

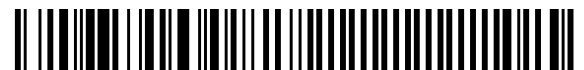
**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA**

<b>IN RE: HOSPITAL FOR SPECIAL</b>	)	<b>Case No. 24-12862</b>
	)	<b>Chapter 11</b>
<b>SURGERY, LLC d/b/a ONECORE HEALTH</b>	)	<b>Judge Janice D. Loyd</b>
	)	
<b>Debtor.</b>	)	

**TIMOTHY W. FOX'S MOTION TO ALLOW CLAIM AS TIMELY FILED AND NOTICE  
WITH BRIEF IN SUPPORT AND  
NOTICE OF OPPORTUNITY FOR 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 A. McGee Avenue, Oklahoma City, OK 73102, no later than 14 days from the date of filing of this Motion. You should also serve a file-stamped copy of your response to the undersigned [and others who are required to be served] and file a Certificate of Service with the Court. **[Note - this is flat fourteen (14) days regardless of the manner of service.]**



**MOTION TO ALLOW CLAIM AS TIMELY FILED WITH BRIEF IN SUPPORT**

Pursuant to Bankruptcy Rule 3002 (C)(6) and 9006 (b), Timothy W. Fox (Fox), files the following Motion to Allow Claim as timely filed and Notice of Opportunity for Hearing and states as follows:

1. On October 7, 2024, Debtor filed a voluntary Chapter 11 Petition, thereby commencing this matter.
2. Prior to Debtor commencing this bankruptcy case, Timothy W. Fox was a patient at one of Debtor's facilities in Oklahoma City. Timothy W. Fox suffered injuries as a result of the negligence of the Debtor, via a nurse practicing at OneCore Health and other employees.
3. Fox commenced a state court medical negligence lawsuit in Oklahoma County against Debtor and others for his injuries (the "State Court Lawsuit"). The *State Court Lawsuit* is styled as *Timothy W. Fox, v. Hospital for Specialty Surgery, LLC a domestic company a/k/a and/or d/b/a OneCore Health, a/k/a and/or d/b/a OneCore Orthopedics and OneCore Holdings, LLC, a domestic company, CJ-2023-3620*.
4. At the time Debtor filed bankruptcy, the *State Court Lawsuit* was pending.
5. The court set a deadline, the bar date of January 22, 2025, for creditors to file a Proof of Claim as reflected in Order filed here in on December 18, 2024 [Docket number 140].
6. Movant filed a Proof of Claim on January 23, 2025, less than 24 hours after the bar date.
7. On April 8, 2025, Debtor filed its Amended Schedule F, whereby it scheduled Timothy W. Fox, as an unsecured, contingent creditor.
8. By this Motion, and pursuant to F. R. Bankr. P. 3003 (c)(6) and 9006 (b) Fox seeks a determination that his claim was timely filed for the reason stated herein. Thereafter, he

seeks to lift the automatic stay to allow him to proceed in the *State Court Lawsuit* against Debtor for injuries and to only recover, if successful, proceeds from the Debtor's insurance carrier. Movant does not wish to participate in any manner in this bankruptcy other than to have his claim deemed timely, obtain relief from the Stay to allow him to proceed in State Court. If this Motion is granted, he will consent to not receiving distributions, not voting on any matters and not proceed in any manner on the Proof of Claim against the Debtor in this bankruptcy.

### **ARGUMENTS & AUTHORITIES**

Movant's failure to file a timely proof of claim was due to excusable neglect as provided for in the United Supreme Court case in *Pioneer Investment Services vs. Brunswick Associates Limited Partnership* 507 U. S. 380 , 113 S.Ct. 1489, 123 L. ED. 2d 74 1993. As the Supreme Court stated in *Pioneer*, the determination of whether neglect is excusable is "at bottom and equitable, one taking into account or relevant circumstances surrounding the party's omission." *Id.* at 395. The relevant factors include (1) the danger of prejudice; (2) the length of delay and its potential impact on proceedings; (3) the reason for the delay; (4) and whether movant acted in good faith.

The flexible understanding of "excusable neglect" accords with the policies underlying Chapter 11 and the bankruptcy rules. *Id.* at 389. The "excusable neglect" standard of Rule 9006(b)(1) governs late filings of Proofs of Claim in Chapter 11 cases but not in Chapter 7 cases. The rules' differentiation between Chapter 7 and Chapter 11 filings corresponds with the differing policies of the two chapters. Whereas the aim of a Chapter 7 liquidation is the prompt closure and distribution of the debtor's estate, Chapter 11 provides for reorganization with the aim of rehabilitating the debtor and avoiding forfeitures by creditors. See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203, 103 S.Ct. 2309, 2312–2313, 76 L.Ed.2d 515 (1983). In

overseeing this latter process, the bankruptcy courts are necessarily entrusted with broad equitable powers to balance the interests of the affected parties, guided by the overriding goal of ensuring the success of the reorganization. See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527–528, 104 S.Ct. 1188, 1197, 79 L.Ed.2d 482 (1984). This context suggests that Rule 9006's allowance for late filings due to “excusable neglect” entails a correspondingly equitable inquiry.

