111,337	\$ 168,435	\$ 228,730	\$ 288,067	\$ 348,097	\$ 261,924