

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 FINAL ORDER, PURSUANT  
TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, AND 507, (I) AUTHORIZING DEBTOR  
TO OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING,  
(II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE  
CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV)  
DETERMINING ADEQUATE PROTECTION NEED NOT BE PROVIDED, (V)  
MODIFYING THE AUTOMATIC STAY, AND (VI) 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 post-petition financing [Doc. 186] (the “**Motion**”).

**A. Facts.**

***Debtor’s general financial condition on the date of bankruptcy:***

1. Debtor filed its case on October 7, 2024 (the “**Petition Date**”). [Doc. 1.]
2. Debtor was paying its debts as they became due before the Petition Date.
3. Debtor filed bankruptcy to stop state court collection/appeal of a \$15M personal injury jury award against it.
4. Debtor values its personal property at \$8,285,647.83. [Doc. 1, p. 10.]
5. Debtor had \$1,690,758.01 in its operating account on the Petition Date. [Doc. 1, p. 11.]

***Debtor’s pre-petition secured debt:***

6. Other than one equipment finance loan, Debtor only had one secured creditor on the Petition Date, BOKF, NA d/b/a Bank of Oklahoma (“**BOKF**”).



7. On or about February 10, 2023, Debtor entered into a commercial credit transaction with BOKF in the original principal amount of \$1,500,000.00.

8. As of the Petition Date, the amount due BOKF was \$765,142.41.

9. Thus, in the approximately 20 months between the Loan Date and the Petition Date, Debtor paid BOKF \$734,857.59, almost half of the original principal balance.

***Debtor's authority to use cash collateral:***

10. Debtor sought emergency authorization to use BOKF's cash collateral on October 7, 2024. [Doc. 17]

11. Attached as Exhibit 2 to Debtor's cash collateral motion was a proposed cash collateral budget (the "**Cash Collateral Budget**").

12. The Court entered an interim Order authorizing use of BOKF's cash collateral on October 10, 2024 [Doc. 48] and a final Order on November 6, 2024 [Doc. 101].

13. At no time did Debtor indicate that there existed "onerous restrictions on use of Cash Collateral" as now alleged in the Motion. [Doc. 186, p. 7, ¶ 18; p. 21, ¶ 41.]

14. Debtor appears to have performed satisfactorily under the Cash Collateral Budget and sought no modifications of its structure.

***Debtor's financial position during bankruptcy:***

15. Post-petition, Debtor paid the aggregate amount of \$217,233.52 to Critical Vendors and has maintained a healthy cash position doing so.

16. Comparing Debtor's Monthly Operating Reports ("**MORs**") to its Cash Collateral Budget, Debtor is outperforming its own projections.

17. For example, Debtor had \$2,121,394.66 in its operating account on December 31, 2024. [Doc. 168, p. 16.]

18. Debtor's cash on hand at the end of December per MOR Item # 23 was \$1,444,937.18, while its projected cash balance for that time in the Cash Collateral Budget was only \$449,446.64.

19. Further, while Debtor's collections are approximately 15.68% below Cash Collateral Budget projections, its overall expenses were approximately 25.20% less than anticipated.

20. A chart comparing Debtor's actual performance to the Cash Collateral Budget is attached as **Exhibit 1**.

***General comments about Debtor's Motion:***

21. The Motion seeks to pay off the amount owed to BOKF with a loan of up to \$2,000,000.00 from Solara Surgical Partners, LLC ("**Solara**"), an insider.

22. The facts underlying the Motion are premised upon the "McEntire DIP Declaration." [Doc. 186, p. 11, ¶ 29; p. 17, ¶ 36; p. 22, ¶ 43; p. 22, ¶ 44; p. 23, ¶ 46; p. 24, ¶ 47.]

23. No such Declaration was attached to the Motion.

24. Further, the 13 Week Budget attached to the Motion (the "**DIP Budget**") appears to differ materially both from the Cash Collateral Budget and Debtor's MORs, with no explanation.

25. For example, the DIP Budget's projected collections are 52.24% less than Debtor's actual performance in bankruptcy per its MORs.

26. Further, the DIP Budget's projected expenses are overall approximately 45.50% higher than Debtor's recorded expenses in its MORs.

27. A chart comparing Debtor's actual performance to the DIP Budget is attached as **Exhibit 2**.

**B. The UST’s Specific Objections.**

**(1) The Debtor does not seem to need additional financing.**

28. As stated above, the Debtor is performing well from a financial perspective.

29. Debtor gave no concrete facts for why it needs a \$2M short term loan.

30. The UST does not believe Debtor has shown that it has a need for DIP financing under the circumstances; until it does, the Motion should be denied.

**(2) The Debtor will default under the proposed loan as of the effective date of a plan.**

31. The \$2M proposed Solara loan must be paid in full in cash on the effective date of Debtor’s Plan. (See, Motion, p. 81, ¶ 8.16.)

32. While Debtor has performed well financially, it has not demonstrated an ability to pay off a \$2M loan in full in cash within a relatively short period of time.

