

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

In re:

GLOBAL WOUND CARE MEDICAL GROUP, a
Professional Corporation,¹

Debtor and Debtor in Possession.

Chapter 11

Case No. 24-34908

(Emergency Hearing Requested)

DEBTOR’S EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTOR TO (A) MAINTAIN INSURANCE PROGRAM AND (B) PAY INSURANCE OBLIGATIONS IN THE ORDINARY COURSE; AND (II) PREVENTING INSURANCE COMPANIES FROM ENFORCING IPSO FACTO CLAUSES OR GIVING ANY NOTICE OF TERMINATION OR OTHERWISE MODIFYING ANY INSURANCE POLICY WITHOUT OBTAINING RELIEF FROM THE AUTOMATIC STAY

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN OCTOBER 24, 2024.

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Global Wound Care Medical Group, a Professional Corporation, the debtor and debtor in possession in the above-captioned case (the “Debtor”), files this motion (the “Motion”) for entry of an order pursuant to §§ 105(a), 362, 363, and 365 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”),² Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(b) of the Local Rules (the “BLR”) for the

¹ The last four digits of the Debtor’s tax identification number in the jurisdiction in which it operates is 3572.

² Unless specified otherwise, all chapter and section references are to the Bankruptcy Code and “Rule” references are to the Bankruptcy Rules.



United States Bankruptcy Court for the Southern District of Texas (the “Court”) for the entry of an order (substantially in the form filed herewith, the “Proposed Order”): (A) authorizing the Debtor to (i) maintain its insurance coverage levels, including authority to revise, extend, supplement, renew or change insurance coverage as needed and (ii) make payments to Wound Pros (defined herein) under the terms of the Management Services Agreement between the parties (the “MSA”) for payments made with respect to insurance premiums, self-insured retentions, broker fees and deductibles in the ordinary course of business (collectively, the “Insurance Obligations”); and (B) preventing insurance companies from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay imposed by § 362.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a) and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory basis for the relief requested are §§ 105(a), 362, 363, and 365, Bankruptcy Rules 6003 and 6004, and BLR 9013-1(b).

BACKGROUND

A. General Background

3. On October 21, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code.

4. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to §§ 1107 and 1108.

5. No trustee, examiner or official committee has been appointed in this chapter 11 case.

6. A description of the Debtor, its business, and the facts and circumstances supporting this Motion and the reasons for commencing this case are set forth in greater detail in the *Declaration of Ralph Cetrulo in Support of the Chapter 11 Petition and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein.

B. Facts Relevant to the Motion

7. The Debtor maintains various insurance policies issued by several insurance carriers (collectively, the "Insurance Carriers"). Wound Pros Management Group, Inc. ("Wound Pros"), a Management Services Organization, provides the Debtor with certain non-clinical administrative and management services pursuant to the MSA. As part of the services provided to the Debtor, Wound Pros obtained and pays for the Debtor's insurance coverage issued by the Insurance Carriers. The Debtor pays Wound Pros for such insurance coverage pursuant to the expense allocation under the MSA.

8. Collectively, the insurance policies issued by the Insurance Carriers provide for coverage for, among other things: workers' compensation and employee liability, commercial general liability, automobile liability, professional and medical malpractice liability, commercial property, and other coverage (collectively, the "Insurance Policies"). A schedule and summary of the Insurance Policies is attached hereto as **Exhibit "A"**.

9. As set forth in **Exhibit "A"**, the Insurance Policies will expire beginning on March 11, 2025 or later. It is critical that the Debtor continues to carry the necessary insurance coverage to operate its business. The Debtor seeks the authority to renew, modify, extend or enter into new

Insurance Policies (collectively, the “New Insurance Policies”) on a postpetition basis in the ordinary course of business.

10. All of the premiums for its Insurance Policies have been paid in full as of the Petition Date as reflected in **Exhibit “A”**. The Debtor, nevertheless, also seeks authority to makes payments to Wound Pros under the MSA for any other premiums paid regarding the Insurance Policies or any New Insurance Policies on a postpetition basis in the ordinary course of business.

11. Wound Pros also pays certain deductibles and self-insured retention amounts with respect to the Insurance Policies. The Debtor also seeks authority to repay Wound Pros under the MSA for deductibles and self-insured retention amounts paid on a postpetition basis, including any amounts accrued and not due as of the Petition Date, in the ordinary course of business.

