

Dated: October 10, 2024

The following is ORDERED:



Janice D. Loyd

Janice D. Loyd
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

_____	X	
In re	:	
	:	Chapter 11
HOSPITAL FOR SPECIAL SURGERY, LLC	:	
<i>Db</i> a ONECORE HEALTH,	:	Case No. 24-12862-JDL
	:	
Debtor.	:	
_____	X	

INTERIM ORDER GRANTING 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

Upon the motion (the “Motion”)¹ of Hospital for Special Surgery, LLC *dba* OneCore Health (“OneCore” or “Debtor”) for entry of an interim order (this “Interim Order”) and a final order pursuant to sections 105(a), 363, 365, and 1107(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), rules 6003, 6004, and 6006 of the

¹ Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.



Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1 of the Local Bankruptcy Rules for the Western District of Oklahoma, (i) authorizing, but not directing, Debtor to pay in the ordinary course of business certain prepetition Critical Vendor Claims (as defined below) subject to the respective caps set forth in the proposed Interim Order and the Final Order and (ii) granting related relief, including (a) authorizing, but not directing, Debtor to pay undisputed claims of vendors and suppliers arising from postpetition delivery of goods and provision of services that were ordered prepetition, and (b) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and rule 81.4 of the Local Civil Rules of the United States District Court for the Western District of Oklahoma; and venue of this chapter 11 case and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Motion was filed on October 7, 2024, and served on or before October 7, 2024 and that the interim response deadline to the Motion expired at 12:00 p.m. Central Time on October 9, 2024; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules of the United States Bankruptcy Court for the Western District of Oklahoma, and that, except as otherwise ordered herein, no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors and all other parties-in-interest; and that the legal and factual

bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis.
2. Debtor is authorized to pay certain prepetition Critical Vendor Claims without further Court order.
3. Payment made to applicable Critical Vendors shall be applied, in the first instance, against claims held by such Critical Vendors which arise under section 503(b)(9) of the Bankruptcy Code, to the extent that Critical Vendors hold such claims, in whole or in part, as applicable.
4. Debtor shall undertake all appropriate efforts in the exercise of its sound business judgment to enter into an agreement with Critical Vendors (each such agreement, a "Trade Agreement") to (a) continue – or recommence – providing goods and services to Debtor in accordance with trade terms (including credit terms, pricing, timing of payments, availability, and other terms) at least as favorable to Debtor as those in place during the 12 months prior to the Petition Date, or as otherwise agreed by Debtor in its reasonable business judgment (the "Customary Trade Terms"), and (b) agree that such Critical Vendor shall not cancel any contract or agreement pursuant to which they provide goods or services to Debtor. Debtor reserves the right to require additional favorable trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim. Any party that accepts payment from Debtor on account of a Critical Vendor Claim shall be provided with a copy of this Interim Order and is deemed to have agreed to the terms and provisions of this Interim Order.

5. Debtor is authorized, but not directed, to pay Critical Vendor Claims, in the event that no Trade Agreement has been executed, if the Debtor determines, in its business judgment, that a formal Trade Agreement is unnecessary or cannot be reached to ensure a Critical Vendor's continued performance on Customary Trade Terms and such vendor acknowledges (in writing, which may be email) that it will continue providing services as agreed with Debtor or otherwise be subject to the provisions of the Interim Order with respect to such payment.

6. Debtor may also, in its sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Interim Order, on the date Debtor delivers notice to the Critical Vendor that the Critical Vendor has breached the terms and provisions of the Trade Agreement.

7. If any Critical Vendor accepts payment on account of a Critical Vendor Claim pursuant to the terms and conditions of a Trade Agreement and thereafter a Trade Agreement is terminated as set forth above, any such payment shall be deemed an unauthorized postpetition transfer under section 549 and shall be recoverable by Debtor in cash or goods, or at Debtor's option, may be applied as a credit against any outstanding postpetition claims held by such Critical Vendor. A Critical Vendor shall then immediately repay to Debtor any payments made to it on account of its Critical Vendor Claim to the extent such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation. Upon recovery of a payment made in respect of a Critical Vendor Claim, such claim shall be reinstated as a prepetition claim in the amount so recovered, less Debtor's reasonable costs of recovery, including attorneys' fees. It being the express intention of this Court to return the parties to the *status quo* in effect as of the date of entry of this Interim order with respect to all prepetition claims if a Trade Agreement is terminated.