Here the danger of prejudice to the Debtor if the claim is allowed for the limited purpose stated herein does not exist. Fox does not seek any recovery against the debtor in this bankruptcy case. Fox would have to be successful in the *State Court Lawsuit* for Debtor’s insurance to be a source of collection. Moreover, because Fox’s *State Court Lawsuit* was filed years prior to the filing of this bankruptcy, the premiums paid for said insurance coverage were paid years prior to the present filing. Allowance of the claim for only a limited purpose will not prejudice the debtor, other creditors, the creditor’s committee, or other interested parties, since Fox will only be seeking recovery of money from Debtor’s insurance carrier.

The claim was filed less than 24 hours after the bar date and time, which is not a substantial delay. Also, Fox does not seek to have any substantive impact on these proceedings. A hearing on Fox’s Motion for Relief is scheduled for May 13, 2025, and this Motion can be heard the same day.

Fox’ counsel signed the claim for filing two days prior to the bar date which illustrates a good faith attempt to timely file the claim. The Bar date was correctly docked in Movant’s counsel’s internal calendaring system. The Movant’s attorney executed Proof of Claim on January 20, 2025, for filing that day. However, a staff person at Movant’s counsel’s Office inadvertently filed the Proof of Claim on January 23, 2025, due to confusion with the method of filing the Proof of Claim through the Verita Global electronic claim filing system, as directed on

the Instructions for Proof of Claim. The Instructions for Proof of Claim failed to advise that PACER/ECF could be used to file a Proof of Claim. On January 23, 2025, the Proof of Claim was filed using PACER/ECF. Movant's counsel's office was unfamiliar with Verita Global electronic claim filing system and on January 23, 2025. Upon inquiry, the Verita Global website provided a message stating, "We have already received a paper proof of claim under this ID." This message, while confusing, referenced the electronic Proof of Claim that had been filed earlier in the date and not a paper Proof of Claim. A paper Proof of Claim had not actually been received by Verita prior to January 22, 2025.

Additionally, a court may take into account whether the mistake was a single unintentional incident (as opposed to a pattern of deliberate dilatoriness and delay), and whether the attorney attempted to correct his action promptly after discovering the mistake. *Jennings v. Rivers*, 394 F.3d 850, 856-57 (10th Cir. 2005). A mistake could occur in any attorney's office, no matter how well run. *Id.* This was a single mistake that should not serve as the basis for a denial of Fox's claim.

Additionally, on April 8, 2025, Debtor filed Amended Schedules whereby Timothy Fox was added as a creditor. [See docket No. 236]. The Amended Schedule and the receipt thereof has caused additional confusion concerning the scheduling of Timothy Fox's claim and whether Mr. Fox may now amend his Proof of Claim. Therefore, being added as an "additional creditor" at this date should allow Timothy Fox's claim to be considered timely filed, for the purposes of allowing him to seek recovery against Debtor's insurance policy, only

Bankruptcy Rule 3002 (C)(6), allows a court to extend the time for filing a Proof of Claim for cause. In the instant case, the prior factors weigh in favor of deeming Mr. Fox's claim as timely filed and allowing Fox to proceed with the *State Court Lawsuit* to recover any proceeds

from any policy of insurance that might cover Debtor. Deeming Fox's claim as timely will allow Fox to proceed with the *State Court Lawsuit* to recover any proceeds from Debtor's insurance and such action will not interfere with Debtor's bankruptcy case. The subject insurance policies are listed assets, thereby providing some amount of insurance to Debtor. Debtor's plan of reorganization will not be impacted by the allowance of the claim. The *State Court Lawsuit* will not prejudice the creditors, creditor's committee, or other interest parties since Fox will only be seeking recovery of money from Debtor's insurance carrier if his claim is allowed, and the stay is lifted.

WHEREFORE, Fox respectfully requests that this Court enter an order deeming his Proof of Claim as timely filed, that in the event relief from the stay is granted he will be allowed to prosecute the *State Court Lawsuit* to only recover from the Debtor's available liability insurance only and for any relief deemed proper by the Court.

/s/Bret D. Davis  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 11th day of April, 2025, that I electronically filed the foregoing with the Clerk of the Court by using CM/ECF Notice of this filing will be sent by s-mail to all parties by operations of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the notice of Electronic filing. This pleading is also being sent by email to the following attorneys in the *State Court Lawsuit*:

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