

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

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In re: : Chapter 11
MODIVCARE INC., *et al.*, : Case No. 25-90309 (ARP)
Reorganized Debtors.¹ : (Jointly Administered)
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**OBJECTION TO STATE NATIONAL'S
APPLICATION FOR PAYMENT OF ADMINISTRATIVE CLAIM**

ModivCare Inc. ("***ModivCare***") and its affiliates in the above-captioned chapter 11 cases (collectively, the "***Debtors***" or "***Reorganized Debtors***") represent as follows in support of this objection (the "***Objection***") and request entry of an order, substantially in the form attached hereto (the "***Proposed Order***"), denying the *Application of National Specialty Insurance Company for Payment of Administrative Claim Under 11 U.S.C. § 503(b)(1)* [Docket No. 1002] (the "***Application***")² filed by the National Specialty Insurance Company ("***State National***").

PRELIMINARY STATEMENT

1. ModivCare owns 75% of a captive insurance series that is currently in run-off (the "***Captive Insurance Program***"). Prior to the Petition Date, State National issued certain insurance policies under this program. The parties relationship (and the Debtors' obligations to State National) relate to these prepetition insurance policies issued by State National, as well as a related guaranty agreement and other related contracts and agreements with the Debtors. Most

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' 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 1200, Denver, Colorado 80237.

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



importantly, each of the underlying agreements that govern the parties' relationship are prepetition contracts.

2. Prior to the Petition Date (on June 30, 2025), the Reinsurance Agreements and Series Agreement (as defined herein) were terminated, and no new insurance policies were issued thereafter under the Captive Insurance Program. Notwithstanding this prepetition termination and while the Captive Insurance Program was in run-off mode during the Chapter 11 Cases, State National made a postpetition collateral demand seeking more than \$54 million in additional collateral from the Debtors and other members of the Captive Insurance Program (even though State National already held collateral in excess of \$44 million). The Debtors promptly disputed the need for any incremental collateral under the Captive Insurance Program and did not agree with State National's collateral demand.

3. State National now asserts that its unsatisfied, postpetition collateral demand is an administrative expense. State National's own Application, however, confirms that its collateral demand arises solely from prepetition agreements, and does not identify any postpetition transaction with, or direct and substantial benefit to, the Debtors' estates. As a matter of law, and as discussed more fully below, an administrative expense cannot arise from a prepetition contract absent a new, postpetition bargain and benefit to the Debtors' estates. Furthermore, while State National relies heavily on the Insurance Order (as defined herein), such order clearly and unambiguously did not create administrative expense rights or enhance prepetition claim status. Accordingly, for the reasons set forth herein, State National's Application should be denied.

BACKGROUND

4. On November 24, 2020, ModivCare Solutions, LLC, with Verida, Inc.³ and Medical Transportation Management, Inc.⁴ (the “***Series Members***”) entered into the Series Agreement for ModivCare’s non-Debtor affiliate, NEMT Insurance DE LLC, Series 1⁵ (the “***Series Agreement***”). On November 30, 2020, NEMT Insurance DE LLC, Series 1 (“***NEMT***”) entered into quota-share reinsurance arrangements under which it reinsures 100% of State National’s⁶ gross liability for specified lines placed through NEMT Insurance DE LLC⁷ (the “***Reinsurance Agreements***”). On May 1, 2022, ModivCare executed a guaranty and indemnification agreement to guarantee NEMT’s performance under the Reinsurance Agreements (the “***Guaranty Agreement***”).⁸

5. On March 31, 2025, NEMT provided a termination notice to the other Series Members under the Series Agreement, effective June 30, 2025. After the termination date, the Captive Insurance Program could not issue new insurance policies and no new policies have been issued nor any new agreements executed in connection with the Captive Insurance Program since that time (which was 51 days before the Petition Date of August 20, 2025).

6. On August 21, 2025, the Bankruptcy Court entered that certain *Order (A) Authorizing Debtors to (I) Continue Insurance Programs, and (II) Pay All Obligations with*

³ Verida, Inc. is a third-party transportation broker and administrator of non-emergency medical transportation services.

⁴ Medical Transportation Management, Inc. is another third-party provider and administrator of non-emergency medical transportation services.

⁵ NEMT Insurance DE LLC, Series 1 is a non-Debtor, Delaware series limited liability company series formed to participate in a captive insurance program for NEMT-related risks.

⁶ State National is a fronting carrier that issues an insurance policy on behalf of a captive insurer.

⁷ NEMT Insurance DE LLC is a non-Debtor affiliate of ModivCare and the series owner of NEMT Insurance DE LLC, Series 1.