8. The execution of a Trade Agreement by Debtor shall not be declared a waiver of any other cause of action, including any avoidance action, that may be held by Debtor.

9. The Banks shall be, and hereby are authorized, when requested by Debtor in its sole discretion, to process, honor, and pay any and all checks or electronic funds transfers drawn on Debtor's bank accounts to pay the Critical Vendor Claims, whenever issued or made, provided that sufficient funds are available in the applicable accounts to make the payments.

10. Nothing in the Motion or this Interim Order shall prejudice Debtor's right to request further authority from this Court, after notice and opportunity for a hearing, to pay any Critical Vendor Payments in excess of the cap set forth in paragraph 2 hereof.

11. Nothing in the Motion or this Interim Order, or Debtor's payment of any claims pursuant to this Interim Order, shall be deemed or construed: (a) as an admission as to the validity of any claim, lien, or trust against Debtor or its estate; (b) as a waiver of Debtor's right to dispute any claim, lien or trust; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of Debtor's rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

12. The U.S. Trustee reserves its arguments and objections with respect to entry of the Final Order, whether or not such arguments or objections were raised in the U.S. Trustee Limited Objection. In reliance upon its reservation of rights, to which Debtor consents, the U.S. Trustee consents to entry of this Interim Order.

13. Notwithstanding anything to the contrary in this Interim order or the Motion, the priority status of a creditor's claims, including that of claims arising under section 503(b)(9) of the Bankruptcy Code, shall not be affected by whether such creditor executes a Trade Agreement, or provides services or goods to Debtor under Customary Trade Terms, or otherwise.

14. The final hearing (the "Final Hearing") on the Motion shall be held on November 7, 2024, at 10:00 a.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 12:00 p.m., prevailing Central Time on November 1, 2024. Objections must be filed and served on: (i) proposed counsel to Debtor, Crowe & Dunlevy, Braniff Building, 324 N. Robinson Ave., Suite 100, Oklahoma City, OK 73102, Attn: William H. Hoch (will.hoch@crowedunlevy.com) and Craig M. Regens (craig.regens@crowedunlevy.com); (ii) the Office of the United States Trustee for the Western District of Oklahoma, 215 Dean A. McGee Ave., Room 408, Oklahoma City, OK 73102, Attn: Marjorie Creasey (Marjorie.Creasey@usdoj.gov) and Jeff Tate (Jeff.Tate@usdoj.gov); (iii) counsel to BOKF, Frederic Dorwart, Lawyers PLLC, 124 E. 4th St., Tulsa, OK 74103, Attn: Samuel S. Ory (Sory@fdlaw.com); and (iv) counsel to any statutory committee appointed in this Chapter 11 Case. If no objections are filed to the Motion, the Court may enter a Final Order without further notice or a hearing.

15. Notwithstanding the relief granted in this Interim Order, any payment made or to be made by Debtor pursuant to the authority granted herein shall be subject to and in compliance with the Approved Budget and in accordance with the Interim Cash Collateral Order.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief request set forth in this Interim Order is necessary to avoid immediate and irreparable harm to the estate.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim order are immediately effective upon its entry.

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

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

20. Findings of fact are based on representations of counsel.

21. Debtor shall serve this Order on parties in interest appearing on the Distribution Service List in accordance with, and as such term is defined in, the *Order Authorizing Limited Notice and Establishing Notice Procedures* [Dkt. No. 9].

IT IS SO ORDERED.

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Approved for Entry:

ONECORE

/s/Craig M. Regens

William H. Hoch, OBA #15788

Craig M. Regens, OBA #22894

Mark A. Craige, OBA #1992

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**ILENE J. LASHINSKY
UNITED STATES TRUSTEE**

/s/ Jeffrey E. Tate _____

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