

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In re:

AMERICAN PURCHASING SERVICES,
LLC d/b/a American Medical Depot,
DVSS ACQUISITION COMPANY, LLC,
AMD PENNSYLVANIA, LLC, and
AMERICAN MEDICAL DEPOT HOLDINGS,
LLC,

Debtors.

Case No. _____

Case No. _____

Case No. _____

Case No. _____

Chapter 11 Cases
(Joint Administration Pending)

DECLARATION IN SUPPORT OF FIRST DAY PLEADINGS

I, Dennis Gerrard, hereby declare that the following is true to the best of my knowledge, information, and belief:

I. INTRODUCTION

1. My name is Dennis Gerrard. I am over the age of eighteen and am competent to testify.

2. I am a Partner at CR3 Partners, LLC (“CR3”), a nationally based turnaround and performance improvement firm, which assists, guides and collaborates with management teams confronted with transitions and/or financial distress, in order to strategize growth, improve operations, solve working capital shortfalls and provide crisis management. CR3 has eight (8) locations in the United States and I am resident at the Georgia office, 3280 Peachtree Road, Atlanta, Georgia, 30305.

3. Through CR3 and by way of an engagement letter dated June 7, 2020, I serve as the Chief Restructuring Officer of American Purchasing Services, LLC d/b/a American Medical Depot (“AMD”), DVSS Acquisition Company, LLC (“DVSS”), AMD Pennsylvania, LLC

(“AMD PA”) and American Medical Depot Holdings, LLC (“Holdings”, and collectively with AMD, DVSS and AMD PA, the “Debtors”). The Debtors conducted a healthcare supply chain distribution and services business, including the sale and distribution of surgical and medical equipment to various U.S. Federal and State governmental agencies and private sector customers.

4. I have extensive experience in turnaround management and financial restructuring of distressed businesses. For 30 years, I have served in senior leadership roles, as a Chief Restructuring Officer, Chief Executive Officer, Chief Operating Officer and/or as a board member, strategizing and implementing financial solutions for multi divisional companies across a variety of industries. Representative experiences include advising manufacturers of plastics, electronic products, telecom equipment and precision machined parts for the automotive and aerospace industries, as well as suppliers of proprietary products for retail distribution, decorative and specialty packaging, products for the horticultural and agricultural industries, and a clothier operating domestically and in Central America. I have successfully reorganized businesses experiencing tight cash flow and burdensome overhead expenses and I have led or participated in the sale of fifteen (15) companies by way of Article 9 asset sales, refinancings and section 363 bankruptcy sales. I have also managed the liquidation of 11 businesses, in a wide range of industries over the course of my advisory career.

5. To minimize any adverse effects on their businesses as a result of the commencement of these chapter 11 cases (the “Chapter 11 Cases”), the Debtors intend to request various types of relief in certain “first day” applications and motions (collectively, the “First Day Motions”). The First Day Motions seek relief, among other things, to: (a) continue employee benefits and compensation practices in order to maintain the confidence, morale, and support of the Debtors’ employees; (b) establish procedures for the smooth and efficient administration of

these cases; and (c) continue the Debtors' cash management system. The relief requested in the First Day Motions is crucial to the success of the Debtors' goal of maximizing the value of its enterprise for all constituents.

6. In that regard, the Debtors anticipate that numerous notices, applications, motions and other filings in these Chapter 11 Cases will or may affect each of the Debtors. Accordingly, joint administration of these cases for procedural purposes will reduce fees and costs, avoid needless duplicative filings, and will enable a more efficient and economical administration of these Chapter 11 Cases.

7. I am advised by counsel that this Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334, and that venue is proper in the United States Bankruptcy Court for the Southern District of Florida pursuant to 28 U.S.C. §§ 1408 and 1409.

8. I submit this declaration (the "Declaration") in support of the Debtors' petitions and First Day Motions. I have general knowledge of Debtors' books and records, and I am familiar with the Debtors' financial and operational affairs. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review of the Debtors' books and records, relevant documents and other information prepared or collected by the Debtors' employees or advisors, or my opinion based upon my experience with the Debtors' operations and financial condition. In making the statements herein based upon my review of the Debtors' books and records, relevant documents and other information prepared or collected by the Debtors' employees, I have relied upon these employees to accurately record, prepare and collect any such documentation and other information.

9. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein based upon my personal knowledge, review of documents, or my personal opinion.

10. I am authorized to submit this Declaration on behalf of the Debtors.

11. Part II of this Declaration describes the business of the Debtors and the developments which led to the Debtors filing of the voluntary chapter 11 petitions. Part III sets forth the relevant facts in support of the various emergency first-day motions and applications filed by the Debtors concurrently herewith. Part IV summarizes the Debtors' objectives in these Chapter 11 Cases.

II. BACKGROUND

A. The Chapter 11 Filings.

12. On the date hereof (the "Petition Date"), the Debtors commenced their bankruptcy cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C §§ 101 et. seq. (the "Bankruptcy Code").

13. The Debtors intend to operate their businesses and manage their affairs as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

14. The Debtors commenced these Chapter 11 Cases to sell and liquidate their businesses and will work diligently to file a chapter 11 plan within the exclusive period in order to minimize fees, preserve the value of their assets and maximize the availability of recovery for their stakeholders.

B. Overview of the Debtors.

15. Attached hereto as **Exhibit "A"** is an organizational chart of the Debtors. American Purchasing Services, **Inc.**, d/b/a American Medical Depot, which started in 1983 as a Florida corporation and was later converted to a Florida limited liability company in August 2010¹ ("AMD"), was formed for the purpose of directly conducting the predominant part of the Debtors' business activities and operations. Primarily, AMD was a distributor of medical,

¹The entity was converted into American Purchasing Services **LLC**, d/b/a American Medical Depot.

surgical, dental and laboratory supplies and equipment. It is owned 100% by American Medical Depot Holdings, LLC.

