

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

IN RE	§	Chapter 11
ABC DENTISTRY, P.A., <i>et al.</i> ¹	§	Case No. 16-34221
DEBTORS.	§	Jointly Administered
	§	
	§	
	§	

**DEBTORS' EMERGENCY MOTION FOR AUTHORIZATION TO: (1) CONTINUE
PRE-PETITION INSURANCE PROGRAM AND (2) PAY ANY PRE-PETITION
AND POST-PETITION PREMIUMS AND RELATED OBLIGATIONS**

NOTICE UNDER THE COMPLEX CASE ORDER

A HEARING WILL BE CONDUCTED ON THIS MATTER ON IN THE COURTROOM OF THE HONORABLE MARVIN ISGUR, U.S. BANKRUPTCY COURT, 515 RUSK STREET, COURTROOM 404, HOUSTON, TX 77002. A SEPARATE NOTICE WILL BE FILED PROVIDING THE DATE AND TIME OF THE HEARING.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE 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.

¹ The Debtors in these chapter 11 cases are: ABC Dentistry, P.A.; ABC Dentistry West Orem, P.L.L.C.; and ABC Dentistry Old Spanish Trail, P.L.L.C.

ABC Dentistry, P.A., et al. (“ABC”) the debtors and debtors-in possession in the above captioned case (the “Debtors”), hereby file this *Debtors’ Emergency Motion for Authorization to (1) Continue Pre-Petition Insurance Program and (2) Pay any Pre-Petition and Post-Petition Premiums and Related Obligations* (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. Venue of the Debtors’ chapter 11 cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

BACKGROUND

2. On August 26, 2016 (the “Petition Date”) ABC Dentistry, P.A., ABC Dentistry Old Spanish Trail, P.L.L.C., and ABC Dentistry West Orem, P.L.L.C. filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

3. The Debtors remain in possession of their property and are operating their business as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been requested or appointed in this chapter 11 case.

4. A detailed description of the Debtors’ business, capital structure, and the events leading to these chapter 11 cases is fully set forth in the *Declaration of Iraj S. Jabbary, D.D.S. in Support of First Day Motions* [Dkt. No. 14] and is incorporated herein by reference.

THE INSURANCE PROGRAM

5. In the ordinary course of their businesses, the Debtors maintain an insurance program (the “Insurance Program”) that provides millions of dollars of coverage for general

liability, professional liability, and flood insurance (collectively, the “Policies”). Attached hereto as Exhibit A is a comprehensive list of the Policies, the type of coverage, Policy numbers, the identity of the insurance carriers (the “Carriers”), and the total monthly premium for each Policy, if the Policy requires monthly premium payments. Two of the Policies in the Insurance Program require premiums to be paid on a monthly basis (the “Monthly Policies”). The premiums on the Monthly Policies are due on September 20, 2016.

6. In many cases, the coverage provided by the Policies is required by various regulations, laws and contracts that govern the Debtors’ business conduct under applicable non-bankruptcy law. Likewise, both the U.S. Trustee Guidelines for debtors-in-possession operating in Chapter 11 cases in this Bankruptcy Court require the Debtors to maintain adequate insurance coverage. Such coverage could not be provided without the continuation of the entire Insurance Program.

RELIEF REQUESTED

7. By this Motion, the Debtors seek authority (but not direction) to: (i) make the payments required to continue their Insurance Program, including payment of any pre-petition premiums, deductibles or other obligations under the Policies listed on Exhibit A; and (ii) continue honoring their obligations under the Insurance Programs by paying any premiums that may arise post-petition to the extent the Debtors determine, in their discretion, that such payments are necessary to avoid cancellation, default, alteration, assignment, attachment, lapse or any form of impairment to the coverage, benefits, proceeds, or other rights or interests provided under the Policies.¹

¹ The Debtors continue to review their insurance policies, insurance requirements and financing needs relating thereto and reserve the right to seek such other or further relief as it may deem necessary to maintain its Insurance Program.