12. The Debtor’s insurance broker is Acrisure Partners West Coast Insurance Services, LLC (“Acrisure”). Wound Pros pays brokerage commission fees and other amounts to Acrisure. The Debtor seeks to make payments to Wound Pros under the MSA for brokerage commission and other amounts paid to Acrisure in the ordinary course of business.

13. As of the Petition Date, no amounts are outstanding with respect to the Debtor’s Insurance Programs.

RELIEF REQUESTED

14. By this Motion, the Debtor seek entry of an order: (A) authorizing the Debtor to maintain, continue and pay the Insurance Obligations and (B) preventing insurance companies from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay imposed by § 362. The Debtor requests that the relief sought herein be granted on an emergency basis because it will suffer irreparable harm without the relief requested in this Motion.

BASIS FOR RELIEF REQUESTED

15. The following is a discussion of the key caselaw and statutes relevant to the Motion.

A. Ordinary Course Payments

16. “[A] debtor receiving necessary benefits from a prepetition executory insurance contract must accord the nondebtor party an administrative expense priority for the pro rata share of the premium, during the period in which the estate received benefits from the contract.” *In re Sharon Steel Corp.*, 161 B.R. 934, 937 (Bankr. W.D. Pa. 1994) (quoting *In re Gamma Fishing Co., Inc.*, 70 B.R. 949 (Bankr. S.D. Cal. 1987)). Administrative expenses incurred in the ordinary course of business are payable in the ordinary course of business. *In re Wireless Telecomms. Inc.*, 449 B.R. 228, 235 n. 5 (Bankr. M.D. Pa. 2011) (quoting 4 Collier on Bankruptcy, 16th ed., ¶ 503.03[4], 503–17) (“‘ordinary course of business’ administrative expenses (such as current postpetition wages and trade debt) generally are paid when due. . . . Additionally, section 363(c) allows a trustee to use property of the estate in the ordinary course of business without providing for notice or an opportunity for a hearing.”); *In re Pac. Forest Indus., Inc.*, 95 B.R. 740, 743 (Bankr. C.D. Cal. 1989) (quoting 3 Collier on Bankruptcy, 15th ed., ¶ 503.01) (“there is a virtually unstated assumption that ‘ordinary course of business’ administrative expenses (such as current post petition wages and trade debt) will be paid when due.”)).

17. The Insurance Policies’ premiums that come due postpetition must be paid to maintain the Debtor’s postpetition insurance coverage. Also, the self-insured retentions and deductibles incurred for postpetition occurrences must be paid to maintain postpetition insurance coverage. The maintenance of the Debtor’s postpetition insurance coverage is essential to the operation of the Debtor’s business. Thus, the Debtor’s expenses related to the payment of postpetition insurance premiums, self-insured retentions and deductibles are administrative in

nature and are appropriately paid by Debtor to Wound Pros via the MSA's expense allocation in the ordinary course of business.

B. The Automatic Stay

18. The Debtor also requests that the Court prevent the Insurance Carriers from giving any notice of termination or otherwise modifying or canceling any Insurance Policies without obtaining relief from the automatic stay imposed by § 362. The purpose of this relief is to aid in the administration of the Debtor's case and to preserve patient care and thereby the value of the business operations. The Debtor's Insurance Carriers may be unfamiliar with the protections afforded chapter 11 debtors under § 362, and thus, an order of this Court affirming these protections would help avoid costly and unnecessary litigation.

19. As a result of the commencement of the Debtor's case, and by operation of law pursuant to § 362, the automatic stay prevents all persons from, *inter alia*, (a) commencing or continuing any judicial, administrative or other proceeding against the Debtor, (b) taking any action to exercise control over property of the estate, or (c) taking any action to collect, assess or recover a claim against the Debtor that arose before the commencement of such case. *See* 11 U.S.C. § 362(a).

20. The appropriate procedure for obtaining Court approval of termination under an insurance policy is to seek relief from the automatic stay. *In re Adana Mortg. Bankers, Inc.*, 12 B.R. 983, 988 (Bankr. N.D. Ga. 1980). The injunctions contained in § 362 are self-executing and constitute fundamental debtor protections, which, in combination with other provisions of the Bankruptcy Code, provide the Debtor with the "breathing spell" that is essential to the Debtor's ability to reorganize. *See, e.g., Sternberg v. Johnston*, 595 F.3d 937, 948 (9th Cir. 2010), *overruled on other grounds, In re Schwartz-Tallard*, 803 F.3d 1095 (9th Cir. 2015).

