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

In re HOSPITAL FOR SPECIAL SURGERY, LLC *Dba* ONECORE HEALTH, Debtor.	:	Chapter 11 Case No. 24-12862-JDL

DEBTOR'S OBJECTION TO EMMA BASE'S SECOND AMENDED MOTION TO DISMISS CASE

Hospital for Special Surgery, LLC *dba* OneCore Health ("OneCore" or the "Debtor") hereby submits this objection (the "Objection") to *Creditor Emma Base's Second Amended Motion to Dismiss Case* [Dkt. No. 85] (the "Motion"). Base has filed proof of claim no. 4-1 (the "Base Claim") in the above-captioned case (this "Chapter 11 Case"), and has submitted herself to this Court's exclusive jurisdiction with respect to resolution and administration of such claim. Nonetheless, Base seeks dismissal of this Chapter 11 Case.

The Motion primarily focuses on explaining the factual contentions that Base made to obtain her judgment (the "Base Judgment") in the case styled *Emma Base v. OneCore Health, a tradename for Hospital for Special Surgery, LLC, Kyle Jones, APRN-CRNA, and Kyle Jones, APRN-CRNA, PC*, Case No. CJ-2022-1096 (Dist. Ct. Okla. County) (the "Base Litigation" in the "State Court")). To the extent that the Motion does make an argument for dismissal of this Chapter 11 Case, Base's contention appears to be that this Court should adopt a *per se* rule that filing a bankruptcy as a substitute for a supersedeas bond constitutes bad faith warranting dismissal of such case. The cases that Base relies upon do not adopt a *per se* rule on the grounds Base suggests support application of such a rule. Moreover, courts within the Tenth Circuit have expressly rejected application of a *per se* rule. Under circumstances similar to those present herein, courts

within the Tenth Circuit have denied motions to dismiss a chapter 11 bankruptcy case. For these and other reasons set forth herein, Debtor respectfully requests that this Court deny the Motion.

Statement of Facts

A. OneCore and This Chapter 11 Case.

1. OneCore is a duly licensed hospital that has been specializing in orthopedic and specialty surgeries in the community of central Oklahoma for more than a decade. In late 2021, OneCore completed the construction of its present leased facility in northeast Oklahoma City and has been operating at such location since January 2022.

2. OneCore has focused on a culture of excellence in the delivery of surgical and other health care services such as radiology and orthopedic care with the goal of being one of the top performing surgical hospitals in Oklahoma. In the past four (4) years, OneCore has received many accolades for its excellence and patient care, including the following:

- Healthgrades: Knee Replacement 5-star recipient, 2023 and 2024;
- Healthgrades: Spinal Fusion Surgery 5-star recipient 2021 – 2024;
- Healthgrades: Outstanding Patient Experience 2024; and
- Press Ganey: Guardian of Excellence Award for Outstanding Patient Experience.[1]

3. On October 7, 2024, OneCore filed its *Voluntary Petition* [Dkt. No. 1].

4. Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No committee has been appointed pursuant to section 1102 of the Bankruptcy Code.

[1] The Press Ganey Guardian of Excellence Award® honors organizations that perform in the top 5% of healthcare providers and health plans for patient experience, employee engagement, physician experience, clinical quality performance or consumer experience in one year. Only 501 hospitals and health systems achieved this recognition out of over 10,000.

5. Debtor remains within its statutory exclusivity period provided by section 1121 of the Bankruptcy Code. While Debtor has not yet filed a plan, Debtor has already commenced certain vital discussions necessary to the formulation of a plan.

B. The Base Claim and the Base Litigation.

6. On November 5, 2024, Base filed a proof of claim (the "Base Claim") as claim no. 4-1 against OneCore in this Chapter 11 Case.

7. The Base Claim asserts that Debtor owes Base the amount of $15,265,541.26 in satisfaction of the Base Judgment. The Base Claim includes post-judgment interest and punitive damages.

