

**UNITED STATES BANKRUPTCY COURT for the
WESTERN DISTRICT OF OKLAHOMA**

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In re:) **Case No. 2024-12862**
Hospital for Special Surgery, LLC)
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**CREDITOR EMMA BASE’S 2nd AMENDED MOTION TO DISMISS
CASE, WITH SUPPORTING BRIEF
AND NOTICE OF OPPORTUNITY FOR HEARING
AND NOTICE OF HEARING**

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this Document carefully and consult your attorney about your rights and the effect of this Document. If you do not want the Court to grant the motion, or you wish to have your views considered, you must file a written response to the motion with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean McGee Avenue, Oklahoma City, OK 73102 no later than 21 days from the date of filing of the motion. You should also serve a file-stamped copy of the response to the undersigned and others who are required to be served and file a certificate or affidavit of service with the Court.

**NOTICE OF HEARING
(TO BE HELD IF A RESPONSE IS FILED)**

Notice is hereby given that if a response to the Creditor Emma Base’s Motion to Dismiss Case is filed, the hearing on the matter will be held on December 4, 2024 at 9:30 a.m. in the Second Floor Courtroom of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102. If no response is timely filed, and the court grants the requested relief prior to the above-referenced hearing date, the hearing will be stricken from the docket of the court.

MOTION TO DISMISS CASE

Emma Base ("Base") moves the Court to dismiss this case pursuant to 11 U.S.C.



§ 1112(b)(1) for “cause,” because the debtor, Hospital for Special Surgery, LLC, d/b/a OneCore Health (hereinafter, “OneCore”) is financially solvent, but for Base’s personal injury judgment against OneCore. However, OneCore filed its state court appeal, and this bankruptcy 10 days after the Judgment was entered, neither posting the required Supersedeas Bond, nor invoking the state law procedure (12 Okla. Stat. Sec. 990.4) allowing OneCore to get a reduced bond amount and avoid bankruptcy. OneCore did just the opposite; it is using bankruptcy in “substitute” for the requisite bond under Oklahoma state law.

As one court has explained:

"This court should not, and will not, act as a substitute for a supersedeas bond of state court proceedings," *In re Wally Findlay Galleries* (New York), Inc., 36 B.R. 849,851 (Bankr. S.D.N.Y.1984).

Again, One Core is doing just that. The bankruptcy should be dismissed, OneCore should be sent back to state court to resolve the bond amount there, not here in this Court.

Background Facts

1. This is a core proceeding pursuant to 28 U.S.C. Section 157.
2. This Court has authority to hear and decide this matter pursuant to 28 U.S.C. Section 1334.
3. OneCore filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code on October 7, 2024.
4. Base is a young woman, in her 20’s, who walked into a hospital for hip surgery, specifically a repair to a labral tear – the cartilage in the hip that holds the “ball” in the

“socket” of the hip. To perform this surgery, it is necessary to have the patient (Ms. Base) unconscious, and immobilized on a highly specialized table that allows the surgeon access to her hip. Ms. Base was placed on such a table, rendered unconscious with anesthesia, and her doctor, Dr. West, performed the surgery successfully. Dr. West left the Operating Room to report to the family that it was successful. Meanwhile, the OneCore staff was left to get the still-unconscious Ms. Base off the specialized table, and into a regular hospital bed to recover.