16. DVSS Acquisition Company, LLC is a Delaware limited liability company (“DVSS”) and was formed in November of 2011 for the purpose of acquiring another healthcare products distribution business. It is owned 100% by AMD.

17. AMD Pennsylvania, LLC is a Delaware limited liability company (“AMD PA”) and was formed in January of 2012 for the purpose of directly conducting certain portions of the Debtors’ business in Pennsylvania. It is owned 100% by DVSS. AMD PA operated the non-governmental, alternate site part of the business, distributing products tailored to the needs of physician offices, ambulatory surgery centers, long-term care facilities, home health and hospice agencies and other alternative healthcare providers (“Alternate Site”).

18. American Medical Depot Holdings, LLC is a Delaware limited liability company (“Holdings”) and was formed in August of 2010 for the purpose of owning, holding, managing, and serving as the parent company, directly or indirectly, of AMD and other subsidiaries including DVSS and AMD PA. It is owned by those parties set forth on Exhibit “B” attached hereto.

19. Holdings and AMD are both manager-managed limited liability companies, governed by a Board of Managers. Charles Sweet and Ron Turcotte are presently the sole Managers of Holdings and AMD. DVSS and AMD PA are also manager-managed limited liability companies governed by a Board of Managers and, pursuant to the organizational documents for DVSS and AMD PA, the Managers for DVSS and AMD PA are to be the same Managers as those for Holdings and AMD. Accordingly, Messrs Sweet and Turcotte are also the sole Managers for DVSS and AMD PA.

20. The Debtors are “affiliates” as that term is defined in section 101(2) of the Bankruptcy Code. The Debtors operate as an integrated national business with common ownership and control. The Debtors also share a number of financial and operational systems. As a result, many of the motions, hearings and orders that will arise in these cases will affect all of the Debtors.

21. As of the Petition Date, AMD and AMD PA, the two Debtors that had business operations, employ 33 employees. AMD has 29 employees, of which 12 are hourly wage earners and 17 are salaried personnel. AMD PA has 4 employees, of which 3 are hourly and 1 is salaried.

C. History of the Debtors’ Growth and Expansion.

22. AMD was founded in 1983 in Miami, in a one bay door warehouse, eventually expanding to two bays. Within a year, it was accepted into the Small Business Association program, which was instrumental in qualifying it for government contract awards. As those awards grew, so did the number of distribution centers operated by AMD to service those government contracts.

23. Early on, operations at smaller locations in Opa Locka and Hialeah, Florida, were eventually consolidated at the larger Miramar, Florida location, which continues to serve as the company’s headquarters and also warehouses inventory. A Tampa distribution center, along with the Miramar location, was utilized to service Veterans Administration (“VA”) hospitals for the state of Florida, per contracts awarded in 2010. In 2012, DVSS acquired AMD PA, which engaged in the Alternate Site part of the business and, consequently, a warehouse at King of Prussia, Pennsylvania was leased to service that component of the business. In 2016, when AMD was awarded in 2016 the VA’s Next Generation Medical Surgical Prime Vendor Contract (“MSPV NG Contract” or “NG Contract”) to service 70 hospitals along the east coast of the United States with an estimated value of \$1.2 billion over five years, AMD warehoused

inventory at the Miramar, Florida and the King of Prussia, Pennsylvania facility and also had to open distribution centers in Whitsett, North Carolina and Schenectady, New York to be able to service that contract. In the last two years, AMD has leased a warehouse in Vernon, California, as the Alternate Site part of the business expanded west to California.

D. Structure of Operations

- **Through Late August of 2020**

24. Until late August of 2020, approximately eighty-five (85%) of the Debtors' business came from government awarded contracts with the remaining 15% involving non-governmental group purchasing organization ("GPO") awards and Alternate Site operations. The Debtors, through AMD and AMD PA, provided services through four principal lines of business, as follows:

- a. Channel Partner Program: AMD partnered with leading medical device and equipment manufacturers under distribution agreements to provide end-customer access, improve the effectiveness of their sales investments and interactions with customers, and optimize channel management and back office functions. By way of example, AMD was awarded the Defense Logistics Agency ("DLA," which is part of the Department of Defense) Integrated Operating Room ("IOR") contract, which allowed AMD to work with vendors and construction companies to coordinate technologically advanced equipment for operating rooms at multiple Department of Defense facilities.
- b. Acute Care Distribution: AMD distributed medical and surgical products and provided a range of value-added services to Integrated Delivery Networks, stand alone acute care hospitals and government hospitals. As an example, AMD distributed medical and surgical supplies, equipment and related services for the VA to VA facilities under the NG Contract.
- c. Projects: AMD provided customers such as military expeditionary hospitals, reserves, and non-governmental group organizations that did not have routine usage the ability to obtain stand-up healthcare assets very quickly by way of designing and assembling medical kits. For instance, after AMD received an order, it worked with its suppliers and vendors to procure product, store and assemble medical kits to meet that order. In 2015, AMD partnered with the DLA and the USAID Office of Federal Disaster Assistance to support the humanitarian relief effort in Syria and bordering countries. This included providing everyday necessities such as toiletries, sanitary towels, and laundry detergent. AMD, acting as the prime contractor, sourced components for 1,089,900 Adult Hygiene Kits,

which were produced for shipment to Kuwait, Jordan, Lebanon and Turkey.

- d. Alternate Site: While AMD engaged in some Alternate Site business, AMD PA exclusively serviced the Alternate Site component of the business, which was supported primarily by the Vernon, CA distribution warehouse and partially by the King of Prussia, PA facility.

- **As of Late August 2020 Through Present Day**

25. As of late August 2020 through present, the Debtors no longer operate any of the four lines of business and, rather, have focused exclusively on selling their assets and collecting accounts receivable in order to, among other things, pay down their secured debt in accordance with their loan documents.