8. Debtor timely appealed the Base Judgment entered in the Base Litigation prior to filing its *Voluntary Petition*.

Argument

I. The Burden is On Base to Prove That Debtor Filed This Chapter 11 Case in Bad Faith.

9. Chapter 11 of the Bankruptcy Code exists to preserve going concern businesses and to maximize the value of property to satisfy a debtor's creditors. *In re Orienta Cooperative Ass'n*, 256 B.R. 508, 511 (Bankr. W.D. Okla. 2000) (citing *Bank of Am. Nat'l Trust Assn. v. 203 North LaSalle St. P'ship*, 526 U.S. 434, 453 (1999). Debtor filed this Chapter 11 Case to maintain its going concern business and to maximize the value of its property to satisfy its indebtedness to its prepetition creditors. Had Debtor refrained from filing this Chapter 11 Case – and, indeed, were this Chapter 11 Case to be dismissed – Base would enforce her judgment, cannibalizing the assets of the Debtor, depleting Debtor's liquid assets, and commencing a downward spiral of Debtor's business that would result in a race to the courthouse by all of Debtor's creditors. In short order, Debtor's business would be in liquidation and Debtor's 100 employees would be unemployed.

10. Although the outcome had Debtor failed to file its Voluntary Petition is readily apparent and although the same outcome awaits Debtor if this Chapter 11 Case is dismissed, Base nonetheless alleges Debtor filed this Chapter 11 Case in bad faith.

11. This Court's determination whether to dismiss this Chapter 11 Case is governed by section 1112(b) of the Bankruptcy Code, which identifies certain circumstances – none of which are present herein – in which a chapter 11 case shall be converted or dismissed "for cause." 11 U.S.C. § 1112(b)(1). Section 1112(b) also identifies circumstances in which the Court may not dismiss a chapter 11 case. 11 U.S.C. § 1112(b)(2).

12. Section 1112(b)(4) identifies sixteen, non-exclusive examples of "cause" for the dismissal of a chapter 11 case, none of which are present in this Chapter 11 Case.

13. Base argues that Debtor filed this Chapter 11 Case in bad faith. *See, generally* Motion, at 7-9. Ultimately, Base's position can be distilled to the twin premises that (i) but for the Base Judgment, Debtor would be solvent and (ii) rather than file this Chapter 11 Case, Debtor should have attempted to obtain an order of the State Court reducing its bond obligation and litigated its appeal to finality.[2]

14. Debtor acknowledges that, even though bad faith is not a specifically enumerated "cause" under section 1112(b)(4), many courts consider dismissal of a chapter 11 bankruptcy case appropriate if such case is found to have been filed in bad faith. *See, e.g., Udall v. FDIC (In re*

[2] Base does not have any advice to offer in substitution for Debtor's reasonable exercise of its sound business judgment with respect to what Debtor should have done to (i) stay collection actions by Base while seeking a reduced bond, (ii) prevent other creditors from exercising remedies in response to Base's collection efforts, (iii) stay collection actions if the State Court refused to reduce the bond, or (iv) satisfy the judgment if upheld on appeal. Notwithstanding that Base neither acknowledges nor addresses these critical questions, she nonetheless showed no hesitation in asserting without caveat, 21 days after the Petition Date and well before the meeting of creditors, that Debtor lacked good faith in filing its *Voluntary Petition*.

Nursery Land Development, Inc.), 91 F.3d 1414, 1416 (10th Cir. 1996); *In re Muskogee Env't Conservation Co.*, 236 B.R. 57, 66 (Bankr. N.D. Okla. 1999); *In re Nichols*, 223 B.R. 353, 359 (Bankr. N.D. Okla. 1998*); In re Trident Assocs. Ltd. P'ship*, 52 F.3d 127, 130 (6th Cir. 1995).

15. Base is required to show by a preponderance of the evidence that "cause" exists for the dismissal of this Chapter 11 Case. *In re Nichols*, 223 B.R. at 355 (citing *Matter of Woodbrook Associates*, 19 F.3d 312, 317 (7th Cir. 1994));*see also*, *In re Vista Foods*, 1997 WL 837774, at *4, 226 B.R. 284 (Table Text) (B.A.P. 10th Cir. 1997). If, and only if, Base carries her burden, then the burden shifts to Debtor to establish that this Chapter 11 Case was filed in good faith. *See*, *e.g.*, *In re Nichols*, 223 B.R. at 355. This Court may exercise its sound discretion in determining that this Chapter 11 Case has been filed in good faith. *In re Nichols*, 223 B.R. at 359.