5. Here is a depiction of the specialized “Hana table” that Ms. Base was on during her surgery:



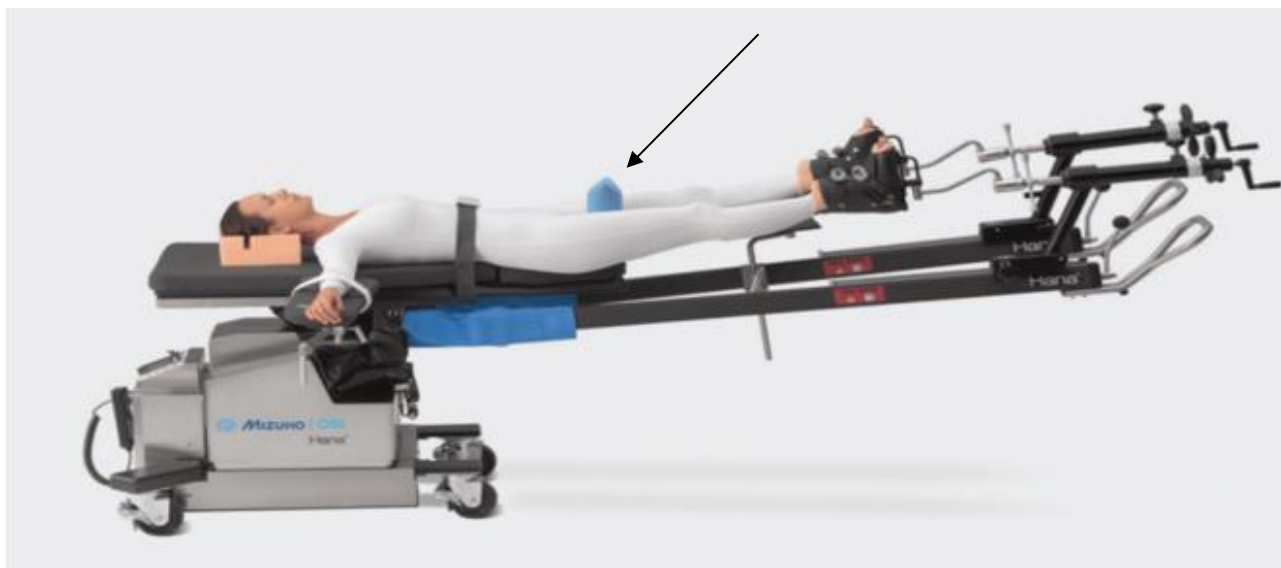
As can be seen, it is a complicated, unusual platform. Putting it together, taking it apart, deploying it properly to support Ms. Base, and then removing her after the surgery was a complex set of tasks for the hospital, OneCore.

6. For OneCore, this was a new device, but OneCore only allowed for a 30-minute training session. More importantly, OneCore chose to use a staff member for Emma Base’s surgery who had not even received that training – she had (i) never been trained on the Hana Table, and (ii) *never used* the Hana Table at OneCore.

7. Not surprisingly, after the surgery was over, and Dr. West was visiting with Ms. Base's family, the OneCore staff, while trying to remove Ms. Base from that complex table, and while she was completely unconscious, dropped her 4 feet to a concrete floor. She was concussed; she suffered a disc bulge in her neck; and she landed on her newly repaired hip, shattering the "ball" of the hip that has just been operated on.

8. To make matters worse, it is important to use a device called a "footboard" to safely transfer the patient out of that complex, body-suspending table, and to a regular hospital bed, but OneCore chose not to use a footboard. A OneCore scrub tech (Melissa Simpson) testified that (i) she knew OneCore had the safety footboard, and (ii) simply chose not to use it.

9. Moreover, OneCore staff removed the safety straps around Ms. Base's waist and also removed the "safety bolster" between the legs of Emma Base; that "safety bolster" is denoted by the arrow in the illustration below:



10. Removal of the waist strap and the safety bolster meant that Emma Base was completely untethered from the Hana Table and had no footboard support for the weight of

her lower legs and feet; together this made the likelihood of dropping her a virtual certainty, and of course she was dropped. On this point, OneCore's own medical expert agreed that removing the safety bolster had created an unsafe condition.

11. OneCore had no policies and procedures for properly training its staff on the use of equipment at the hospital. OneCore had no policies and procedures for the safe transfer of patients from the Hana Table. OneCore's trial counsel made the groundless argument to the jury that OneCore precisely followed its own transfer policies and procedures when, in fact, there never were any policies to follow. Clearly, the jury knew this was not true, hence, their finding of "willfulness" against OneCore, and their award of punitive damages against a hospital – a rare event.

