

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

	X	
	:	
In re:	:	Chapter 11
	:	
MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
	:	
Reorganized Debtors. ¹	:	(Jointly Administered)
	:	
	X	

**OBJECTION TO STATE NATIONAL'S
APPLICATION FOR PAYMENT OF ADMINISTRATIVE CLAIM**

The parties represented by Paul Hastings LLP set forth on Exhibit A to that certain *Verified Statement Pursuant to Bankruptcy Rule 2019* [Docket No. 791] (together, the “**Consenting Creditors**”), by and through their counsel, respectfully submit this omnibus objection (the “**Objection**”) to the *Application of National Specialty Insurance Company's* (“**State National**”) *for Payment of Administrative Claim Under 11 U.S.C. § 503(b)(1)* (the “**Application**”) and respectfully state as follows:

PRELIMINARY STATEMENT²

1. State National seeks administrative priority treatment for its asserted Claim in these Chapter 11 Cases, which at its core is a demand for additional collateral to secure potential future liability exposure that is currently contingent and unknown, notwithstanding the fact that any such

¹ A complete list of each of the Reorganized Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”) and the last four digits of each Debtor’s taxpayer identification number (if applicable) may be obtained on the website of the Reorganized Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.’s principal place of business and the Reorganized Debtors’ service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

² Capitalized terms not otherwise defined have the meaning ascribed to them in the Application.



2590309251230000000000003

obligation arises solely from prepetition agreements relating to prepetition claims without any postpetition benefit to the estate.³

2. The relevant Reinsurance Agreements were entered into on November 30, 2020 and the Guaranty Agreement was entered into on May 1, 2022. Importantly, the Reinsurance Agreements and Series Agreement (as defined below) expired on June 30, 2025, nearly two months prior to the Petition Date. The Bankruptcy Code strictly limits administrative expense priority to those claims that arise from transactions with the debtor occurring *after* the bankruptcy case is filed and which directly and substantially benefit the estate. State National's request disregards precedent case law, and State National improperly attempts to elevate a prepetition contractual obligation to administrative status.

3. Courts consistently have held that claims based on prepetition contracts do not qualify for administrative priority merely because performance, payment, or invoicing occurs postpetition. Here, the underlying insurance policy, Reinsurance Agreements, and Guaranty Agreement at issue were negotiated, executed, and became effective years prior to the Petition Date, and any obligations flowing from that policy are rooted entirely in the parties' prepetition contractual relationship. There has been no postpetition agreement and no new consideration has been provided to the estate that could justify administrative expense treatment.

4. Even if there were postpetition conduct, State National has failed to demonstrate that its alleged Claim conferred an actual and necessary benefit upon the Estates as required under Section 503(b) of the Bankruptcy Code – instead relying almost entirely on quotes from the Debtors' Insurance Motion (as defined below) that grant the Debtors the option, but no obligation,

³ On December 19, 2025, State National delivered a demand letter related to the Series Agreement (as defined below) seeking the same relief regarding additional collateral as discussed in the Application.

to pay certain claims relating to insurance during the Chapter 11 Cases.⁴ State National glaringly avoids citing to case law except for general propositions, likely because State National's position is unsupported by other court holdings which reject attempts to recharacterize prepetition insurance agreements as administrative expenses absent clear postpetition assumption or a distinct postpetition transaction.

5. Accordingly, State National's Application should be denied.

BACKGROUND

6. On November 24, 2020, ModivCare Solutions, LLC, along with Verida, Inc. and Medical Transportation Management, Inc. (the "**Series Members**") entered into that certain Series Agreement for NEMT Insurance DE LLC, Series 1 (as amended and restated, the "**Series Agreement**"). The Reinsurance Agreements were entered into on November 30, 2020, under which NEMT Insurance DE LLC, Series 1 ("**NEMT**"), an entity owned 75% indirectly by Debtor ModivCare, Inc. ("**ModivCare**")⁵, would reinsure 100% of State National's gross liability with respect to certain insurance policies. Application, ¶ 4. State National and ModivCare entered into a guaranty and indemnification agreement on November 30, 2020, five years before the Petition Date, which was terminated and replaced by a new guaranty and indemnification agreement on May 1, 2022 with the same terms (the "**Guaranty Agreement**"). Application, ¶ 3. Pursuant to the Guaranty Agreement, ModivCare guaranteed the performance of NEMT under that certain Quota Share Reinsurance Agreement, dated as of November 30, 2020, under which NEMT acts as a reinsurer of business written on behalf of State National by NEMT Insurance LLC.