26. The Debtors' senior management team includes: (a) myself, as Chief Restructuring Officer of the Debtors through CR3; (b) Doug Flannery, a consultant from CR3 whose duties and role are similar to a chief financial officer; and (c) Beverly Kuykendall, who is serving as the President of Government Business of the Debtors.

D. The Debtors' Debt Structure.

27. Wells Fargo Bank, National Association, a national banking association is the senior secured agent ("Wells Fargo" or the "Senior Agent"), for the Debtors' senior secured lenders (collectively, the "Senior Lenders"). AMD, AMD PA and DVSS are the borrowers under a revolving line of credit ("Revolver") provided by the Senior Lenders. In connection with the Revolver, Holdings, which owns 100% of the equity in AMD, issued a Guaranty and Security Agreement in favor of the Senior Lenders.² The Senior Lenders have a lien on virtually all of the Debtors' assets. The outstanding principal balance of the senior secured indebtedness due to the Senior Lender is not less than \$10,536,688.78.

28. WC AMD, LLC, a Delaware limited liability company (the "Junior Agent"), SOLIC AMD Investco, LLC, a Delaware limited liability company, and Aman Capital LLC, a

Florida limited liability company, are the Debtors' junior secured lenders (collectively, the "Junior Lenders"). The Junior Lenders have a lien on virtually all of the Debtors' assets, subordinated to the Senior Lenders pursuant to an Intercreditor Agreement. In a related transaction, the Junior Lenders also purchased equity interests in Holdings. The total outstanding principal balance of the junior secured indebtedness due to the Junior Lenders is approximately \$32,816,304.39 million in the aggregate.

29. As of the Petition Date, the Debtors owed approximately \$51 million in general unsecured debt to about 450 non-insider creditors, of which about \$30 million is owed to 9 vendors. Approximately \$559,000 in general unsecured debt is owed to the Junior Lenders (in addition to the Junior Lenders' second lien debt in the approximate amount of \$32,816,000).

E. Events Leading to the Filing of the Chapter 11 Cases.

a. The Debtors' Financial Overview.

30. The Debtors have experienced significant delays in collecting accounts receivable and in selling inventory due to the negative economic impact of Covid-19 on the healthcare products distribution industry commencing in the second calendar quarter of 2020 and continuing thereafter. Significantly, a material percentage of voluntary and non-emergency surgical and medical procedures has been cancelled or indefinitely deferred during this period, and this has materially reduced the payment and purchasing performance of the Debtors' customers.

31. Additionally, in 2016, AMD was awarded and began performing under the VA's MSVP NG Contract, which lapsed on April 1, 2020, but was to include two additional bridge contracts emanating therefrom; one to end in September 2020 and the other to end in March of 2021. The VA, however, chose to terminate the first bridge contract effective August 1, 2020, about 2 ½ months early. Under the NG Contract and bridge contract, AMD was required to

²AMD, AMD PA and DVSS also signed the Guaranty and Security Agreement as Grantors.

maintain necessary inventory levels to provide the required supplies to participating VA facilities. That meant that after the VA reviewed and approved usage amounts of products on a monthly basis, AMD was required to purchase the inventory using its bank credit and store it in its warehouses until the VA facilities affirmatively ordered the products for delivery. With increasing frequency, however, the VA facilities failed to purchase the inventory that they forecasted was needed. Consequently, AMD's operations and finances were severely impacted because AMD utilized about \$17 million of its working capital line of credit for purchases of inventory. Much of that inventory remains stockpiled at Debtors' distribution centers and, thus, is not being sold at the wholesale prices anticipated, while the Debtors continue to pay interest to the bank on the debt they incurred for those inventory purchases.

32. The foregoing circumstances have taken a substantial toll on AMD's and AMD PA's employee head count. Prior to August 1, 2020, AMD and AMD PA collectively employed 174 people. AMD's employees totaled 145, of which 86 were hourly wage earners and 59 were salaried employees. AMD PA had 29 employees in total, of which 22 were hourly wage earners and 7 were salaried. By early August 1, 2020, and progressively through November 2020, however, both Debtors were forced to reduce their workforces. Collectively, AMD and AMD PA now employ 33 employees, most of which work full time.

F. Objectives of Chapter 11 Filing.

33. The Debtors commenced these Chapter 11 Cases in order to preserve and maximize the value of their assets for the benefit of their customers, their secured creditors, their vendors and other unsecured creditors, and their employees. The Debtors' immediate objective is to stabilize their operations by obtaining the relief requested in the First Day Motions and to conduct an orderly disposition of their assets at the highest and best value.

III. FIRST-DAY MOTIONS

34. Concurrently with the filing of these Chapter 11 Cases, the Debtors will be filing a number of First Day Motions. The Debtors request that the Court conduct a hearing as soon as possible after the commencement of the Debtors' bankruptcy cases (the "First Day Hearing"), during which the Court will hear arguments of counsel with respect to the First Day Motions.

35. I have reviewed each of the First Day Motions, including the exhibits thereto and I believe that the relief sought in each of the First Day Motions is narrowly tailored to meet the goals described above and, ultimately, will be critical to the Debtors' ability to preserve their going concern value, to maximize the value of their assets for all creditors of their estates, and to avoid immediate and irreparable harm to the Debtors' estates.

A. Debtors' *Ex Parte* Motion for Joint Administration (the "Joint Administration Motion").³

36. The Debtors believe that it would be more efficient for the administration of these cases if joint administration were authorized. The Debtors anticipate that a significant portion of the activity during these cases and most hearings will be substantially identical for all of the Debtors resulting in duplicative pleadings repeatedly being filed should joint administration be denied. Consequently, joint administration would reduce costs and facilitate the economical, efficient and convenient administration of the Debtors' estates.