12. Base had to undergo two additional hip surgeries to repair the damage done to her from the fall, and the trial testimony was that her prognosis, as a young woman, was that she would need to undergo further hip surgeries throughout her life.

13. On March 10, 2022, Emma Base filed a lawsuit for damages resulting from medical malpractice claims against OneCore in the District Court in and for Oklahoma County, State of Oklahoma, styled *Emma Base v. OneCore Health, a tradename for Hospital for Specialty Surgery, LLC et al*, Case No. CJ-2022-1096 (the "State Court Litigation").

14. A six-day trial concluded on September 3, 2024, wherein the jury in the State Court Litigation entered its verdict awarding Emma Base judgment in the amount of \$15,215,541.30 (inclusive of prejudgment interest) and \$50,000 in punitive damages, based on the jury's finding that OneCore had acted willfully.

15. On September 26, 2024, a Journal Entry of Judgment in the amount of \$15,215,541.30 plus post-judgment interest and \$50,000 in punitive damages was entered in the State Court Litigation in favor of Emma Base.

16. On Monday October 7, 2024 – the Monday after the 10th day after the Judgment was entered, OneCore simultaneously filed its appeal in the state court, and filed this bankruptcy.

17. Relevant here, OneCore never sought a Supersedeas Bond in the state court to stay collection of the Judgment, and OneCore specifically did not invoke its right under 12 Okla. Stat. Sec. 990.4 to seek a reduction in the Supersedeas Bond amount to a level OneCore could “afford.”

18. OneCore’s 2022 financial statement shows that it had *\$11.08 million* of retained earnings. Moreover, it has had a solid history of profitable years with an EBIT of \$4.56 million in 2020, \$2.41 million in 2021, and \$687,927 in 2022. OneCore’s bankruptcy Petition (at page 109) reveals that its gross revenues in 2023 were \$29,510,774, and in 2024, through October 7, are \$20,818,685.

19. Absent Emma Base’s Judgment, OneCore would have no claim to insolvency, and the right to be in this Court. The real question posed by OneCore’s Chapter 11 filing, in fact the only question, is the proper size of the Supersedeas Bond that OneCore should post, because that Judgment is the only economic basis for OneCore to claim insolvency. However, once collection of that Judgment is stayed, by the posting of a Supersedeas Bond, the basis for OneCore’s bankruptcy evaporates. That question of the size of the

Supersedeas Bond is a purely state law question, and belongs in the state court, decided under 12 Okla. Stat. Sec. 990.4. However, OneCore did not even ask the state court to set the size of the Supersedeas Bond. Instead, OneCore simply announced that it would post no bond, and then 10 business days after Emma Base's Judgment was entered, OneCore filed the appeal in the state court case, and filed this case in the Bankruptcy Court.

20. OneCore has filed a list of its 20 Largest Unsecured Creditors. The largest by far is Emma Base. Of note, the schedule calls for this list of the 20 Largest Unsecured Creditors who "are not insiders." The 2nd largest unsecured creditor is in fact an *insider*--Solara Surgical Partners, LLC ("Solara"), at a mere \$1,211,297. Solara is the majority owner of OneCore. There is quite a bit more to the Solara story. Thus, Solara's role and its "control" of OneCore will be further addressed in this Court. It is undeniable, but for Emma Base's un-superseded Judgment, OneCore would have the cash flow to pay its creditors, secured and unsecured, in the normal course of business, and could not, have filed this bankruptcy.

ARGUMENT AND AUTHORITIES

A. Cause exists under 11 U.S.C. Section 1112(b)(1) to dismiss this case; it is a transparent attempt to substitute a bankruptcy proceeding for posting a Supersedeas Bond.