**(3) The Motion seeks to grant releases to Solara, including for Chapter 5 Causes of Action.**

33. According to page 15 of the Motion:

|  |   |
|--|---|
| <p><b>Release of Claims Belonging to the Estates or the Trustee</b></p> <p>Bankruptcy Rule 4001(c)(1)(B)(viii)</p> | <p>Subject to entry of the Final Order, the Debtor releases and discharge Solara, in its capacity as a secured party, together with its respective affiliates, agents, attorneys, officers, directors and employees, from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, any of the DIP Loan Documents (as defined in the Final Order) or any loans under the DIP Facility, any aspect of the relationship between the Debtor, on the one hand, and any or all of the released parties, on the other hand, relating to any of the DIP Loan Documents or any transaction contemplated thereby or any other acts or omissions by any or all of the released parties in connection with the DIP Facility or any of the DIP Loan Documents or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the DIP Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action.</p> <p>See Final Order ¶ 33</p> |
|--|---|

34. As Solara is an insider, it should not obtain any releases.

**(4) *The “Carve-Out” should include counsel for any committee that is formed in the case and the Patient Care Ombudsman.***

35. The Carve-Out associated with Motion covers:

- fees due under 11 U.S.C. § 1930(a),
- debtor’s retained professionals, and
- fees and expenses of a chapter 7 trustee.

(See, Motion, p. 15.)

36. The Carve-Out fails to provide for professionals that would be needed by an unsecured creditor committee, should one be formed.

37. The Carve-Out fails to provide for the Patient Care Ombudsman.

38. The UST reserves the right to comment and object to the amount of the Carve-Out upon further reflection.

**(5) *Any fund reserve should be required to be placed in an approved depository.***

39. Debtor proposes to establish a reserve fund “equal to the amount of the Carve-Out.” [Doc. 186, p. 15.]

40. The UST believes the Debtor would, while a debtor in possession, place such a fund in a depository approved by the UST.

41. However, out of an abundance of caution, the UST requests that any DIP financing order expressly include such a provision.

**(6) *DIP financing should not include indemnifying Solara:***

42. Bankruptcy Rule 4001(c)(1)(B)(ix) requires the Motion to describe the nature and extent of the indemnification of any entity.

43. The body of the Motion does not mention any indemnity.

44. The Proposed Order requires Debtor to “indemnify the DIP Lender (and each of its respective directors, officers, employees, agents, representatives, attorneys, consultants, advisors and controlling persons) against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents.” (Motion, p. 43-44, ¶ 8.)

45. Any DIP financing order should not include indemnification of Solara.

**(7) *DIP financing should not include waiver of surcharge under § 506(c):***

46. Bankruptcy Rule 4001(c)(1)(B)(x) requires the Motion to describe the nature and extent of any release, waiver, or limitation of any right under 11 U.S.C. § 506(c).

47. The body of the Motion does not mention any release, waiver, or limitation of any right under § 506(c).

48. The Proposed Order, however, grants Solara a waiver of claims for surcharges for preservation and disposition of collateral under § 506(c). (Motion, p. 50, ¶ 16.)

49. No DIP financing order should include waiver of surcharges under § 506(c).

**(8) *DIP financing should not preclude other post-petition financing:***

50. The body of the Motion does not mention limiting Debtor’s ability to obtain Court approved post-petition financing under 11 U.S.C. § 364.

51. The Proposed Order, however, limits Debtor’s ability to obtain Court approved post-petition financing under 11 U.S.C. § 364. (Motion, p. 50, ¶ 17.)

52. With an approximately \$7 million dollar equity cushion, the UST does not believe Solara needs such a potentially harsh provision as protection in this case.

**(9) *Limitation on use of DIP financing proceeds:***

53. The body of the Motion does not mention that the DIP loan prohibits the Debtor from fulfilling its fiduciary duties.

54. Paragraph 14 of the Proposed Order attached to the Motion prohibits all parties, “including Debtor or any Committee,” from the following:

No portion of the Carve-Out, DIP Facility, DIP Collateral, or Cash Collateral shall include, apply to, or be available for any fees, costs or expenses incurred by any party, including Debtor or any Committee, if any is appointed, in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against the DIP Secured Party, including, without limitation, (i) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Loan Documents, DIP Obligations, DIP Superpriority Claims or DIP Liens in respect thereof, or (ii) asserting any claims or causes of action, including, without limitation, claims or actions to hinder or delay the DIP Lender’s assertion, enforcement or realization on the DIP Collateral in accordance with the DIP Loan Documents or this Final Order. Furthermore, none of the Carve-Out, DIP Collateral, Cash Collateral or any proceeds of the DIP Facility shall be used to prevent, hinder or delay the DIP Secured Party from enforcing or realizing upon the DIP Collateral once an Event of Default has been determined by the Court to have occurred and to be continuing under the DIP Loan Documents or this Final Order.

55. The above provision should be stricken.

56. This is especially so considering the “Binding Effect” provision and the “Survival” provision in the Proposed Order and . [Motion, p. 52, ¶¶ 20-21.]

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

57. Because of the shortened notice and response time to the Motion, and the lack a McEntire DIP Declaration, the UST reserves the right to assert all legal and factual arguments, whether or not raised herein, related to relief requested in the Motion,

**C. Relief requested.**

58. Considering the above, the UST requests that the Court deny the Motion until such time as Debtor satisfies the above objections.