⁴ See *Emergency Motion of Debtors for Entry of an Order (A) Authorizing Debtors to (I) Continue Insurance Programs, and (II) Pay All Obligations with Respect Thereto; (B) Modifying Automatic Stay to Permit Employees to Proceed with Workers' Compensation Claims; (C) Modifying Automatic Stay to Permit Insurers to Advance and/or Reimburse Defense Costs and Fees Under Policies; and (D) Granting Related Relief* [Docket No. 7] (the "**Insurance Motion**").

⁵ The other owners of NEMT are Verida, Inc. and Medical Transportation Management, Inc.

7. On March 31, 2025, NEMT sent a notification of termination of the Series Agreement, notifying the Series Members that the Series Agreement would terminate on June 30, 2025 (the “**Termination Notice**”). Pursuant to the Series Agreement, upon termination, no new insurance policies can be issued.

8. State National currently holds over \$44 million in collateral to secure the reinsurance obligations owed to State National. Notwithstanding this, State National is demanding additional collateral purportedly to protect against future potential obligations that may or may not exist.⁶ To that end, on October 22, 2025, State National demanded payment from NEMT in the amount of \$54,402,768, of which ModivCare would be potentially liable for \$38,081,937 under the Guaranty Agreement.

ARGUMENT

I. STATE NATIONAL HAS NOT DEMONSTRATED THAT ITS CLAIM IS FOR ACTUAL AND NECESSARY COSTS AND EXPENSES THAT BENEFITTED THE REORGANIZED DEBTORS’ ESTATES

9. Section 503(b)(1)(A) of the Bankruptcy Code provides for allowance as an administrative expense claim of claims for “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). To qualify as an administrative expense claim under section 503(b)(1)(A), the claim must: “(1) arise[] from a transaction with the debtor-in-possession and (2) [be] beneficial to the debtor-in-possession in the operation of the business.” *In re ATP Oil & Gas Corp.*, No. 12-36187 (MI), 2014 WL 1047818, *3 (Bankr. S.D. Tex. Mar. 18, 2014) (quoting *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984)); *In re Whistler Energy II, L.L.C.*, 931 F.3d 432, 441 (5th Cir. 2019) (quoting *In re Jack/Wade Drilling, Inc.*, 258 F.3d 385, 387 (5th Cir. 2001) (“[T]o qualify as an ‘actual and necessary cost’ under section 503(b)(1)(A), a claim against the

⁶ State National bases this demand on a model that the Consenting Creditors understand the Debtors have previously, and continue to, disagree with.

estate must have arisen postpetition and as a result of actions taken by the trustee [or debtor-in-possession] that benefitted the estate.”)).

10. The party asserting an administrative claim bears the burden of proof and persuasion by a preponderance of the evidence. *See In re TransAmerican Nat. Gas Corp.*, 978 F.2d 1409, 1413 (5th Cir. 1992); *see also In re Buttes Gas & Oil Co.*, 112 B.R. 191, 194 (Bankr. S.D. Tex. 1989) (noting that a failure by a claimant to present a prima facie case prevents any burden from shifting to an objecting party). An application for administrative expense status does not constitute prima facie evidence thereof, and a claimant must show its entitlement to such priority status by a preponderance of the evidence without presumptive validity for the status asserted. *See, e.g., In re Cardinal Indus., Inc.*, 151 B.R. 833, 836 (Bankr. S.D. Ohio 1992); *see also TransAmerican*, 978 F.2d at 1416 (requiring an applicant provide evidence in demonstrating a prima facie case). Although an objecting party bears a burden of production if an administrative claim demonstrates a prima facie case, “the burden of persuasion, by a preponderance of the evidence, remains with the movant.” *Id.*

11. Courts have held that Section 503(b) priorities “should be narrowly construed to maximize the value of the estate for all creditors.” *In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 299 (Bankr. S.D. Tex. 2020) (Isgur, J.) (quoting 4 Collier on Bankr. ¶ 503.06[2] (Richard Levin & Henry J. Sommers eds., 16th ed.)); *In re Juvenelliano*, 464 B.R. 651, 655 (Bankr. D. Del. 2011) (“[A]dministrative claims must be strictly construed based on the presumption that a debtor has limited resources to be distributed equally to creditors.”); *see also Otte v. United States*, 419 U.S. 43, 53 (1974) (holding that there is an overriding concern to keep administrative expenses at a minimum).