Section 1112(b)(1) states " ... the court shall convert a case under this chapter to chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause."

Courts have determined that cause for dismissal includes the absence of good faith.

In re Muskogee Environmental Conservation Company, 236 B.R. 57, 65 (Bankr. N.D. Okla. 1999). "The determination of whether a bankruptcy case has been filed in good faith is a matter left to the sound discretion of the bankruptcy court," *In re Nichols*, 223 B.R. 353, 359 (Bankr. N.D. Okla.1998). The Sixth Circuit in *In re Laguna Associates Ltd. Partnership*, 30 F.3d 734 (6th Cir. 1994) set forth several non-exclusive factors for determining whether a case was filed in good faith.

Those factors are:

- The debtor has one asset,
- The pre-petition conduct of the debtor has been improper,
- There are only a few other unsecured creditors,
- The debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending against the foreclosure in state court,
- The debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford,
- The filing of the petition effectively allows the debtor to evade court orders,
- The debtor has no ongoing business or employees, and
- The lack of possibility of reorganization.

Laguna, at 738. The Tenth Circuit adopted this analysis in *In re Nursery Land Dev., Inc.*, 91 F.3d 1414, 1415 (10th Cir. 1996).

Application of the *In re Nursery Land Dev., Inc.* factors shows that OneCore's bankruptcy should be dismissed. The bankruptcy was only filed because of Ms. Base's \$15 million Judgment, which is 1,150% larger than OneCore's 2nd largest claim (\$1.2 million, held by insider, Solara). OneCore had the ability to post a Supersedeas Bond to stay the Judgment, and even had the statutory right to ask the trial court to reduce the size of the Supersedeas Bond to a manageable amount. 12 Okla. Stat. Sec. 990.4(b)

provides that:

“Upon a showing by the judgment debtor that the judgment debtor is likely to suffer substantial economic harm if required to post bond in the amount required by this paragraph, the court shall balance the likely substantial economic harm to the judgment debtor with the ability of the judgment creditor to collect the judgment in the event the judgment is affirmed on appeal and may lower the bond accordingly.”

The dispute between OneCore and Emma Base concerns only the laws of the State of Oklahoma and was adjudicated in an Oklahoma State Court.

OneCore made no effort to post a bond. Nor did OneCore make any effort to seek relief from the bond. The financial condition of OneCore reflects that it could in fact post a bond (as one example, OneCore reports Retained earnings in excess of \$11 million as of 2022).

OneCore’s bankruptcy was filed for just one reason: to gain protection from a single judgment creditor (Emma Base) because she rightly obtained a verdict in the State Court Litigation.

A Bankruptcy Court must not act as a substitute of a supersedeas bond:

"This court should not, and will not, act as a substitute for a supersedeas bond of state court proceedings," *In re Wally Findlay Galleries* (New York), Inc., 36 B.R. 849,851 (Bankr. S.D.N.Y.1984).

See also, In re Smitl 158 B.R. 448,451 (Bankr. W.D. Ky. 1986); and *In re Fraternal Composite Service, Inc.*, 315 B.R. 247,250 (N.D.N.Y. 2003).

OneCore’s attempt to use this Court in substitute for a supersedeas must not be countenanced. OneCore’s bankruptcy should be dismissed.

CONCLUSION

OneCore’s bankruptcy should be dismissed. OneCore, a solvent company, must not

be permitted to use this Court as a substitute for an Oklahoma state-law required supersedeas bond. The only victim of OneCore's procedural machinations is Emma Base, who will be wrongfully deprived of an Oklahoma state court Judgment.

Respectfully submitted,

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Certificate of Service by U.S. Mail or by email

The undersigned certifies that on this 28th day of October, 2024, this motion was served on all parties on the Approved Distribution List (Docket Item no. 9) as well as on all persons who have filed a Notice of Appearance and Request for Service. Persons with their email listed below were served by email; all others were served by regular U.S. mail:

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