16. Many courts have recognized that the concept of good faith is an amorphous notion that courts must define on a case-by-case basis in reliance upon specific factual inquiry. *In re Muskogee*, 236 B.R. at 66 (citing *In re Okoreeh-Baah*, 836 F.2d 1030, 1033 (6th Cir. 1988)); *see also, Laguna Assocs. Ltd. P'ship v. Aetna Cas. & Sur. Co. (In re Laguna Assocs. Ltd. P'ship)*, 30 F.3d 734, 737 (6th Cir. 1994), *as amended on denial of reh'g and reh'g en banc* (Sept. 9, 1994) (hereafter "*Laguna*").

17. The Tenth Circuit, and other courts, evaluating whether a chapter 11 case was filed in bad faith have identified several nonexclusive factors, none of which, standing alone, is determinative of the question. *See*, *e.g.*, *In re Muskogee*, 236 B.R. at 66 (citing *Udall v. FDIC (In re Nursery Land Dev., LLC)*, 91 F.3d 1414, 1416 (10th Cir. 1996)) Such factors, collected and applied in *Nursery Land Development*, include:

(1) debtor has one asset;

(2) the prepetition conduct of the debtor has been improper;

(3) there are only a few unsecured creditors;

(4) the debtor's property has been posted for foreclosure and the debtor has been unsuccessful in defending against the foreclosure in state court;

(5) the debtor and one creditor have proceeded to a standstill in state court, and the debtor has lost or has been required to post a bond which it cannot afford;

(6) the filing of the petition effectively allows the debtor to evade state court orders;

(7) the debtor has no ongoing business or employees;

(8) the debtor lacks any reasonable possibility of reorganizing.

Id. (citing *Laguna*, 30 F.3d at 737) (hereafter "*Laguna* Factors").

II. Base Failed to Carry Her Burden of Proving That Debtor Filed This Chapter 11 Case in Bad Faith.

18. The Motion fails to show that Debtor filed this Chapter 11 Case in bad faith. Base argues that this Chapter 11 Case was filed solely because of her judgment and Debtor could have posted a bond to proceed with its appeal but did not. Motion, at 8. Base contends that when a debtor files a bankruptcy case rather than posting a bond in the aftermath of a judgment against it, the debtor's bankruptcy filing is *per se* filed in bad faith. Base primarily relies on *In re Wally Findlay Galleries (New York), Inc.*, 36 B.R. 849 (Bankr. S.D.N.Y. 1984) for her proposition that "[t]his court should not … act as a substitute for a supersedeas bond of state court proceedings." *Id.*, 36 B.R. at 851. In making her argument, Base (i) ignores the specific factual circumstances attendant to Debtor's filing of this Chapter 11 Case; (ii) misunderstands the reasoning in *Wally Findlay*; (iii) overlooks the myriad cases arising in the Tenth Circuit which have rejected a *per se* rule that filing a bankruptcy case when a debtor cannot afford a supersedeas bond is bad faith; and (iv) fails to acknowledge that the dispositive fact determinative of whether filing a bankruptcy in lieu of posting an appeal bond constitutes bad faith is whether the judgment together with the

debtor's other liabilities substantially exceeded debtor's assets, and in this Chapter 11 Case, the answer is an unequivocal yes.