12. As discussed further below, State National has failed to demonstrate by a preponderance of the evidence that its Claim should qualify as an administrative expense. Not only does the Claim stem from a prepetition contract, it also has not benefitted the estate. State National's sole argument appears to be that in the Insurance Motion ModivCare sought and obtained an order authorizing, but not directing, ModivCare to make payments in its discretion relating to Insurance Obligations (as defined in the Insurance Motion). State National also fails to mention that the order specifically states that none of the relief granted enhances the status of any claim.⁷

A. Courts Have Consistently Held that Insurance Agreements Entered Into Prepetition Do Not Receive Administrative Expense Treatment

13. The requirement that expenses arise “postpetition and as a result of actions taken by the” debtor-in-possession, is closely tied to the purpose of section 503(b)(1)(A). *Matter of Whistler Energy II, L.L.C.*, 931 F.3d 432 (5th Cir. 2019). Administrative priority serves “to encourage third parties to provide necessary goods and services to the debtor-in-possession so that it can continue to conduct its business, thus generating funds from which prepetition creditors can be paid.” *Id.* at 442 (citing to *In re TransAmerican Nat. Gas Corp.*, 978 F.2d at 420). However, that incentive is not required when the relevant obligation pre-dates the bankruptcy, as is the case here. *Id.*

14. Court have consistently held that obligations arising out of prepetition contracts do not receive administrative priority status. *In re Alchar Hardware Co., Inc.*, 759 F.2d 867, 868–69 (11th Cir.1985). Notably, insurance agreements entered into prepetition are rarely, if ever, granted

⁷ Order (A) Authorizing Debtors to (I) Continue Insurance Programs, and (II) Pay All Obligations with Respect Thereto; (B) Modifying Automatic Stay to Permit Employees to Proceed with Workers' Compensation Claims; (C) Modifying Automatic Stay to Permit Insurers to Advance and/or Reimburse Defense Costs and Fees Under Policies; and (D) Granting Related Relief [Docket No. 57] (the “**Insurance Order**”).

administrative priority status. *In re Yanks*, 49 B.R. 56 (Bankr.S.D.Fla.1985) (private insurer not entitled to administrative expense priority for postpetition payments made under insurance policy where all operative acts and legal relationships occurred prepetition); *In re Broaddus Hosp. Ass'n*, 159 B.R. 763 (Bankr.N.D.W.Va.1993) (where injury occurred prepetition and private insurer paid claim postpetition, private insurer stepped into the shoes of the injured party and was denied administrative priority status); *In re Chateaugay Corp.*, 177 B.R. 176 (S.D.N.Y.1995), judgment aff'd by, 89 F.3d 942 (2nd Cir.1996) (“[W]orkers’ compensation payments paid on behalf of the debtor in possession to employees for prepetition injuries should not be classified as an administrative expense.”)

15. For example, in *In re Greater Kansas City Transp., Inc.*, the court held that an insurer’s postpetition payments to tort claimants whose claims were covered by a prepetition insurance contract could not be deemed an administrative expense claim. 71 B.R. 865, 872 (Bankr. D. Kan. 1987). The court, in reaching its decision, held that the prepetition tort claimants, at best, would have held unsecured claims against the debtors’ bankruptcy estate and that the court “cannot see how a third party paying off unsecured claims can give rise to an administrative expense claim.” *Id.* at 872.

16. The fact that there may be postpetition amounts owed is also not a sufficient basis for administrative priority status. Simply because an insurer is required to make payments postpetition, that fact cannot in anyway transform liability arising from a prepetition contract into an administrative expense claim. *In re Firearms Imp. & Exp. Corp.*, 131 B.R. 1009 (Bankr. S.D. Fla. 1991); *see also In re Vanderveer Ests. Holding, LLC*, 328 B.R. 18 (Bankr. E.D.N.Y. 2005), *aff’d sub nom. Am. Safety Indem. Co. v. Off. Comm. of Unsecured Creditors*, No. 05 CV 5877 ARR, 2006 WL 2850612 (E.D.N.Y. Oct. 3, 2006) (“Here, the Insurance Policy was entered

into prepetition; therefore, ASIC's claims do not arise from a transaction between the creditor and the debtor-in-possession."").

17. As noted above, the Reinsurance Agreements were entered into on November 30, 2020 and expired on June 30, 2025, well before the Petition Date. No new insurance policies were permitted to be issued under the insurance program after the Petition Date (nor will any new policies ever be issued).

18. The Reinsurance Agreements are substantively identical to the insurance agreements discussed above in the case law that State National studiously avoids discussing. The Reinsurance Agreements do not create a new loss or liability but rather allocate risk for an underlying insured event. The reinsurer's obligation is derivative of the same occurrence that triggers coverage under the underlying insurance policy.