21. As fundamental as the foregoing protections may be, and notwithstanding that they arise as a matter of law upon commencement of a chapter 11 case, not all parties affected or potentially affected by the commencement of a chapter 11 case are aware of the Bankruptcy Code provisions or cognizant of their significance and impact. Experience has shown that it is often necessary to advise third parties of the existence and effect of § 362 and, occasionally, it is necessary to commence proceedings in the bankruptcy court to enforce the protections contained therein.

22. The Debtor submits that this Court has ample authority to grant the relief sought herein. Under § 105(a), “the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of § 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy, ¶ 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed). This is consistent with the broad equitable authority of the bankruptcy courts. *See, e.g., United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990).

23. Accordingly, the Debtor believes that under the circumstances of this case, entry of the proposed order, which incorporates a restatement of the applicable provisions of § 362, would help protect the Debtor from violations of these crucial provisions by Insurance Carriers. It would also spare the Debtor from the burden and expense of commencing proceedings to enforce the Bankruptcy Code. Accordingly, an order entered by this Court enforcing the automatic stay may increase substantially the efficiency of the administration of this case.

24. To the extent an Insurance Policy is deemed an executory contract within the meaning of § 365, the Debtor does not at this time intend to assume such agreement. Court authorization of payment shall not be deemed to constitute postpetition assumption or adoption

thereof as an executory contract pursuant to § 365. The Debtor is in the process of reviewing the Insurance Policies and reserves all of its rights under the Bankruptcy Code with respect thereto.

C. *Ipsa Facto* Provisions Unenforceable.

25. Under § 365(e)(1), *ipso facto* provisions are not enforceable in bankruptcy. The Court should enter an order making clear that the above-referenced *ipso facto* clauses in any of the Insurance Policies are not enforceable.

EMERGENCY CONSIDERATION

26. The Debtor requests emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” FED. R. BANKR. P. 6003. An immediate and orderly transition into chapter 11 is critical to the viability of the Debtor’s operations. The maintenance of the Debtor’s insurance coverage is vital to the continued operation of the Debtor’s business, and to the health, welfare, safety and security of the Debtor’s patients who seek medical care. Payment of the Insurance Obligations is necessary to maintain the Debtor’s insurance coverage postpetition and must be made to avoid immediate and irreparable harm. Thus, the Debtor has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and requests that the Court approve the relief requested in this Motion on an emergency basis.

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

27. The Debtor requests that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtor has established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

28. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver or limitation of the Debtor's or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (vi) an admission as to the validity of any liens satisfied pursuant to this Motion, or (vii) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under § 365. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtor's right to dispute such claim subsequently.

NO PREVIOUS REQUEST

29. No previous application for the relief sought herein has been made to this or any other Court.

NOTICE

30. The Debtor has provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the twenty (20) largest unsecured claims against the Debtor; (c) the Office of the United States Attorney for the Southern District of Texas; (d) the United States, acting by and through the Department of Health & Human Services and the Centers for Medicare & Medicaid Services; (e) the Insurance Carriers; and (f) any party that has requested notice pursuant to Bankruptcy Rule

2002. In light of the nature of the relief requested, the Debtor submits that no other or further notice is required.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing on this Motion, the Debtor respectfully requests entry the Proposed Order (substantially in the form attached hereto) (A) authorizing the Debtor to (i) maintain its insurance coverage levels, including authority to revise, extend, supplement, renew or change insurance coverage as needed and (ii) pay Wound Pros under the terms of the MSA for payments made with respect to insurance premiums, self-insured retentions, broker fees and deductibles in the ordinary course of business; (B) preventing insurance companies from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay imposed by § 362; and (C) granting the Debtor such other and further relief as the Court deems just and proper.

[Signature Page Follows]

Dated: October 21, 2024

Respectfully submitted,

DENTONS US LLP

/s/ Casey Doherty

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*Proposed Counsel to the Debtor and
Debtor-in-Possession*

CERTIFICATE OF ACCURACY

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to BLR 9013-1(i).

/s/ Casey Doherty _____

CERTIFICATE OF SERVICE

This is to certify that I have on October 21, 2024, I caused a 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.

/s/ Casey Doherty _____

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

In re:

GLOBAL WOUND CARE MEDICAL GROUP, a
Professional Corporation¹

Debtor and Debtor in Possession.