⁸ The Guaranty Agreement replaced the original guaranty and indemnification agreement executed on November 30, 2020.

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 (the "Insurance Order") [Docket No. 57]. While the Insurance Order authorized the Debtors to continue their insurance programs in the ordinary course of business and pay certain prepetition claims arising thereunder, it also expressly stated the following: "[n]otwithstanding the relief granted [therein] or any actions taken [thereunder], nothing contained in [the Insurance Order] shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any obligations under the Insurance Policies are owed." *See Insurance Order*, ¶ 13.

7. On October 22, 2025, State National demanded an additional \$54,402,768 of collateral from NEMT, of which ModivCare would be potentially liable for \$38,081,937 under the Guaranty Agreement. The Debtors dispute State National's need for any incremental collateral and the parties engaged in discussions and negotiations to resolve this issue. Ultimately, however, the parties were not able to come to a resolution.

8. On December 11, 2025, the Debtors filed the *Notice of Filing of Fourth Plan Supplement for the Second Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates* [Docket No. 1030] (the "**Fourth Plan Supplement**"). Pursuant to the Fourth Plan Supplement, the Debtors sought to reject all contracts and agreements related to the Captive Insurance Program (which rejection became effective pursuant to Section 8.1 of the Debtors' chapter 11 plan).

ARGUMENT

I. STATE NATIONAL’S CLAIM DOES NOT SATISFY 503(B)(1)(A) BECAUSE IT NEITHER ARISES FROM A POSTPETITION TRANSACTION WITH, NOR CONFERS A POSTPETITION BENEFIT ON, THE DEBTORS’ ESTATES

9. To receive administrative priority, a claimant must show by a preponderance of the evidence that its claim arose from a transaction with the Debtors and that it provided an actual and necessary benefit to the estate. *See Matter of TransAmerican Nat. Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992); *see also In re Buttes Gas & Oil Co.*, 112 B.R. 191, 193–194 (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). 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, 2014 WL 1047818 at *3 (Bankr. S.D. Tex. Mar. 18, 2014) (quoting *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984)); *Matter of 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 estate must have arisen postpetition and as a result of actions taken by the trustee [or debtor-in-possession] that benefitted the estate.”). Moreover, courts in this Circuit and elsewhere construe this priority narrowly. *See In re Northstar Offshore Grp., LLC*, 628 B.R. 286, 299 (Bankr. S.D. Tex. 2020); *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) (finding that there is an overriding concern to keep administrative expenses at a minimum).

10. The Reinsurance Agreements and Series Agreement were executed prepetition, and State National does not dispute that these are prepetition agreements. State National does not

identify any postpetition transaction with the Debtors or any postpetition consideration provided to the Debtors' estates. That alone defeats State National's Application for administrative priority. *See Whistler Energy II, L.L.C.*, 931 F.3d at 442; *see also Jartran, Inc.*, 732 F.2d at 588 (“[A]dministrative priority is granted to post-petition expenses so that third parties will be moved to provide the goods and services necessary for a successful reorganization...In the case before us, no inducement by the [debtor] was required because the liability...was irrevocably incurred before the petition was filed.”).

11. Furthermore, courts 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) (internal quotations omitted) (“[O]nly those obligations of a debtor's estate which arise post-petition...are entitled to treatment as administrative expenses.”). Notably, claims arising from prepetition insurance agreements are rarely, if ever, given administrative priority because there is no new transaction with the bankruptcy estate. *See In re Yanks*, 49 B.R. 56, 59 (Bankr. S.D. Fla.1985) (private insurer's postpetition payments under an insurance policy were not entitled to administrative expense priority where all operative acts and legal relationships occurred prepetition); *see also In re Broaddus Hosp. Ass'n*, 159 B.R. 763, 768 (Bankr.N.D.W.Va.1993) (finding that a private insurer who stepped into the shoes of a party whose injuries occurred prepetition but insurance paid claim postpetition was not entitled to administrative priority); *see also In re Chateaugay Corp.*, 177 B.R. 176, 181 (S.D.N.Y. 1995) (“[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.”), *aff'd* by 89 F.3d 942, 948–949 (2nd Cir.1996); *see also In re Greater Kansas City Transp., Inc.*, 71 B.R. 865, 872 (Bankr. D. Kan. 1987) (finding that the prepetition tort claimants, at best, would have held

unsecured claims against the debtors' bankruptcy estate and that it "[could not] see how a third party paying off unsecured claims can give rise to an administrative expense claim.").