37. The Debtors submit that the rights of the creditors of each of the Debtors will not be adversely affected by joint administration of these cases. The Debtors filed the Joint Administration Motion on an *ex parte* basis as contemplated by Local Rule 1015-1(A)(2)(a). The Debtors submit that the entry of an Order approving joint administration of the Debtors' Chapter 11 Cases will be in their best interests and those of their creditors.

³ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the respective motion or application, as defined, in this section of the Declaration.

B. Debtors' Application for Approval, on an Interim and Final Basis, of the Employment of Paul Steven Singerman and the Law Firm of Berger Singerman LLP as Counsel for Debtors in Possession *Nunc Pro Tunc* to Petition Date (the "BSLLP Application").

38. The Debtors seek authority to retain, on an interim and final basis, Paul Steven Singerman and the law firm of Berger Singerman LLP ("BSLLP") as general bankruptcy counsel *nunc pro tunc* to the Petition Date. As detailed in the BSLLP Application, the Debtors understand that Mr. Singerman and BSLLP have extensive experience representing chapter 11 debtors in this district (and other districts across the country) and that they are well-qualified to serve as general bankruptcy counsel to the Debtors. The Debtors believe it is in their best interests, and those of their creditors, that Mr. Singerman and BSLLP be retained to serve as Debtors' general bankruptcy counsel in their Chapter 11 Cases.

39. To the best of the Debtors' knowledge, except as disclosed in the *Declaration of Paul Steven Singerman on Behalf of Berger Singerman LLP as Proposed Counsel for Debtors-In-Possession, Nunc Pro Tunc to the Petition Date*, affirmed by Mr. Singerman and filed by BSLLP which accompanies the BSLLP Application to retain it, neither Mr. Singerman nor BSLLP has any connection with the Debtors' creditors or other parties in interest or their respective attorneys. Counsel has informed me that corporations may not appear in a Florida or Federal Court *pro se*, and that only a licensed attorney may appear on their behalves. Because there is a myriad of relief that must be sought from the Court immediately, the Debtors will suffer immediate and irreparable harm if they are unable to obtain the services of counsel before a final hearing on the application for approval of counsel's employment can be convened. For example, the Debtors require the Court's approval of the use of their existing cash management system. Without the ability to continue using their cash management system, the Debtors will be unable to operate and maximize value for the benefit of their estates. It is, therefore, my belief that only with the granting of interim approval of counsel's employment will such immediate and

irreparable injury be avoided. In that regard, counsel advises that this relief, as contemplated by Bankruptcy Rule 6003, has been granted in numerous chapter 11 cases in this District, including large chapter 11 cases. *See, e.g., In re McGuire Holdings*, Chapter 11 Case No. 11-39347-RAM (Bankr. S.D. Fla. Oct. 27, 2011); *In re HearUSA, Inc.*, Chapter 11 Case No. 11-23341-EPK (Bankr. S.D. Fla. May 20, 2011); *In re Gulfstream International Group, Inc.*, Chapter 11 Case No. 10-44131-BKC-JKO (Bankr. S.D. Fla. Nov. 8, 2010); *In re Medical Staffing Network Holdings, Inc., et al.*, Chapter 11 Case No. 10-29101-BKC-EPK (Bankr. S.D. Fla. July 8, 2010); *In re Gemini Cargo Logistics, Inc., et al.*, Chapter 11 Case No. 08-18173-BKC-PGH (Bankr. S.D. Fla. June 20, 2008); *In re First NLC Financial Services, LLC*, Chapter 11 Case No. 08-10632-BKC-PGH (Bankr. S.D. Fla. Jan. 28, 2008); *In re Touse, Inc.*, Chapter 11 Case No. 08-10928-BKC-JKO (Bankr. S.D. Fla. Jan. 31, 2008) and by other bankruptcy courts throughout the country. Accordingly, in the exercise of my business judgment, it is in the best interests of the Debtors, their estates and creditors to retain BSLLP as the Debtors' corporate restructuring counsel.

C. Debtors' Application for Approval of Employment of Prime Clerk, LLC as Notice, Claims and Solicitation Agent of the Bankruptcy Court, *Nunc Pro Tunc* to Petition Date.

40. The Debtors seek approval of their agreement with and appointment of Prime Clerk, LLC ("Prime Clerk") as notice, claims, and solicitation agent of the Court. The Debtors believe that Prime Clerk has substantial experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of Chapter 11 cases. The Debtors also believe that Prime Clerk has substantial experience in cases of this size and complexity, and has acted as the official notice, claims, and balloting agent in many large bankruptcy cases pending in districts nationwide. The approval of the Debtors' agreement with

Prime Clerk and Prime Clerk's appointment as notice, claims, and balloting agent of the Court will facilitate the orderly and efficient management of these chapter 11 cases.

D. Debtors' Emergency Motion for Order (I) Authorizing Debtors to Pay (A) Certain Prepetition Employee Obligations and (B) Prepetition Withholding Obligations, (II) Authorizing the Debtors to Maintain Employee Benefit Programs, and (III) Directing Banks to Honor Related Prepetition Transfers (the "Employee Motion").

41. The Debtors seek the relief requested in the Employee Motion because any delay in paying employee compensation, deductions, or benefits will destroy the Debtors' relationships with the employees and irreparably impair employee morale at the very time when the dedication, confidence, and cooperation of these employees are most critical. The Debtors face the imminent risk that their operations may be severely impaired if the Debtors are not immediately granted authority to make the payments described in the Employee Motion. Employee support for the Debtors' liquidation efforts is crucial to the success of those efforts, particularly given the unique knowledge of the employees regarding the Debtors' inventory, accounts receivable, product lines, customers and operations. At this critical early stage of these Chapter 11 Cases, the Debtors simply cannot risk the substantial disruption that would inevitably attend any decline in work force morale attributable to the Debtors' failure to pay employee compensation, deductions, and benefits in the ordinary course. Finally, to remain in a position to maintain necessary oversight and quality control, the Debtors must continue their corporate policies of permitting certain employees to incur business-related expenses and thereafter to seek reimbursement by submitting appropriate invoices or vouchers evidencing such out-of-pocket disbursements.