19. Base's Motion fails to account for or appreciate the factual circumstances of this case. In this Chapter 11 Case, (i) Debtor could not afford the bond, (ii) if Debtor sought to reduce the bond, absent a stay of execution, Base would be able to enforce her judgment against Debtor while such motion to reduce the bond remained pending for an indeterminate period of time, (iii) the Base Judgment, whether or not enforced, likely would set off a race amongst Debtor's creditors to cannibalize Debtor's assets, (iv) Debtor's ability to remain a going concern and to retain its employees was placed at risk by the Base Judgment, (v) no guarantee exists that the bond would be reduced at all, let alone to an amount Debtor could afford, and (vi) exhausting resources that could be used to propose a confirmable plan of reorganization is preferable, in the reasonable exercise of Debtor's sound business judgment, to exhausting those resources pursuing an uncertain appeal.

20. Base mistakenly contends that *Wally Findlay* stands for her preferred proposition that it is *per se* bad faith for a debtor to file a chapter 11 bankruptcy in lieu of posting a supersedeas bond. The United States Bankruptcy Court for the Southern District of New York has made quite clear that *Wally Findlay* stands for an entirely different proposition. As the court explained in *In re Sletteland*, 260 B.R. 657 (Bankr. S.D.N.Y. 2001) while surveying a multitude of factors it considers in evaluating whether a chapter 11 case has been filed in bad faith, the *Wally Findlay* court dismissed such chapter 11 case because it was "evident that the debtor seeks to use this court not to reorganize, but to relitigate. This is an impermissible use of Chapter 11 of the Bankruptcy Code. Consequently, the above captioned petition must be dismissed." *Id.*, 260 B.R. at 666 (quoting *Wally Findlay*, 36 B.R. at 851); *see also*, *In re P.J. Clarke's Restaurant Corp.*, 265 B.R.

392, 402 n.7 (Bankr. S.D.N.Y. 2001) (noting that "the [*Wally Findlay*] court concluded that the debtor filed with the intent, not to reorganize, but to relitigate, and dismissed the case."). Debtor did not file this Chapter 11 Case to relitigate the Base Litigation. Debtor filed this Chapter 11 Case to obtain the breathing room necessary to remain a going concern and to preserve the value of its assets while it negotiates and formulates a confirmable plan of reorganization.

21. Base also fails to recognize that courts in the Tenth Circuit have declined to "adopt a *per se* rule that filing a bankruptcy as a substitute for posting an appeal bond always constitutes bad faith." *In re Fox*, 232 B.R. 229, 234 (Bankr. D. Kan. 1999); *see also*, *In re Pomodoro Restaurant*, 1999 WL 282735, at *3, 251 B.R. 441 (Table Text) (B.A.P. 10th Cir. 1999) ("This Court agrees with those cases that look to the circumstances of the case, including whether or not the debtor could afford to post a supersedeas bond without losing the ability to stay in business."); *In re Surgical Associates, Inc.*, No. 13-10081-R, 2013 WL 1176233, at *4 (Bankr. N.D. Okla. Mar. 21, 2013) ("this Court declines to adopt the *per se* approach and instead considers whether the totality of circumstances supports a finding of bad faith."); *In re Hyatt*, 479 B.R. 880, 895 (Bankr. D. N.M. 2012) ("Giving debtors the opportunity to reorganize in response to impending financial distress is the purpose of chapter 11. The fact that this financial distress was brought on by litigation rather than borrowing is not dispositive") (internal quotation marks and citations omitted).

22. Our neighboring non-Tenth Circuit bankruptcy court also has rejected the *per se* rule seemingly advocated by Base (albeit not supported by the authority cited in her Motion). *See, e.g.*, *In re Stephens*, 2022 WL 534011, at *8 n. 49 (Bankr. N.D. Tex. Feb. 22, 2022) (citing *In re Fox*, 232 B.R. at 234) ("like the Bankruptcy Court for the District of Kansas, this Court 'declines

to adopt a *per se* rule that filing a bankruptcy as a substitute for posting an appeal bond always constitutes bad faith.'")).

