

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

In re:

HOSPITAL FOR SPECIAL SURGERY, LLC,
Debtor.

Case No. 24-12862 JDL
Chapter 11

**LIMITED OBJECTION OF THE UNITED STATES TRUSTEE TO THE
DEBTOR'S EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE PAYMENT OF PREPETITION CLAIMS OF
CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF
WITH BRIEF IN SUPPORT AND NOTICE OF OPPORTUNITY FOR HEARING**

United States Trustee, Ilene J. Lashinsky ("UST"), files this Limited Objection to the Debtor's motion seeking authority to pay certain critical vendors [Doc. 14] (the "**Motion**").

A. Facts.

1. Debtor filed its Chapter 11 case on October 7, 2024. [Doc. 1.]
2. Debtor's entire amount of unsecured debt is 20,701,858.43. [Doc. 1, p. 10]
3. \$15,000,000.00 of that sum is related to one judgement creditor. [Doc. 1, p. 8.]
4. Thus, Debtor's non-judgment related unsecured debt is approximately \$5,701,858.00.
5. Debtor's Motion asks for permission to pay \$2,400,000.00 in critical vendor claims, or approximately 42% of its non-judgment debt to what it deems "critical vendors."

B. Specific objections.

6. The Motion only identifies one entity as a critical vendor: OneCore Health. This entity may be an insider and there is no indication it will cease doing business with Debtor if its prepetition unsecured claim is not paid immediately. Moreover, this entity does not appear on Debtor's Schedule E/F.
7. Insiders should not be paid to the detriment of other creditors.



8. The Debtor does not supply a list of vendors or their respective claim amounts proposed to be paid through the Motion. It simply asks for authority to pay, in its sole discretion and without further Court approval, unnamed vendors up to \$2,400,000.00. [Doc. 14, ¶ 18, p. 7.]

9. The Motion seeks an Order “authorizing, but not directing” it to pay “Critical Vendors.” Such discretion does not indicate a true “critical vendor” situation.

10. Debtor has failed to meet its burden by a preponderance of the evidence establishing that extraordinary circumstances exist to invoke the Doctrine of Necessity.

11. It does not appear that Debtor intends to inform the Court or interested parties who the “Critical Vendors” are (other than OneCore) or how much each is to be paid.

12. The Motion seeks to have the Debtor supplant the Court’s judgement with its own regarding who does and who does not meet the legal standard of a “critical vendor.”

13. Debtor should present the Court with the name of creditor to be paid, the amount to be paid the creditor, and evidence satisfying the three elements set forth in *In re CoServ, L.L.C.*, 273 B.R. 487, 498-99 (Bankr. N.D. Tex. 2002):

- a. that the need to deal with the claimant is virtually indistinguishable to profitable operations or preservation of the estate, such as the claims of certain customers, sole suppliers of a given product, or creditors having control over valuable property of the estate;
- b. a showing “that meaningful economic gain to the estate or the going concern value of the business will result or that serious economic harm will be avoided through payment of the prepetition claim, which is materially less than the potential loss to the estate or business”; and
- c. that no practical and legal alternatives to exist to payment, the debtor must lack the means to implement alternatives to payment of a prepetition claim, such as a deposit, collect on delivery terms, payment on shipment, or “countless other devises,” and, on the legal side, the claimant is not bound by contract or is outside the reach of the court to punish violations of the automatic stay.

The UST Reserves all arguments, whether posed herein or not, to the final relief requested in the Motion.

14. The UST reserves the right to assert any and all legal and factual arguments, whether or not raised herein, related to relief requested in the Motion.

C. Relief requested.

15. Considering the above, the UST requests that the Court deny the Motion until the above issues are adequately addressed.

Respectfully submitted,

ILENE J. LASHINSKY
UNITED STATES TRUSTEE

s/ Jeffrey E. Tate
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