42. Attached to the motion is the schedule required by Local Rule 9013-1(I), containing, among other things, the names of the Debtors' 33 employees (the names are redacted in order not to cause discord among the employees as to differing compensation), the

amounts of compensation sought to be paid, and withholding amounts for payroll taxes and related benefits.

E. Debtors' Emergency Motion for (A) Authority to (I) Maintain Bank Accounts and to Continue to Use Existing Bank Forms and Checks, and (II) Continue to Use Existing Cash Management System, and (B) Waiver of Certain Investment and Deposit Guidelines (the "Cash Management Motion").

43. I understand from counsel that the U.S. Trustee has established certain operating guidelines for debtors-in-possession in order to supervise the administration of Chapter 11 cases. These guidelines require chapter 11 debtors to, among other things, close all existing bank accounts and open new debtor-in-possession ("DIP") bank accounts, establish one DIP account for all estate monies required for the payment of taxes (including payroll taxes), maintain a separate DIP account for cash collateral, and obtain checks for all DIP accounts that bear the designation "debtor-in-possession," the bankruptcy case number, and the type of account. These requirements are designed to provide a clear line of demarcation between prepetition and post-petition transactions and operations and to prevent the inadvertent post-petition payment of prepetition claims. In the Cash Management Motion, the Debtors seek a waiver of these requirements so that their operations are not further disrupted by the need to alter the cash management system.

44. Prior to the commencement of these Chapter 11 Cases, in the ordinary course of their business, the Debtors utilized a network of bank accounts to efficiently collect, transfer and disburse funds generated on a daily basis from their operations (collectively, the "Bank Accounts"). A list of the Debtors' Bank Accounts and the amount on deposit in each such Bank Account as of December 10, 2020 is set forth on Exhibit "A" attached to the Cash Management Motion. The Debtor utilizes bank accounts at Wells Fargo Bank for its cash management system. In addition to checks, the Debtors also conduct banking transactions by debit, wire or ACH payments, and other similar methods.

45. Through the utilization of the existing cash management system, the Debtors are able to facilitate cash forecasting and reporting, monitor collection and manage disbursement of funds, and maintain control over the administration of the various bank accounts required to effect the collection, disbursement, and movement of cash. The movement of funds through the Debtors' cash management system is illustrated in the chart attached as Exhibit "B" to the Cash Management Motion.

46. The cash management system used by the Debtors constitutes ordinary, usual, and essential business practices. This system allows the Debtors to (a) control corporate funds centrally, (b) ensure availability of funds when necessary, and (c) reduce administrative expenses.

47. The Debtors' operations require that the cash management system continues during the pendency of these Chapter 11 Cases. If the Debtors were required to adopt a new cash management system, their operations would be severely disrupted, which would have an adverse impact on the Debtors' ability to finance their operations in the ordinary course and maximize the value of their enterprise. Further, the establishment of new cash accounts and a new collection and disbursement system would result in substantial additional costs to the Debtors' bankruptcy estates. Accordingly, maintenance of the existing cash management system is essential and in the best interests of all creditors and other parties in interest.

48. The Debtors request authority to maintain their existing Bank Accounts and cash management system in accordance with their usual and customary practices to ensure a smooth transition into chapter 11 with minimal disruption to operations.

49. The Debtors also seek a waiver of certain operating Guidelines established by the office of the U.S. Trustee. For example, the Debtors seek a waiver of the requirements that they: (i) close all existing bank accounts; (ii) open new debtor in possession ("DIP") bank

accounts; (iii) establish one DIP account for all estate monies required for the payment of taxes (including payroll taxes); (iv) maintain a separate DIP account for cash collateral; (v) obtain checks for all DIP accounts that bear the designation, “debtor in possession,” the bankruptcy case number, and the type of account; and (vi) open a new set of books and records as of the Petition Date. Closing and opening new bank accounts and books and records would create unnecessary administrative burdens and hardship and would cause unnecessary expense, utilization of resources, and delay. With the use of computer technology, it is now easy to differentiate between pre- and post-petition transactions by date. The Debtors, in the ordinary course of their businesses, use many checks, invoices, stationery, and other business forms. By virtue of the nature and scope of the businesses in which the Debtors are engaged and the numerous other parties with whom the Debtors deal, the Debtors need to use their existing Bank Accounts and business forms without alteration or change. A substantial amount of time and expense would be required in order to close and open new bank accounts and print new checks and other business forms. Fulfillment of the requirement would likely delay payment of post-petition claims and negatively affect operations. Accordingly, the Debtors request that they be authorized to continue to use their existing bank account and business forms and to maintain their existing business records.

50. I further understand that section 345 of the Bankruptcy Code and the U.S. Trustee establishes certain requirements with respect to all deposits and investments of money of the estate. The Debtors believe that the banks at which they maintain their accounts are financially stable banking institutions, are FDIC insured and authorized depositories pursuant to 11 U.S.C. § 345(b). Additionally, as explained above, the Debtors’ Bank Accounts comprise an established cash management system that the Debtors need to maintain in order to ensure that collections and disbursements from the Bank Accounts are not disrupted. The Debtors will

note, in their respective records, the date and times the chapter 11 petitions were filed, and the records will reflect each post-petition receipt and disbursement. Therefore, a waiver of the section 345 deposit guidelines would not pose a risk to the Debtors' estates nor their creditors.

51. The Debtors should be granted further relief from the Guidelines to the extent that they require the Debtors to make all disbursements by check. In particular, the Guidelines require that all receipts and all disbursements of estate funds be by check with a notation representing the reason for the disbursement. Considering the complexity of the Debtors' operations, the Debtors must conduct transactions by debit, wire, or ACH payments and other similar methods, as discussed above. In addition, the Debtors receive a portion of their customer receipts from credit card purchases through ACH payments from the credit card companies. To deny the Debtors the opportunity to conduct transactions by debit, wire or ACH payments or other similar methods would interfere with the Debtors' performance of their contracts and unnecessarily disrupt the Debtors' business operations, as well as create additional costs to the Debtors. Therefore, the Debtors request a waiver of this requirement.

52. The Debtors and I have been advised by counsel that the relief requested in the Cash Management Motion has been granted in other large chapter 11 cases in this District. Therefore, I submit that the entry of an order authorizing the relief sought will be in the Debtors' best interests and those of their creditors.

F. Debtor's Emergency Motion For Order (I) Authorizing the Debtors (A) to Use Cash Collateral on an Interim Basis Pursuant to 11 U.S.C. §363 and (B) Granting Adequate Protection in Connection Therewith Pursuant to 11 U.S.C. §§105, 361, 362, 363 and 507, and (II) Scheduling a Final Hearing Under Bankruptcy Rule 4001 (the "Cash Collateral Motion").

53. The Debtors filed the Cash Collateral Motion seeking interim and final authorization to utilize Cash Collateral to include cash on hand and cash to be generated from the continued operations of the Debtors' business, including from the collection of accounts

receivable. The Debtors seek to use Cash Collateral in order to pay for essential expenses contained in the Budget attached to the Cash Collateral Motion as Exhibit “A,” such as wages, the purchase of supplies and payment of outside vendors because without it, the Debtors will not be able to remain in business in order to propose a plan in these chapter 11 cases.

54. In exchange for the use of Cash Collateral, the Debtors propose, as adequate protection pursuant to §§361 and 363 of the Bankruptcy Code, as applicable, granting Senior Agent, for the benefit of the Senior Lenders, and Junior Agent (together, “Agents”) for the benefit of the Junior Lenders, effective as of the Petition Date, replacement liens to, on and in all property of the Debtors acquired or generated after the Petition Date, but solely to the same extent and priority, and of the same kind and nature, as the property of the Debtors securing the prepetition obligations to Senior Lenders and Junior Lenders (together “Lenders”) under their respective Loan Documents. For purposes of the Interim Cash Collateral Order the Debtors are seeking, Wells Fargo’s replacement lien, however, will not extend to any claims or causes of action arising under sections 542 through 550 of the Bankruptcy Code (collectively, the “Avoidance Actions”).

55. In the event that diminution occurs in the value of the Cash Collateral in which Agents and Lenders have an interest from and after the Petition Date as a result of the Debtors’ use thereof in an amount in excess of the replacement lien granted, the Cash Collateral Motion requests that Agents and Lenders be granted an administrative expense claim under section 507(b) of the Bankruptcy Code with priority over all other relevant administrative expense claims, except for the following Carveouts: (a) the aggregate amount provided in the Budget for unpaid compensation and reimbursement of expenses of Carveout Professionals as defined in the Cash Collateral Order (including any unpaid holdback amounts) retained by the Debtors’ estates, or any official committee appointed in the Debtors’ cases under the Bankruptcy Code

(collectively, the “Professionals”), accrued or incurred on or before the earlier of entry of an order terminating the Debtors’ use of Cash Collateral (the “Termination Date”) that are allowed and payable under 11 U.S.C. §§ 330 and 331 and/or any orders of the Court, regardless of whether allowed before such Termination Date; (b) compensation and reimbursement of expenses of Professionals accrued or incurred after the Termination Date in connection with the wind-down of the Debtors’ chapter 11 cases and conversion to chapter 7 cases, if the cases are converted to chapter 7 cases either voluntarily or involuntarily, in an aggregate amount not more than \$175,000 for the Debtors’ Carveout Professionals and \$25,000 for the Committees’ Carveout Professionals; (c) the aggregate amount provided in the Budget for unpaid fees due to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930; and (d) the aggregate amount provided in the Budget for unpaid fees required to be paid to the Clerk of the Bankruptcy Court.

56. While the Debtors reserve the right to contest the validity, priority, and extent of Agents’ and Lenders’ alleged liens and claims in accordance with the Cash Collateral Motion, they also submit that the foregoing protections, and the fact that the use of Cash Collateral will enable the Debtors to preserve value by continuing to operate in the ordinary course of business, should adequately protect Agents and Lenders from any diminution in the value of any interests in its prepetition collateral, including any Cash Collateral; provided, however, that nothing in the Cash Collateral Motion will prejudice Agents’ and Lenders’ right to later assert that its interests in the Debtors’ collateral securing Agents’ and Lenders’ liens lack adequate protection and seek a higher valuation of the collateral securing Agents’ and Lenders’ liens and provided further that the Debtors reserve all rights and defenses in that event.

G. Debtors' Emergency Motion For Authorization to (I) Continue to Administer Insurance Policies and Related Agreements; and (II) Honor Certain Obligations in Respect Thereto (the "Insurance Motion").

57. The Debtors filed the Insurance Motion seeking authorization to continue to administer insurance policies and agreements relating thereto, in the Debtors' discretion, including to pay insurance premiums and other costs, to the extent they become due and payable during the pendency of these Chapter 11 Cases.

58. The Debtors maintain numerous insurance policies, including workers' compensation and employers liability insurance, management liability insurance, fiduciary liability insurance, commercial/general/auto liability insurance, property and flood insurance, storage tank, crime and cyber insurance, umbrella liability insurance and excess liability insurance (collectively, the "Insurance Policies").

59. It is essential for the Debtors to maintain the Insurance Policies, which provide a comprehensive range of coverage for the Debtors. If the Insurance Policies are allowed to lapse, the Debtors will be exposed to substantial liability for any damages resulting to persons or property of the Debtors and others, and the Debtors would have to bear the costs and expenses of defense litigation. Moreover, maintenance of the Insurance Policies is mandatory under the guidelines of the U.S. Trustee and various state and federal laws.