12. Courts are also clear that the liability incurred under a prepetition contract does not become a postpetition administrative expense merely because there are postpetition payments under the contract. *In re Firearms Imp. & Exp. Corp.*, 131 B.R. 1009, 1015–1016 (Bankr. S.D. Fla. 1991) (finding that insurer's claim was not entitled to administrative priority because the obligation arose prepetition and postpetition performance of that obligation was not a benefit to the estate); *see also In re Vanderveer Ests. Holding, LLC*, 328 B.R. 18, 27 (Bankr. E.D.N.Y. 2005) ("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."), *aff'd sub nom. Am. Safety Indem. Co. v. Off. Comm. of Unsecured Creditors*, No. 05 CV 5877, 2006 WL 2850612 at *5 (E.D.N.Y. Oct. 3, 2006); *see also In re Abercrombie*, 139 F.3d 755, 757 (9th Cir. 1998) (finding that "costs and expenses arising out of prepetition contracts are treated under the Bankruptcy Code as nonprioritized unsecured claims" rather than administrative expense claims).

13. As noted above, the Reinsurance Agreements were entered into November 30, 2020. Given that the Captive Insurance Program is in run off, no new insurance policies have been permitted to be issued under the Captive Insurance Program after the Petition Date (nor will any new such policies ever be issued). Accordingly, there is no postpetition contract or agreement with the Debtors that could give rise to any administrative expense.

14. The Reinsurance Agreements are substantively and functionally indistinguishable from the insurance agreements in the above case law. The postpetition payment obligations of the Debtors under the Reinsurance Agreements do not create new losses or liabilities, but rather

reallocate risk for an underlying prepetition insured event. These payment obligations are, therefore, merely general unsecured claims.

15. In addition, the losses State National may have incurred postpetition are satisfied in full by the collateral it is already holding. State National's request to replenish the collateral based on prepetition obligations and agreements does not give rise to an administrative expense.

16. The Debtors' obligations under the Guaranty Agreement likewise are not administrative priority claims. As noted above, the Guaranty Agreement was entered into prepetition and remains in effect postpetition. No new policies have been issued postpetition. 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] *see also* 124 Cong. Rec. H11,094 (daily ed. Sept. 28, 1978) (Congress, when creating the Bankruptcy Code, noted that 11 U.S.C. § 502(e)(1)(A) stands for the policy "that a surety's claim for reimbursement or contribution is entitled to no better status than the claim of the creditor assured by such surety."). Such claims have the same priority as the underlying creditors' claims and are not elevated in priority merely because the guaranty is triggered postpetition. *See In re Regal Cinemas, Inc.*, 393 F.3d 647, 650 (6th Cir. 2004); *see also Chase Manhattan Bank, N.A. v. Francini*, No. 91 Civ. 2515, 1991 WL 161359 at *4 (S.D.N.Y. Aug. 16, 1991). To give a surety postpetition status because it made a postpetition payment to a prepetition creditor would distort the distribution scheme of the Bankruptcy Code. *See Chase Manhattan Bank, N.A.*, 1991 WL 161359 at *4.

17. State National's final argument is that the Debtors' Insurance Motion and the resulting Insurance Order conferred administrative expense status on its claim by virtue of ModivCare's postpetition continuation of the Captive Insurance Program and acknowledgment of

its benefits. This argument is without merit. The Insurance Order did not transform State National's prepetition indemnity claim into a postpetition administrative claim and made no findings satisfying section 503(b)(1)(A). To the contrary, the Insurance Order expressly provides that nothing therein creates rights in favor of, or enhances the status of, any claim held by persons owed obligations under the Debtors' insurance policies. *See* Insurance Order, ¶ 13.

II. STATE NATIONAL'S APPLICATION SEEKS SECURITY FOR CONTINGENT LIABILITIES THAT ARE NOT "ACTUAL AND NECESSARY" COSTS OF PRESERVING THE ESTATE

17. Section 503(b)(1)(A) permits priority only for "actual, necessary" costs. State National's request is a demand for more collateral to protect against outcomes that may never actually materialize. Such contingencies are not "actual" and, therefore, cannot qualify for administrative treatment. *In re Highland Group, Inc.* 136 B.R. 475, 480–481 (Bankr. N.D. Ohio 1992); *see also In re Food Barn Stores, Inc.*, 175 B.R. 723, 728 (Bankr. W.D. Mo. 1994). Furthermore, the Debtors clearly do not believe there is any benefit to their estates in continuing the Captive Insurance Program, which is why the Debtors are rejecting all agreements relating to the Captive Insurance Program pursuant to the Fourth Plan Supplement.

18. State National holds approximately \$44 million of collateral that can be used to satisfy any claims for which it paid during the Chapter 11 Cases. A request to replenish this collateral, based on prepetition contracts, is not an administrative expense. The Application does not identify any postpetition agreement that would give rise to a postpetition obligation on the part of the Debtors to replenish the collateral.