23. Moreover, while courts in the Tenth Circuit have recognized that a split in authority exists as to whether filing a bankruptcy as a substitute for posting an appeal bond constitutes bad faith, the split truly is not between courts that have adopted a *per se* rule and courts that have not. *See, gen.*, *In re Fox*, 232 B.R. at 233-34. Instead, consistent with bankruptcy courts' obligation to evaluate bad faith on a case-by-case basis in reliance upon specific factual inquiry, *In re Muskogee*, 236 B.R. at 66, courts overwhelmingly have considered the likely impact of the judgment that led to a bankruptcy filing on the debtor's ability to remain a going concern absent the bankruptcy filing. Thus, the determinative factor indicative of whether Debtor filed this Chapter 11 Case in bad faith is whether the judgment together with Debtor's other liabilities substantially exceeded its assets. To illustrate, in *In re Davis*, 93 B.R. 501 (Bankr. S.D. Tex. 1987), the court observed that:

> One primary characteristic of those cases not finding bad faith is that the judgment together with the debtors' other liabilities substantially exceeded the assets. Another characteristic included the cooperativeness of the debtors in providing information to assist the court and creditors in expeditiously handling the cases. Those courts also found that the debtors had been forced into bankruptcy to avoid a forced sale and liquidation of its assets.

Id., 93 B.R. at 503. Similarly, the court in *In re Boynton*, 184 B.R. 580 (Bankr. S.D. Cal. 1995), highlighted the fact that:

> The cases granting dismissal on bad faith grounds, with the exception of *Karum*, dealt with smaller judgments where the debtor had the ability to satisfy the judgment without losing the ability to stay in business. The cases denying the motion to dismiss typically involved larger judgments that would render the debtor unable to continue its business and allowed the judgment creditor only a partial recovery.

Id., 184 B.R. at 582.[3]

24. Debtor's *Schedules* conclusively demonstrate that the Base Judgment, together with Debtor's other liabilities substantially exceeded Debtor's assets. In Debtor's *Summary of Assets and Liabilities*, Debtor identifies assets having a value of $8,285,647.83 and liabilities, exclusive of contingent, unliquidated, and unknown liabilities, totaling $21,797,844.06. *Petition* [Dkt. No. 1], at 10. Consequently, Debtor, in the reasonable exercise of its sound business judgment, justifiably concluded that unless it initiated this Chapter 11 Case to formulate a plan of reorganization, the Base Judgment would be the death knell for its business. Because Debtor's liabilities, including the Base Judgment, substantially exceeded its assets, under established precedent of courts in the Tenth Circuit, Base's factually inaccurate contention that Debtor filed this Chapter 11 Case in bad faith fails as a matter of law. The Motion can be denied solely on this ground.

III. Debtor Did Not File This Chapter 11 Case in Bad Faith.

25. Courts in the Tenth Circuit have looked to the eight *Laguna* factors to determine whether a chapter 11 case has been filed in bad faith. None of those factors exist here.

[3] Among the cases involving smaller judgments which the debtor could afford to pay while remaining in business noted by the *Boynton* court are *Wally Findlay* and another of the three cases cited by Base: *In re Smith*, 58 B.R. 448 (Bankr. W.D. Ky. 1986). *See* Motion, at 9 (wherein Base cites three cases). In *In re Fraternal Composite Service, Inc.*, 315 B.R. 247 (Bankr. N.D.N.Y. 2003), also cited by Base, debtor filed its chapter 11 before a judgment had even been entered against it. Nonetheless, the *Fraternal Composite* court did not apply a *per se* rule and it favorably discussed the *Muskogee* court's observation that there is a distinction between cases granting dismissal on bad faith grounds and those denying dismissal: "the cases dealing with smaller judgments in which the debtor had the ability to satisfy the judgment without losing the ability to stay in business were dismissed; whereas, the cases in which there were larger judgments that 'would render the debtor unable to continue its business and allowed the judgment creditor only a partial recovery' were not dismissed on bad faith grounds. *Fraternal Composite*, 315 B.R. at 250 (citing *Muskogee*, 236 B.R.at 67).

26. The first factor is whether Debtor has only one asset. As indicated in the *Schedules* [Dkt. No. 1], Debtor has a wide range of assets. Debtor estimates that its assets, consisting of personal property, have a value of $8,285,647.83. *Summary of Assets and Liabilities for Non-Individuals* [Dkt. No. 1], at 10. As of the Petition Date, Debtor's assets included: (i) cash on hand in the amount of $2,513.00, (ii) multiple bank accounts holding deposits in the aggregate amount of $1,696,944.52, (iii) a utilities deposit in the amount of $3,320.88, (iv) prepayments to third parties in the amount of $717,280.19, (v) accounts receivable in the amount of $5,668,487.47, (vi) inventory with an approximate value of $1,051,095.02, (vii) furniture and fixtures valued at $238,084.44, (viii) kitchen appliances valued at $16,113.21, (ix) office equipment with an approximate value of $72,809.39, (x) medical equipment valued at $1,157,344.65, and (xi) tax refunds and unused net operating losses in the aggregate amount of $202,935.65. *See Schedule A/B* [Dkt. No. 1], at 11-16. Plainly, this is not a single asset case. The first factor is not met.

27. The second factor is whether Debtor's prepetition conduct has been improper. Base does not appear to argue that it has, unless of course, its argument that Debtor should have sought a reduction in the supersedeas bond rather than filing this Chapter 11 Case is intended to be an allegation of improper prepetition conduct. As will be shown below, case law demonstrates that Debtor's reasonable exercise of its sound business judgment to file its appeal of the Base Litigation and then file this Chapter 11 Case rather than seeking discretionary modification of an appeal bond is properly considered under the rubric of the fifth factor and is not bad faith. Accordingly, Base has not identified any facts suggesting Debtor's prepetition conduct has been improper. Thus, the second factor is not applicable in this Chapter 11 Case.

28. The third factor is whether there are only a few unsecured creditors. Base does not allege that Debtor only has a few unsecured creditors. And, Debtor identifies 207 unsecured

creditors in its *Schedule E/F*, exclusive of any potential claims held by patients. *Schedule E/F* [Dkt. No. 1], at 21 – 80. The third factor is not applicable in this Chapter 11 Case.

29. The fourth factor is whether Debtor's property has been posted for foreclosure and Debtor has been unsuccessful in defending against the foreclosure in state court. Base does not allege that this factor is present, and it is not.

30. The fifth factor is whether Debtor and one creditor have proceeded to a standstill in state court, and Debtor has lost or has been required to post a bond which it cannot afford. To the extent that the Motion plausibly can be said to focus on any factor, this is the factor the Motion somewhat addresses. As will be shown, litigation has not proceeded to a standstill. Debtor affirmatively appealed the judgment in favor of Base. The Base Litigation presently is stayed under section 362 of the Bankruptcy Code; however, Debtor is utilizing this pause in the Base Litigation to engage with Base on consensual resolution of the Base Claim as part of its broader obligations and intentions to formulate a confirmable plan of reorganization. Depending upon the outcome of such negotiations, Debtor may proceed with its appeal of the Base Litigation. Had Debtor refrained from initiating this Chapter 11 Case, it would not have been able to post the bond.

31. Nonetheless, all Base points to as an alleged *indicia* of bad faith is Debtor's decision to file this Chapter 11 Case rather than appeal without bond because it could not afford the supersedeas bond. Of course, Oklahoma law does not require that an appellant post a bond to appeal a judgment against it.[4] Thus, it is difficult to see how failing to post a bond or to seek a

[4] In Oklahoma, unlike some other states, there is no longer a "required Supersedeas Bond": a supersedeas bond is merely one way to "obtain a stay of the enforcement of a judgment, decree or final order" pending appeal. 12 O.S. 990.4(A); *see also, e.g., Armstrong v. Trustees of Hamilton Inv. Tr.*, 1983 OK 18, ¶ 7, 667 P.2d 985, 988 (reversing trial court order "that appellant post a $3,000,000 supersedeas bond as a 'prerequisite' to her prosecution 'of any appeal'" because "[s]upersedeas is not a jurisdictional requirement," and "[a]n appeal to review a district court decision may be prosecuted in this court without posting an undertaking").

reduction in such bond may constitute evidence that a chapter 11 case filed in Oklahoma has been filed in bad faith under any circumstance.