60. The Debtors' continued operations require that the Insurance Policies be maintained on an ongoing and uninterrupted basis. In maintaining those insurance arrangements, it is crucial that the administrative fees paid to providers and the premiums paid for the Insurance Policies are continued and maintained by the Debtors. For example, the risk that eligible claimants will not receive payments with respect to employment-related injuries may have a devastating effect on the financial well-being and morale of the employees, and their willingness

to remain in the Debtors' employ. Departures by employees at this critical time may result in a severe disruption of the Debtors' business to the detriment of all parties in interest.

61. To the extent that the Insurance Policies may be deemed executory contracts, the Debtors do not at this time seek authority to assume these contracts. The Debtors request only authorization to continue the programs, pay certain claims in accordance with the programs, and pay such premiums and administrative expenses as may be necessary to keep the Insurance Policies in force.

H. Debtors' Emergency Motion for Order Authorizing Debtors to Pay Prepetition Sales, Use, Trust Fund, Property, and Other Taxes and Similar Obligations (the "Tax Motion").

62. The Debtors are requesting that the Court enter an order authorizing, but not directing, the Debtors to pay prepetition sales, use, trust fund, property, and other taxes and similar obligations, as detailed in the Tax Motion, in the ordinary course of the Debtors' businesses. In addition, the Debtors are requesting that (i) to the extent Debtors have paid certain taxes which should not have been paid, the Court authorize the Debtors to seek a refund of such taxes, and (ii) to the extent that the Debtors dispute any such pre-petition tax, the Court authorize the Debtors to set aside, in a segregated account, funds to pay the subject tax until a final determination is made as to whether the Debtors are obligated to pay the subject tax.

63. In connection with the operation of their businesses, the Debtors: (a) incur certain sales, use, trust fund and property taxes, and collect or incur payroll and employment-related taxes in favor of various taxing authorities (collectively, the "Taxes"), and (b) are charged fees, licenses, and other similar charges and assessments by various licensing authorities (collectively, the "Fees"). The Taxes and Fees are paid to various taxing, licensing, and other authorities (collectively, the "Authorities") on a periodic basis (whether monthly, quarterly, or yearly) that are established for each particular Tax or Fee.

64. As of the Petition Date, the Debtors estimate that they have incurred prepetition payroll and employment-related Taxes in the ordinary course of business and that such Taxes are owed (but have not yet been paid) to the Authorities. Those payroll and employment-related taxes will be paid in conjunction with the Debtors' upcoming payroll, which payroll is the subject of a separate First Day Motion. Other than amounts owed related to the upcoming payroll, the Debtors are current on their payroll and employment-related Taxes.

65. Separate and apart from the payroll and employment-related taxes, the Debtors estimate that as of the Petition Date, the Debtors owe the various Authorities approximately \$73.31 in prepetition Taxes and Fees as described in detail on Exhibit "A" to the Tax Motion. Through the Tax Motion, the Debtors seek only the authorization to pay the Authorities the amounts described therein. Other than amounts currently due, the Debtors are current on all other Taxes and Fees and are not otherwise in arrears.

66. If the Taxes and Fees are not paid, it is possible that some, if not all, of the Authorities may, pursuant to Bankruptcy Code § 362(b)(9), cause the Debtors to be audited and subjected to various administrative proceedings. Such audits and administrative proceedings and the accompanying disruption in business activities would materially and adversely affect the Debtors' restructuring prospects and unnecessarily divert the Debtors' attention away from these cases. In the event that such action is taken by the Authorities, the Debtors need the authority of this Court to pay, if necessary, the various Taxes and Fees.

67. Accordingly, the Debtors request that they be authorized, but not directed, to pay the prepetition Taxes and Fees to the relevant Authorities in the ordinary course of business. Nothing herein, however, shall preclude the Debtors from contesting, in their sole discretion, the validity and amount of any Taxes or Fees under bankruptcy or non-bankruptcy law.

68. The Debtors further request that all depositories on which checks were drawn in payment of prepetition amounts to the Authorities be directed to clear such checks as and when presented for payment, if appropriate. For the above reasons, I believe that granting the relief requested in the Tax Motion is in the best interests of the Debtors, the estates, their creditors and other interested parties.

I. Debtors' Motion for Authorization to Assume Executory Contract Between American Purchasing Services, LLC and AvMed Supply, LLC (the "AvMed Assumption Motion") (Expedited Hearing Requested)

69. The Debtors filed a motion seeking a Court order to assume a Purchase and Sale Agreement ("PSA") between AMD and AvMed Supply, LLC ("AvMed"). As explained above, a large portion of the Debtors' business centered on distributing medical surgical supplies, laboratory consumables, medical equipment, and laboratory supply items to the federal government and its departments, agencies, and divisions.

70. Due to its financial condition, AMD has been unable to continue to perform its ongoing obligations pursuant to its medical and surgical supply contracts with the federal government. As a result, AMD entered into the PSA with AvMed in order for AvMed to complete the acquisition and shipping of nonpharmaceutical goods under remaining purchase orders, some of which AvMed purchased directly from AMD. AMD continues to supply and ship the pharmaceutical items required under those purchase orders. As the federal government will not release payment on the purchase orders until they are fulfilled to a certain level, subcontracting with AvMed was critical to enable AMD to receive \$2.1 million owed to AMD from the federal government for prior shipments of inventory under the purchase orders.

71. Since AMD seeks to disengage from the Med/Surg supply business, under the PSA, AMD also agreed to seek the novation of Med/Surg contracts and the associated inventory and books and records to AvMed for \$250,000.