19. State National's only alleged benefit from postpetition payments is that keeping up payments would protect the Debtors from liability, preserve the value of the Debtors' ownership in NEMT, and possibly return any excess collateral to NEMT. These allegations, however, are

contingent, indirect benefits to the Debtors that arise from prepetition contracts, not an actual benefit to the estates from postpetition transactions.

20. Ironically, State National also notes that the collateral it is holding could be short by at least \$54 million. If this were true, the Debtors' equity in NEMT would be worthless and, therefore, there would be no equity value to preserve and no resulting benefit to the Debtors' estates from meeting State National's collateral demand. This is exactly why the Debtors have rejected the agreements underlying the parties relationship – the Debtors do not believe there is any benefit to their estates by continuing the Captive Insurance Program. State National's assertions to the contrary fall well short of showing by a preponderance of the evidence that they have an administrative expense claim.

21. State National's actions do not provide a direct and substantial postpetition benefit to the Debtors' estates. Postpetition payments or collateralization under a prepetition contract do not convert a prepetition liability into an administrative expense. *See Jartran, Inc.*, 732 F.2d at 588. The reinsurer's obligations are derivative of underlying prepetition insured events, and courts routinely deny administrative elevation on that basis. *See Regal Cinemas, Inc.*, 393 F.3d at 650; *see also Chase Manhattan Bank, N.A.*, 1991 WL 161359 at *4.⁹

⁹ State National also seemingly argues that it is entitled to an administrative claim for unknown future liabilities that arise after the Debtors' emergence from these Chapter 11 Cases (which occurred on December 29, 2025). As a matter of law that argument should be rejected. Courts generally recognize that once a debtor has confirmed a plan, any further accrual of administrative expenses is extinguished. *See Nat'l Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F.3d 835 (6th Cir. 2010) (finding that even though a postpetition insurance contract benefitted the estate, there were no administrative expense claims given that the claimed expenses were not yet "actual" expenses). "[C]onfirmation signals the end of case administration, the point after which no more administrative claims will arise." *In re Seaman*, 588 B.R. 790, 796 (Bankr. W.D. Mich. 2018); *see also In re HNRDC Dissolution Co.*, 371 B.R. 210, 227–228 (E.D. Ky. 2007), *aff'd*, 536 F.3d 683 (6th Cir. 2008) (per curiam), cert. denied, 557 U.S. 936 (2009); *In re Dahlgren Int'l, Inc.*, 147 B.R. 393, 398–399 (N.D. Tex. 1992); *In re Frank Meador Buick, Inc.*, 65 B.R. 200, 203 (W.D. Va. 1986) (a postconfirmation claim was treated as an ordinary, unsecured creditor claim); *In re Severson*, 53 B.R. 8, 9–10 (Bankr. D. Or. 1985) (finding that postconfirmation expenses in chapter 13 case are not administrative expenses); *In re Westholt Mfg., Inc.*, 20 B.R. 368, 372 (Bankr. D. Kan. 1982) (holding that, after confirmation, further expenses of reorganized chapter 11 debtor not entitled to first priority), *aff'd sub nom. United States v. Redmond*, 36 B.R. 932, 934 (D. Kan. 1984).

CONCLUSION

22. State National's asserted claim is rooted in prepetition agreements that expired before the Petition Date and identifies no postpetition transaction or estate benefit that could satisfy the requirements of section 503(b)(1)(A). For all the foregoing reasons, the Debtors respectfully request that this Court deny the relief sought by State National in its Application.

RESERVATION OF RIGHTS

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

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Dated: December 30, 2025

Respectfully submitted,

/s/ Timothy A. ("Tad") Davidson II

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Counsel for the Reorganized Debtors

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/ Timothy A. ("Tad") Davidson II
Timothy A. ("Tad") Davidson II

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

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In re:	:	Chapter 11
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MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
	:	
Reorganized Debtors. ¹	:	(Jointly Administered)
	:	
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**ORDER SUSTAINING REORGANIZED DEBTORS' OBJECTION TO STATE
NATIONAL'S APPLICATION FOR PAYMENT OF ADMINISTRATIVE CLAIM**

Upon consideration of the *Application of National Specialty Insurance Company for Payment of Administrative Claim Under 11 U.S.C. § 503(b)(1)* (the "***Application***") [Docket No. 1002] filed by the National Specialty Insurance Company ("***State National***") and the Debtors' objection (the "***Objection***") to the Application, and upon all the proceedings had before this Court, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Objection is sustained and the Application is denied.
2. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: _____

UNITED STATES BANKRUPTCY JUDGE

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' 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 1200, Denver, Colorado 80237.