

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
DEBTOR'S EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS, PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 503, 506, AND 507, (I)
AUTHORIZING THE USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE
PROTECTION, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A
FINAL HEARING, AND (V) 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 use cash collateral [Doc. 17] (the "**Motion**").

A. Facts.

Debtor has provided adequate information to determine its urgent need to use cash collateral:

1. Debtor filed its Chapter 11 case on October 7, 2024. (See, Doc. 1.)
2. Debtor's bankruptcy schedules, statement of financial affairs, and other documents were filed with its Voluntary Petition. [Doc. 1]
3. Moreover, attached as Exhibit 2 to the Motion is Debtor's proposed cash collateral budget (the "**Budget**").
4. The Budget is a forward-looking, 13-week cash flow projection that appears well suited to forecast Debtor's budgeting period.
5. Thus, Debtor appears to have disclosed adequate material financial information to properly consider the Motion.
6. Further, the UST believes Debtor has adequately shown that it has a critical need to use cash collateral, and that without such use it would suffer irreparable injury.



Debtor's sole Secured Creditor, BOKF, NA d/b/a/ Bank of Oklahoma ("BOKF") is significantly over-secured.

7. BOKF appears to be secured by most, if not all, of Debtor's personal property.
8. Debtor values its personal property at \$8,285,647.83. [Doc. 1, p. 10.]
9. Debtor's secured debt to BOKF is currently \$765,142.41. (See, Motion, p. 5)
10. At the time Debtor filed bankruptcy, it possessed \$1,690,758.01 in its operating account. [Doc. 1, p. 11.]
11. Thus, BOKF appears to be significantly over-secured.
12. Consequently, the interim adequate protection given to BOKF, if any is required above its equity cushion, should be limited to "that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Rule 4001(b)(2) of the FED. R. BANKR. P.

B. The UST's Specific Objections.

The "Carve-Out" should include counsel for any committee that is formed in the case.

13. The Carve-Out associated with Motion is only defined in the attached proposed Order and not in the body of the Motion. (See, Motion, p. 27.)
 14. The UST reserves the right to comment and object to the amount of the Carve-Out upon further reflection in the final Order to be entered regarding cash collateral usage.
 15. The Carve-Out fails to provide for professionals that would be needed by an unsecured creditor committee.
- The Motion prohibits Debtor from using cash collateral to pursue Chapter 5 Causes of Action.***
16. Some actions that may be beneficial to the estate, such as avoidance actions, are completed excluded under the permitted uses of cash collateral.

17. The UST recognizes that it is one thing for BOKF to provide a war chest to fund litigation against itself, but its another to prohibit recoveries to the estate that Debtor, committee professionals, or others, may have the fiduciary requirement to pursue.

The Motion also contains the following objectionable provisions:

18. The Motion attempts to grant BOKF a waiver of claims for surcharges for preservation and disposition of collateral under § 506(c). (Motion, p. 9, ¶ 19(e).)

19. The Order attached to the Motion appears to limit Debtor's ability to obtain Court approved post-petition financing under 11 U.S.C. § 364. (Motion, p. 25.) With a \$7 million dollar equity cushion, the UST does not believe BOKF needs such a potentially harsh provision as adequate protection against diminution in this case.

20. Paragraph 7 of the Order attached to the Motion prohibits actions from parties besides the Debtor, including the following:

No portion of the Carve-Out, BOK Collateral or Cash Collateral shall include, apply to, or be available for any fees, costs or expenses incurred by any party, including the Debtor or any Committee, in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against BOKF, including, without limitation, (i) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the BOK Collateral, the Adequate Protection Liens, or the BOK Claim in respect thereof, or (ii) asserting any claims or causes of action, including, without limitation, claims or actions to hinder or delay BOKF's assertion, enforcement or realization on the BOK Collateral or postpetition collateral subject to the Adequate Protection Liens. Furthermore, none of the Carve-Out, BOK Collateral, or Cash Collateral shall be used to prevent, hinder or delay BOK from enforcing or realizing upon the BOK Collateral once an Event of Default has been determined by the Court to have occurred and to be continuing under this Interim Order.

21. The above provision should be stricken.

22. Paragraph 8 of the Order attached to the Motion requires Debtor to provide a

“Variance Report” to BOKF. Any financial reporting Debtor is to supply BOKF should also be given to the UST.

23. Paragraph 12 of the Order attached to the Motion makes “the provisions of this Interim Order...binding upon... BOKF, Debtor, any Committee appointed in this Chapter 11 Case...(including any chapter 7 or chapter 11 trustee ...an examiner...or any other fiduciary appointed as a legal representative of Debtor or with respect to property of the estate of Debtor.)” No stipulations or limitations agreed to by the Debtor should extend to parties beyond the Debtor.

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

24. 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.

25. 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

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