72. It is in the best interests of the Debtors and their estates that the Court approve the assumption of the PSA, as the transaction will allow AMD to receive \$2.1 million from the federal government in payment of AMD's prior shipments that partially fulfilled the purchase orders, which would not be possible without AvMed acquiring and shipping the balance of inventory required by those purchase orders as a subcontractor.

J. Debtors' Emergency Motion for Authorization to Assume Executory Contract Between American Medical Depot Holdings, LLC and Tiger Capital Group, LLC (the "Tiger Contract")

73. The Debtors filed a motion seeking a Court order to assume a Consulting Agreement between Holdings and Tiger Capital Group, LLC ("Tiger") dated September 2020, as amended on December 1, 2020 (collectively, the "Contract"). Tiger was initially retained by the Debtors in order to conduct private bulk sales of the Debtors' inventory. Although it is a narrow market of buyers that can purchase very large quantities of medical supplies, Tiger was able to conduct three (3) private bulk sales and, subsequently, began focusing its efforts on auctioning the remaining inventory as a more viable option to maximize a sale of the Debtors' assets.

74. As of the Petition Date, Tiger has advertised and coordinated two (2) on-line auctions of the Debtors' inventory located at the Vernon, CA and King of Prussia, PA warehouses. Tiger is preparing for four (4) additional auctions to take occur post-petition through mid-January 2021 at the Debtors' Miramar, FL, Tampa, FL, Whitsett, NC and Schenectady, NY warehouses. The Debtors seek the Court's permission to assume the Tiger Contract on an emergency basis as the next on-line auction is scheduled on December 16, 2020 for inventory located in the Tampa, FL warehouse.

75. It is in the best interest of the Debtors and their creditor constituencies for the Court to approve the assumption of the Contract, as Tiger is familiar with the Debtors'

inventory, has already engaged in the sales of the Debtors' inventory and is best suited to most efficiently and effectively assist the Debtors in liquidating their assets.

IV. DEBTORS' OBJECTIVES IN THESE CASES

76. The Debtors' objectives in their Chapter 11 Cases is to to stabilize their operations and liquidate their assets in an orderly manner to ensure the highest value for all of the Debtors' stakeholders. The potential means by which I will seek to maximize value of the Debtors assets include: (i) a bulk sale of approximately \$19 million in inventory, of which approximately \$5 million is attributed to inventory purchases AMD was required to make in order to service the VA hospitals under the NG Contract and bridge contract, but which the VA ultimately failed to order and purchase, and over \$10 million of which is attributed to inventory purchases by AMD for the VA that were not part of the NG Contract or bridge contract; (ii) collection of accounts receivable totalling approximately \$15 million, of which over \$3.1 million is owed by the VA for inventory ordered and received under the NG Contract; (iii) selling other assets, such as government contracts, subject to the satisfaction of governmental agency requirements; and (iv) selling intellectual property, including patents and/or patented products.

77. For all of these reasons, I respectfully request that this Court grant the relief requested in each of the First Day Motions filed concurrently herewith.

V. CONCLUSION

78. To successfully maximize the value of its assets for all stakeholders, the Debtors' immediate objective is to maintain the status quo following the commencement of these cases by minimizing any adverse impact of the filing of these Chapter 11 Cases on the Debtors' assets and operations and protect the interests of their employees, creditors and other stakeholders. For the reasons described herein and in the First Day Motions, I believe that the prospect for achieving

these objectives for the benefit of the Debtors' creditors and other stakeholders will be substantially enhanced if the Court grants the relief requested in each of the First Day Motions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed this 11th day of December, 2020 in Miami, Florida.

AMERICAN MEDICAL DEPOT HOLDINGS, LLC
AMERICAN PURCHASING SERVICES, LLC, d/b/a
AMERICAN MEDICAL DEPOT
DVSS ACQUISITION COMPANY, LLC
AMD PENNSYLVANIA, LLC

By:


Dennis Gerard, Chief Restructuring Officer

8565568-3

**EXHIBIT “A”
(Organizational Chart)**

Debtors' Organizational Chart

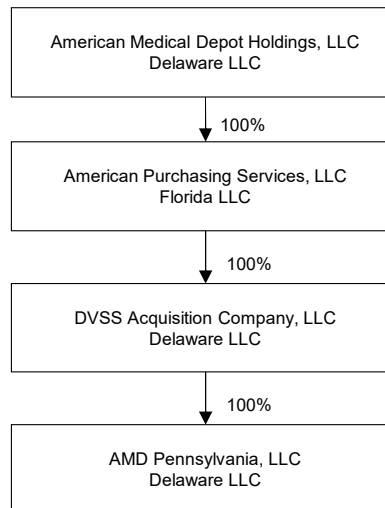


EXHIBIT “B”
(Equity Ownership Chart)

AMERICAN MEDICAL DEPOT HOLDINGS, LLC – OWNERSHIP INTERESTS

Member	Series A Preferred Units	Series B Preferred Units	Class A Common Units	Class B Common Units	Class C Common Units
WC AMD, LLC	1,881.8182	0	0	20,712,749.0257	0
SOLIC AMD Investco, LLC	681.8182	0	0	7,504,619.2135	0
Aman Capital LLC	156.4332	0	0	1,721,825.1961	0
Nana Capital LLC	0	280.08	0	0	0
AMD Founders LLC	0	0	77,500,000	0	0
Sukrit Agrawal	0	0	500	0	0
Akhil Agrawal	0	0	500	0	0
Sukrit Agrawal Irrevocable Trust, dated December 31, 2009	0	0	49,500	0	0
Akhil Agrawal Irrevocable Trust, dated December 31, 2009	0	0	49,500	0	0
Paul Kaliner	0	0	2,528,555	0	0
Beverly Kuykendall	0	0	0	0	1,209,535.6971
Steven Inacker					120,953.5697
Steven Nielsen					120,953.5697
Michael Orscheln					2,419,071.3942