32. Most courts do not consider filing a chapter 11 rather than posting a supersedeas bond an *indicia* of bad faith. In fact, the majority of courts to consider the issue have found that there is no *per se* rule that simply failing to post a supersedeas bond represents bad faith. *See In re Fox*, 232 B.R. 229, 233-34 (Bankr. D. Kan.) , *appeal dismissed* 241 B.R. 224 (B.A.P. 10th Cir. 1999) (comparing case law and declining to adopt a *per se* rule that filing a chapter 11 case in lieu of filing a supersedeas bond constitutes bad faith).

33. In fact, it is common for debtors to file a chapter 11 due to the outcome of litigation. *In re Marshall*, 403 B.R. 668, 690-91 (C.D. Cal. 2009), *aff'd*, 721 F.3d 1032 (9th Cir. 2013). Congress enacted chapter 11 of the Bankruptcy Code for the purpose of giving debtors the opportunity to reorganize in the face of impending financial distress. *Id.* at 691; *Bank of Am. Nat'l Trust and Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 435 (1999) ("the two recognized policies underlying Chapter 11 [are] preserving going concerns and maximizing property available to satisfy creditors"). In this Chapter 11 Case, Debtor's financial distress primarily is a result of a litigation outcome rather than a borrowing decision, but that is not dispositive of whether this Chapter 11 Case should be dismissed. *See, e.g.*, *Marshall*, 403 B.R. at 691; *In re Texaco, Inc.*, 254 B.R. 536, 541 (Bankr. S.D.N.Y. 2000) ("Texaco filed under Chapter 11 for the sole purpose of compromising a $10.5 billion judgment").

34. The sixth factor for this Court to consider is whether the filing of the *Voluntary Petition* has enabled Debtor effectively to evade state court orders. Base does not allege that

Debtor has evaded any state court orders by filing this Chapter 11 Case and Debtor has not done so. The sixth factor is inapplicable to this Chapter 11 Case.

35. The seventh factor is whether Debtor lacks an ongoing business and employees. Base does not allege that Debtor has no business and no employees, nor could she. As is reflected in the *Declaration of Carrie McEntire in Support of Debtor's Chapter 11 Petition and First Day Motions* [Dkt. No. 15] (the "McEntire First Day Declaration"), Debtor currently employs "approximately 60 full-time and 40 contract, or part-time employees." McEntire First Day Declaration, ¶ 8. Moreover, "Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code." *Id.* ¶ 9. Indeed, the McEntire First Day Declaration thoroughly describes Debtor's ongoing business operations. And, each of Debtor's First Day Motions sought to sustain Debtor's ongoing business operations and/or facilitate its efforts to maintain its relationships with its employees. The seventh factor is not present in this Chapter 11 Case.

36. The eighth factor is whether the Debtor lacks any reasonable possibility of reorganizing. Base does not allege that Debtor lacks any reasonable possibility of reorganizing, nor could she. Debtor earnestly is working towards proposing a confirmable plan of reorganization and has been engaging with critical stakeholders pre- and postpetition. Debtor remains in its exclusivity period and anticipates proposing a plan of reorganization in this Chapter 11 Case. The eighth factor is not present in this Chapter 11 Case.

Conclusion

The Motion fails to show that any of the factors supporting a finding that Debtor filed this Chapter 11 Case in bad faith are present. Moreover, Debtor has shown that it filed this Chapter 11 Case in good faith. Consequently, Debtor respectfully requests that this Court deny the Motion.

Dated: November 15, 2024

Respectfully submitted,

ONECORE

/s/Craig M. Regens
William H. Hoch, OBA #15788
Craig Regens, OBA #22894
Mark A. Craige, OBA #1992
Kaleigh M. Ewing, OBA #35598
-Of the Firm-
CROWE & DUNLEVY
A Professional Corporation
Braniff Building
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102-8273
(405) 235-7700
will.hoch@crowedunlevy.com
craig.regens@crowedunlevy.com
mark.craige@crowedunlevy.com
kaleigh.ewing@crowedunlevy.com

Counsel to Debtor