BASIS FOR RELIEF

8. This Court has authority to grant the relief requested herein pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Moreover, Section 105(a) of the Bankruptcy Code allows the Court to authorize payments on account of certain pre-petition claims when necessary. Section 105(a) of the Bankruptcy Code provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). This is generally referred to as the “necessity of payment rule” or the “doctrine of necessity.” See *In re NVR, L.P.*, 147 B.R. 126, 128 (Bankr. E.D. Va. 1992); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989), accord *In re Financial News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991) (pre-petition claims may be paid when so doing is “critical to the debtor’s reorganization”); *In re Eagle-Pitcher Indus.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (payment must be “necessary to avert a serious threat to the Chapter 11 process”); *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (payment necessary to “permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”) (quoting *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987)).

9. Courts have recognized that the “necessity of payment rule” is “well-established in bankruptcy common law.” *In re NVR, L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (also stating that, under Section 105(a), a court “can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor”); see also *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (stating that a bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to

facilitate the rehabilitation of the debtor is not a novel concept”) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989).

10. For the reasons described above, and in view of the Debtors’ need to maintain insurance to operate their business and prudently manage and preserve cash flow, authorizing the Debtors to maintain the Insurance Program and making the payments required by the Policies, is essential to the continued operation of the Debtors’ businesses and reorganization efforts and is in the best interests of all parties in interest in these cases. Failure to pay the monthly premiums may result in cancellation of necessary existing Policies and impair the Debtors’ ability to obtain or renew coverage. If the Policies lapse, the Debtors could be exposed to liability for damages resulting to persons and property of the Debtors. Furthermore, guidelines established by the United States Trustee and federal and state law require the Debtors to remain current with respect to some of the Policies. Thus, the Debtors respectfully request authorization (but not direction) to fully retain in place the existing Insurance Program and honor the obligations described herein.

11. The Debtors also seek authorization (but not direction) to renew Policies or to enter into new insurance arrangements as may be required as the annual terms of existing Policies and arrangements expire, in the ordinary course of business, without further order of the Court. It is essential to the continued operation of the Debtors’ business and reorganization that the Insurance Program be maintained on an ongoing and uninterrupted basis.

12. Bankruptcy courts handling other complex chapter 11 cases in this District have approved relief substantially similar to the relief requested by this Motion. *See, e.g., In re Autoseis, Inc.*, Case No. 14–20130 (Bankr. S.D. Tex. Aug. 27, 2014); *In re ATP Oil & Gas*

Crop., Case No. 12-36187 (Bankr. S.D. Tex. Aug. 21, 2012); *In re Seahawk Drilling, Inc.*, Case No. 11-20089 (Bankr. S.D. Tex. Feb. 14, 2011); *In re TXCO Res., Inc.*, Case No. 09-51807 (Bankr. W.D. Tex. May 20, 2009); *In re Energy Partners, Ltd.*, Case No. 09-32957 (Bankr. S.D. Tex. May 1, 2009). *See also In re WorldCom, Inc.*, Case No. 02-13533 (Bankr. S.D.N.Y. 2002); *In re Enron Corp.*, Case No. 01-16034 (Bankr. S.D.N.Y. 2001).

13. If the Court grants the relief sought in this Motion, the Debtors request that all applicable banks and other financial institutions be authorized, when requested by the Debtors in their discretion, without any duty of inquiry or liability to any party for following the Debtors' instructions, to receive, process, honor and pay any and all checks drawn on the Debtors' accounts to pay amounts owed under the Insurance Program, whether those checks are presented prior to or after the Petition Date, and to make other transfers, provided that sufficient funds are available in the applicable accounts to make the payments.

14. Finally, the Debtors request that authorization of the payment of the various premiums hereunder not be deemed to constitute the post-petition assumption of any executory contract pursuant to Section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all of their rights under the Bankruptcy Code. Moreover, such authorization to pay should not affect the Debtors' right to contest the amount or validity of any such charges.

15. Based on the foregoing, the relief requested is necessary and appropriate, in the best interests of the Debtors' estates and creditors, and should be granted in all respects.

RESERVATION OF RIGHTS

16. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors'

properties; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute a Claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code Section 365; or (f) otherwise affecting the Debtors' rights under Bankruptcy Code Section 365 to assume or reject any executory contract with any party subject to the proposed Order once entered.

