**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF INDIANA**
**INDIANAPOLIS DIVISION**

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| IN RE: | ) | |
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| FAYETTE MEMORIAL HOSPITAL ASSOCIATION, INC., | ) | CASE NO. 18-07762-JJG-11 |
| | ) | |
| | ) | |
| Debtor. | ) | |

**MOTION TO CONDITION USE OF CASH COLLATERAL & OBJECTION TO DEBTOR'S SECOND INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL AND PROVISION OF ADEQUATE PROTECTION**

Comes now the State of Indiana ("Creditor"), by counsel, Deputy Attorney General Amanda K. Quick, and files its Motion to Condition Use of Cash Collateral and Objection to the Debtor's Second Interim Order Authorizing Use of Cash Collateral and Provision of Adequate Protection (the "Second Order"). In support of its objection, the Creditor shows the Court the following:

1. On October 10, 2018, the debtor, Fayette Memorial Hospital Association, Inc. ("Debtor") filed its voluntary petition under Chapter 11 of the United States Bankruptcy Code. [Doc. #1].
2. On that same date, the Debtor filed its First Day Motion Pursuant to 11 U.S.C. §§ 363, 361 and 105 for Authorization to Use Cash Collateral and Provide Adequate Protection (the "Motion"). [Doc. #4].
3. On October 16, 2018, the Court entered the Interim Order Granting First Day Motion for Use of Cash Collateral (the "First Order"). [Doc. #31].
4. On October 31, 2018, the Court entered the Second Order and a hearing on the Motion and Second Order is currently scheduled for December 5, 2018. [Doc. #63].

5. On November 5, 2018, the Bankruptcy Code § 341 meeting of creditors (the "341 Meeting") was held in this matter.

6. At the 341 Meeting, Samantha Bell-Jent, the Chief Financial Officer of the Debtor ("CFO"), testified on its behalf as to the Debtor's financial affairs.

7. Prior to the Debtor's filing of its bankruptcy petition, it entered into a grant agreement (the "Grant") with the Indiana State Department of Health ("Department"). *See* Exhibit A. The Grant extended $9,227,295.00 to the Debtor for the construction of a detoxification unit and other related costs.

8. In order to receive Grant funds, the Debtor was required to submit monthly claim vouchers to the Department. *See* Affidavit of Aaron Atwell, attached hereto as Exhibit B. The Grant required the Debtor to first pay its outstanding invoices and debts related to the construction of the detoxification unit, and then submit claim vouchers to the Department for reimbursement of those funds. *See id*.

9. At the 341 Meeting, the CFO testified that post-petition, the Debtor had submitted claim vouchers to the Department and received $585,000.00[1] in Grant funds (the "Funds"). The CFO further testified that the Funds had been deposited into the Debtor's general operating account at Comerica and comingled with other funds.

10. In addition, the CFO testified that the Debtor used the Funds to pay for the operational costs of the entire hospital – not just the detoxification unit – in violation of the terms of the Grant.

11. As such, the Creditor seeks to condition the Debtor's use of its cash collateral upon its filing of financial documents that detail the actual and budgeted use of the Funds. The

[1] According to the records of the Department, $506,431.90 in Grant funds were disbursed to the Debtor post-petition. *See* Exhibit B.

Creditor also seeks to condition the Debtor's continued use of its cash collateral upon the filing of amended pleadings that explain the apparent misuse of the Funds in explicit violation of the terms of the Grant. There is nothing in the Motion or Second Order (and the cash flow budgets attached thereto) that would have put the Creditor on notice that the Funds were being used in violation of the terms of the Grant. It was not until the 341 Meeting that these facts were discovered.

12. The Department has also been notified by representatives of Terrex Construction, LLC ("Terrex") that it has not been paid for both pre- and post-petition work regarding construction of the detoxification unit. *See* Exhibit B. In fact, the Debtor lists more than a $1.2 million debt to Terrex in its bankruptcy schedules. [Doc. #1, 67].
13. The Creditor also has concerns that certain contractors and sub-contractors may have a priority interest in the Funds and may not have been put on notice of the Motion and Second Order.

WHEREFORE, the State of Indiana respectfully requests that the Court grant its Motion to Condition Use of Cash Collateral and Objection to the Debtor's Second Interim Order Authorizing Use of Cash Collateral and Provision of Adequate Protection, and for all other just and proper relief.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2018, a copy of the foregoing *Motion to Condition Use of Cash Collateral & Objection to the Debtor's Second Interim Order Authorizing Use of Cash Collateral and Provision of Adequate Protection* was filed electronically. A copy of this was sent via electronic mail via the Court's CM/ECF system to the below parties:

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All other parties of record.

/s/ Amanda K. Quick
Amanda K. Quick
Deputy Attorney General