19. The obligations pursuant to the Guaranty Agreement likewise cannot be granted administrative priority status. A claim by a surety or guarantor to recover postpetition payments made under the terms of a prepetition guarantee agreement are treated as a prepetition claim. *See* 4 Collier on Bankruptcy, ¶ 502.06[3]. Such claims have the same priority as the underlying creditor's claim and are not elevated in priority merely because the underlying creditor's claim was extinguished postpetition. To give a surety better than prepetition status because it made payment to a prepetition creditor after the filing of a bankruptcy petition would distort the distribution scheme of the Bankruptcy Code. *Id.*

20. As noted above, the Guaranty Agreement was entered into prepetition and has not been replaced postpetition. No new policies were issued postpetition. State National's sole argument appears to rely on misconstruing a clause from the Insurance Motion pursuant to which the Debtors sought the authority, but not obligation, to make payments in the discretion of the

Debtors if determined appropriate. This argument falls far short. Elevating State National's claim to administrative status would impermissibly convert a prepetition contractual liability into a priority expense, contrary to settled case law and the Bankruptcy Code's priority scheme, and this request should be rejected.

B. State National Has Not Provided a Benefit to the Estate

21. In addition to arising "postpetition and as a result of actions taken by the" debtor-in-possession, the administrative expenses claimed must benefit the estate. *In re Jack/Wade Drilling*, 258 F.3d at 387. This requirement "is merely a way of testing whether a particular expense was truly 'necessary' to the estate: If it was of no 'benefit,' it cannot have been 'necessary'" within the meaning of § 503(b)(1)(A). *Id.* The words 'actual' and 'necessary' have been construed narrowly: the debt must benefit the estate and its creditors. *In re TransAmerican Nat. Gas Corp.*, 978 F.2d at 1416.

22. As pointed out in *In re Greater Kansas City Transp., Inc.*, supra, 71 B.R. at 872, an insurer's postpetition payments to tort claimants whose claims are covered by a prepetition insurance contract simply cannot be deemed an administrative expense claim. In *In re Firearms Imp. & Exp. Corp.*, the court held that to the extent the debtor may have had obligations to the insurance company, the obligations arose out of a prepetition contract, which required performance. 131 B.R. at 1015. Simply because the insurance company was required to make payments postpetition, that alone could not transform liability from a prepetition contract into an administrative expense claim. *Id.* The court also observed that it was in the insurer's best interest to provide a defense to the claims against the debtor, as failure to do so would result in covering higher judgments. *Id.* Therefore, the insurer was acting out of its own best interest, as well.

23. State National does not point to any benefit to the estate beyond a blanket statement that ModivCare continuing to make payments would "insulate ModivCare from liability and

ensure that the value of ModivCare’s interest in NEMT is preserved” and that “excess collateral would be returned to NEMT and thereby inure to ModivCare’s benefit as its majority owner.” *See* Application, ¶ 26, 27. Of course, in the same breath, State National claims that the collateral it holds is inadequate by over \$54 million. *See* Application, ¶ 20. While ModivCare disputes this assessment, were State National’s position correct it would mean there is no value in the equity interests that ModivCare holds in NEMT and therefore there could be no benefit to the estate relating thereto.⁸

24. Just as the courts noted in the above-cited cases, State National’s and the Debtors’ obligations arose out of a prepetition contract, and performance pursuant to insurance agreements—even if the insurer undertakes that performance postpetition as it is legally and contractually obligated to do—does not rise to the level of necessity or benefit within the meaning of § 503(b)(1)(A) so as to transform such unsecured claims into administrative priority claims.

CONCLUSION

25. For all the foregoing reasons, the Consenting Creditors respectfully request that this Court deny the relief sought by State National in its Application.

RESERVATION OF RIGHTS

26. The Consenting Creditors reserve their rights to amend, modify, or supplement this Objection to the extent that additional issues, or issues which the Consenting Creditors currently believe to be resolved, are raised in connection with the Application, including any supplement or response thereof.

⁸ It is not clear what State National intends by stating that ModivCare could potentially have additional liability. Any such liability would be a general unsecured claim and treated in accordance with the confirmed chapter 11 plan.

[Remainder of page intentionally left blank.]

Dated: December 30, 2025
Chicago, Illinois

Respectfully submitted,

/s/ Matthew L. Warren

PAUL HASTINGS LLP

Matthew L. Warren (TX Bar No. 24119154)

Lindsey Henrikson (admitted *pro hac vice*)

71 South Wacker Drive, Suite 4500

Chicago, Illinois 60606

Telephone: (312) 499-6000

Facsimile: (312) 499-6100

Email: mattwarren@paulhastings.com

lindseyhenrikson@paulhastings.com

-and-

Kristopher M. Hansen (admitted *pro hac vice*)

200 Park Avenue

New York, New York 10166

Telephone: (212) 318-6000

Facsimile: (212) 319-4090

Email: krishansen@paulhastings.com

*Counsel to First Lien Agent, Consenting Creditors, and
DIP Lenders*

CERTIFICATE OF SERVICE

I certify that on December 30, 2025, I caused a true and correct copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Matthew L. Warren

Matthew L. Warren