EMERGENCY CONSIDERATION

17. The Debtors respectfully request emergency consideration of this Motion as premiums under certain Policies are due on September 20, 2016. As a result, the Debtors do not have sufficient time to accommodate a full 21-day notice period without allowing those Policies to lapse. Moreover, it was not practical to file this Motion in the first days of the case, given the work required of the Debtors since filing for bankruptcy. The Debtors have worked diligently on obtaining approval of the first day motions, setting up protocols to address US Trustee guidelines, complying with US Trustee information requests, preparing for the Initial Debtor Interview, and working on Schedules and Statements of Financial Affairs for each of the Debtors. Accordingly, the Debtors respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order (a) granting the Motion, and (b) granting such other and further relief as the Court deems appropriate.

[Remainder of Page Left Intentionally Blank]

Date: September 9, 2016

Respectfully submitted,

BAKER BOTTS L.L.P.

/s/ Omar J. Alaniz

Omar J. Alaniz, State Bar No. 24040402

2001 Ross Avenue

Dallas, Texas 75201

Telephone: 214.953.6593

Facsimile: 214.953.4593

Email: *omar.alaniz@bakerbotts.com*

PROPOSED COUNSEL TO DEBTORS-IN-POSSESSION

Exhibit A**Schedule of Insurance Policies**

Type of Coverage	Carrier	Policy Number	Monthly Premium	Paid Through
General Liability (OST)	Travelers	680-5167R92A-16	\$428.04	9/20/2016
General Liability (West Orem)	American Casualty Company of Reading, Pennsylvania	4017610942	\$479.00	9/20/2016
Professional Liability (OST and West Orem)	Fortress Insurance Company	9001441	\$2,300 (paid by Pasadena)	11/20/2016
Flood (OST)	Hartford Fire Insurance Company	8704642119	\$2,501.00 annually	07/07/2017
Flood (West Orem)	Hartford Fire Insurance Company	8704666910	\$2,501.00 annually	08/23/2017

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

IN RE ABC DENTISTRY, P.A., et al.¹ <p style="text-align: center;">DEBTORS.</p>	§ § § § § § § § § §	Chapter 11 Case No. 16-34221 Jointly Administered
--	--	--

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR AUTHORIZATION
TO: (1) CONTINUE PRE-PETITION INSURANCE PROGRAM AND
(2) PAY ANY PRE-PETITION AND POST-PETITION
PREMIUMS AND RELATED OBLIGATIONS**

Upon the emergency motion of the Debtors in the above-captioned cases for authorization to: (i) continue their pre-petition insurance program and (ii) pay any pre-petition and post-petition premiums or other related obligations (the "Motion");² and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and the Motion being a core proceeding under 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided; and the relief requested being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause therefore; it is hereby

ORDERED that the Debtors are authorized, but not required, to maintain at their discretion the Insurance Program; and it is further

¹ The Debtors in these chapter 11 cases are: ABC Dentistry, P.A.; ABC Dentistry West Orem, P.L.L.C.; and ABC Dentistry Old Spanish Trail, P.L.L.C.

² Capitalized terms used but not defined herein have the meaning given in the Motion.

ORDERED that the Debtors are authorized, but not required, to pay all amounts necessary to maintain the Insurance Program, including, but not limited to, any pre-petition or post-petition premium, deductible or other amount that is due or will become due during these chapter 11 cases in respect of any of the Policies; and it is further

ORDERED that, subject to the availability of funds, the Debtors' banks and financial institutions (collectively, the "Banks") are authorized and directed to process, honor and pay any and all checks or electronic transfers issued in connection with the Insurance Program; and it is further

ORDERED that all Banks that process, honor and pay any and all checks or electronic transfers on account of the Insurance Program may rely on the representations of the Debtors as to which checks or electronic transfers are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors instructions; and it is further

ORDERED that authorization of the payments shall not be deemed to constitute the post-petition assumption of any executory contract pursuant to Section 365 of the Bankruptcy Code; and it is further

ORDERED that nothing in this Order shall affect the Debtors' rights to contest the amount or validity of any amounts claimed to be due by any of the Debtors under or with respect to any aspect of Insurance Program, in whole or in part; and it is further

ORDERED that, notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Debtors' Carriers, any other agents or brokers employed by the Debtors, or any other third party relating to the Insurance Program; and it is further

ORDERED that the Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated:

The Honorable Marvin Isgur
United States Bankruptcy Judge