Chapter 11

Case No. 24-34908

ORDER (I) AUTHORIZING THE DEBTOR TO (A) MAINTAIN INSURANCE PROGRAM AND (B) PAY INSURANCE OBLIGATIONS IN THE ORDINARY COURSE; AND (II) PREVENTING INSURANCE COMPANIES FROM ENFORCING IPSO FACTO CLAUSES OR GIVING ANY NOTICE OF TERMINATION OR OTHERWISE MODIFYING ANY INSURANCE POLICY WITHOUT OBTAINING RELIEF FROM THE AUTOMATIC STAY

Upon the emergency motion (the “Motion”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of this order (the “Order”) (A) authorizing the Debtor to (i) maintain its insurance coverage levels, including authority to revise, extend, supplement, renew or change insurance coverage as needed and (ii) repay Wound Pros Management Group, Inc. (“Wound Pros”) under the terms of the Management Services Agreement (the “MSA”) for payments made with respect to insurance premiums, self-insured retentions, broker fees and deductibles in the ordinary course of business (collectively, the “Insurance Obligations”); and (B) preventing insurance companies from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay imposed by § 362 of the Bankruptcy Code, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this

¹ The last four digits of the Debtor’s tax identification number in the jurisdiction in which it operates is 3572.

² Capitalized terms not otherwise defined herein shall have the meaning afforded in the Motion.

matter pursuant to 28 U.S.C. § 1334; and this Court having found that (a) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (b) venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; (c) the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and (d) the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any; and this Court having determined that the legal and factual bases set forth in support of the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted subject to the terms of this Order.

2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2024, at __: __.m., Central Prevailing Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., Central Prevailing Time, on _____, 2024. In the event no objections to entry of a final order on the Motion are timely received, the Court may enter such final order without need for the Final Hearing.

3. The Debtor is authorized to:

- a. maintain its insurance coverage levels, including authority to revise, extend, supplement, renew or change insurance coverage as needed, and
- b. make payments to Wound Pros under the terms of the MSA for payments made with respect to insurance premiums, self-insured retentions, broker fees and deductibles in the ordinary course of business.

4. The Debtor's insurers are barred from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay imposed by § 362 of the Bankruptcy Code.

5. The Debtor shall maintain a matrix/schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion. Debtor shall provide a copy of such matrix/schedule to the U.S. Trustee and any statutory committee appointed in this chapter 11 case every 30 days beginning upon entry of this Order.

6. Notice of the Emergency Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rules 2002 and 6004(a) and BLR 9013-1(b) are waived and/or satisfied by such notice.

7. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2024

[Name of Judge]
United States Bankruptcy Judge

EXHIBIT A
Insurance Summary

Global Wound Care Medical Group, a Professional Corporation
 EXHIBIT A - Insurance Summary

Name	Type	Policy #	Term Start	Term End	Annual Premium ⁽¹⁾
The Hanover Insurance Company	Commercial General Liability	L3J-J751613-00	4/13/2024	4/13/2025	Premium included in E&O premium costs
The Hanover Insurance Company	Automobile Liability	L3J-J751613-00	4/13/2024	4/13/2025	Premium included in E&O premium costs
The Doctors Company, an Interinsurance Exchange	Excess Liability	L3J-J751613-00	4/13/2024	4/13/2025	\$109,541
The Hanover Insurance Company	Professional Liability/Medical Malpractice	L3J-J751613-00	5/25/2022	4/13/2025	\$311,571
The Hanover Insurance Company	2nd Layer Excess	MFJ-02503-24-00	4/13/2024	4/13/2025	\$75,000
QBE Insurance Group	Workers Compensation Employee Liability	QWC4902264	3/11/2024	3/11/2025	\$997,923
AMWINS Special Risk Underwriters ⁽²⁾ (First \$5mm) Landmark American Insurance Company (2nd \$5mm) Evanston Insurance Company (3rd \$5mm) Golden Bear Insurance Company (4th \$5mm)	Commercial Property	IN939100244-00	6/18/2024	6/18/2025	\$260,000

(1) Includes related fees and taxes

(2) AMWINS Special Risk Underwriters is comprised of the following carriers: Certain Underwriters at Lloyds, Trisura Specialty Insurance, General Security Indemnity Company, Western World Insurance Company, and National Fire & Marine Insurance Company