Respectfully submitted,

ILENE J. LASHINSKY  
UNITED STATES TRUSTEE

s/ Jeffrey E. Tate

Marjorie J. Creasey, OBA #17819

Jeffrey E. Tate, OBA #17150

Office of the United States Trustee

215 Dean A. McGee, Fourth Floor

Oklahoma City, OK 73102

(202) 603-5882 | (405) 231-5958 [fax]

Marjorie.Creasey@usdoj.gov

Jeff.Tate@usdoj.gov



|                            | Actual #s Per<br>Operating<br>Reports Filed | 13 Week Budget<br>Cash Collateral<br>[Doc 17] | Actual vs<br>Budget % |
|----------------------------|---|---|-----------------------|
| <b>Cash on Hand</b>        | 1,444,937.18                                | 449,446.64                                    | 221.49% Greater       |
| A/R (Not in Budget)        |   |   |                       |
| <b>Collections</b>         | 7,344,275.59                                | 8,710,000.00                                  | -15.68% Less          |
| AP (Not in Budget)         |   |   |                       |
| <b>Medical Supplies</b>    | 1,727,499.42                                | 2,775,049.83                                  | -37.75% Less          |
| <b>Employee Expense</b>    | 1,498,018.26                                | 1,622,898.00                                  | -7.69% Less           |
| <b>General Admin</b>       | 778,422.27                                  | 954,295.04                                    | -18.43% Less          |
| <b>Occupancy</b>           | 844,934.40                                  | 894,972.85                                    | -5.59% Less           |
| <b>Total Operating Ex</b>  | <b>4,848,874.35</b>                         | <b>6,247,215.72</b>                           | <b>-22.38% Less</b>   |
| <b>Interest</b>            | 21,728.31                                   | 45,592.00                                     | -52.34% Less          |
| <b>Total Ordinary Exp</b>  | 4,870,602.66                                | 6,292,807.72                                  | -22.60% Less          |
| <b>PrePetition Pay.</b>    | 1,928,065.87                                | 2,832,000.00                                  | -31.92% Less          |
| <b>Restructing Costs</b>   | 286,354.82                                  | 350,000.00                                    | -18.18% Less          |
| CFO                        | <b>47,621.40</b>                            | -   | Greater               |
| Legal                      | <b>184,021.40</b>                           | <b>150,000.00</b>                             | <b>22.68% Greater</b> |
| Patient Ombudsman          | <b>7,500.00</b>                             | -   | Greater               |
| Noticing Agent             | 47,212.02                                   | 200,000.00                                    | -76.39% Less          |
| <b>Total Disbursements</b> | <b>7,085,023.35</b>                         | <b>9,471,807.72</b>                           | <b>-25.20% Less</b>   |

**UST  
Exhibit  
1**

|                            | Actual #s Per<br>Operating<br>Reports Filed | 13 Week Budget<br>Emergency Mo.<br>[Doc 186] | Actual vs<br>Budget %  |
|----------------------------|---|--|------------------------|
| <b>Collections</b>         | 7,344,275.59                                | 4,824,000.00                                 | 52.24% Less            |
| AP (Not in Budget)         |   |  |                        |
| <b>Medical Supplies</b>    | 1,727,499.42                                | 2,340,000.00                                 | -26.18% Greater        |
| <b>Employee Expense</b>    | 1,498,018.26                                | 1,335,000.00                                 | 12.21% Less            |
| <b>General Admin</b>       | 778,422.27                                  | 1,222,354.77                                 | -36.32% Greater        |
| <b>Occupancy</b>           | 844,934.40                                  | 958,631.41                                   | -11.86% Greater        |
| <b>Total Operating Ex</b>  | <b>4,848,874.35</b>                         | <b>5,855,986.18</b>                          | <b>-17.20% Greater</b> |
| <b>Interest</b>            | 21,728.31                                   | 18,933.33                                    | 14.76% Less            |
| <b>Total Ordinary Exp</b>  | <b>4,870,602.66</b>                         | <b>5,874,919.51</b>                          | <b>-17.09% Greater</b> |
| <b>PrePetition Pay.</b>    | 1,928,065.87                                | 550,000.00                                   |                        |
| <b>Restructing Costs</b>   | 286,354.82                                  | 700,360.00                                   | -59.11% Greater        |
| CFO                        | 47,621.40                                   | 75,000.00                                    | -36.50% Greater        |
| Legal                      | 184,021.40                                  | 400,360.00                                   | -54.04% Greater        |
| Patient Ombudsman          | 7,500.00                                    | 15,000.00                                    | -50.00% Greater        |
| Patient Omb. Legal         | -   | 15,000.00                                    |                        |
| Noticing Agent             | 47,212.02                                   | 195,000.00                                   | -75.79% Greater        |
| <b>Total Disbursements</b> | <b>7,085,023.35</b>                         | <b>13,000,199.02</b>                         | <b>-45.50% Greater</b> |
| U.S. Trustee Fees          | -   | -  |                        |
| DIP Financing              | -   | 1,250,000.00                                 |                        |