

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)
) Chapter 11
NOVAN, INC., *et al.*,¹)
) Case No. 23-10937 (LSS)
 Debtors.)
) (Jointly Administered)
)
) **Re: D.I. 11, 49 & 176**
)

FINAL ORDER AUTHORIZING DEBTORS TO (I) CONTINUE THEIR INSURANCE PROGRAM (II) PAY ALL PREPETITION AND POSTPETITION OBLIGATIONS WITH RESPECT THERETO, (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH INSURANCE OBLIGATIONS

Upon the *Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations With Respect Thereto; (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations* (the “Motion”),² filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”) (a) authorizing, but not directing, the Debtors to (i) continue their insurance program and honor prepetition and postpetition obligations with respect thereto; and (ii) renew, supplement, modify, extend, terminate, or purchase insurance coverage (including by obtaining “tail” coverage) in the ordinary course of business, as necessary; (b) authorizing and directing applicable banks and financial institutions to honor and process checks and transfers related to such insurance

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

² Capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to such terms in the Motion.



obligations; and (c) granting related relief; all as further described in the Motion, and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b), (iv) venue of the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court, as applicable; and this Court having granted the interim relief requested in the Motion [D.I. 49]; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Final Order, and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, on a final basis, as set forth herein.
2. The Debtors are authorized, but not required, to pay all Insurance Obligations in connection with the Insurance Program and those Insurance Obligations that were due and payable in the ordinary course of business as of the Petition Date; provided that that any payment made by the Debtors pursuant to the authority granted herein shall be in accordance with the terms and conditions of the DIP Facility, including the Initial DIP Budget and Approved Budget, and the

requirements of the DIP Order and any other or subsequent orders approving debtor-in-possession financing or use of cash collateral by this Court in these Chapter 11 Cases.

3. The Debtors are authorized, but not directed, after consulting with the DIP Lender and the Official Committee of Unsecured Creditors (the “Committee”), to maintain the Insurance Program without interruption on the same basis and to the extent consistent with their practices and procedures that were in effect prior to the Petition Date and to modify, renew, and enter into new arrangements consistent therewith, including through obtaining “tail” coverage, in the ordinary course of business.

4. Subject to paragraph 2 of this Final Order, the Debtors are hereby authorized, but not directed, to pay any undisputed prepetition amounts that are later determined to be due and owing as a result of an audit, including any additional fees and costs imposed as a result of any audit, provided that the Debtors shall provide no less than one (1) business day prior notice to the Committee which shall be provided through electronic mail and set forth details of such payments.

5. Except as set forth in this Final Order, without further order of this Court, the Debtors are authorized, but not directed, after consulting with the DIP Lender and the Committee, to honor their Insurance Obligations under the Insurance Program and to renew the existing Commercial Insurance Policies or enter into new arrangements in the ordinary course of business, as may be required as the annual terms of existing arrangements expire.

6. Except as set forth in this Final Order, without further order of this Court, the Debtors are authorized, but not directed, after consulting with the DIP Lender and the Committee, to amend, supplement, change, or enter into new broker retention agreements in connection with the Insurance Programs and to pay any Broker Fees, whether incurred or due and payable before or after the Petition Date, in the ordinary course of business.

7. The Banks shall be and hereby are authorized and directed to receive, process, honor and pay all checks and fund transfers on account of the Insurance Obligations that had not been honored and paid as of the Petition Date, *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments. The Banks are authorized to rely on the representations of the Debtors as to which checks and fund transfers are authorized to be honored and paid pursuant to this Final Order.

8. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

9. This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority, or amounts of any Insurance Obligations on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

10. To the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Final Order nor any payments made in accordance with this Final Order shall constitute the postpetition assumption of any such Insurance Program or any related contract or agreement pursuant to section 365 of the Bankruptcy Code.

11. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order or any payment made pursuant to this Final Order shall constitute, nor it is intended to constitute: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or

admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

12. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

13. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Final Order.

14. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Final Order.

Dated: August 18th, 2023
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE