

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 5, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00 Hearing
RE: [21] Debtors Emergency Motion For Entry Of An Order Authorizing The Filing Under Seal Of Confidential Patient Information

Docket 21

Matter Notes:

9/5/2018

**The tentative ruling will be the order.
Party to lodge order: Movant**

POST PDF OF TENTATIVE RULING TO CIAO

Tentative Ruling:

9/4/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to (1) authorize the Debtors to file confidential patient information under seal and (2) pay prepetition and postpetition amounts owed to insurance carriers.

Pleadings Filed and Reviewed:

- 1) Debtor's Emergency Motion for Entry of an Order Authorizing the Filing Under Seal of Confidential Patient Information [Doc. No. 21]
- 2) Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Maintain Insurance Program, (B) Pay Insurance Premiums in the Ordinary Course and (C) Pay all Obligations Associated Therewith; and (II) Preventing Insurance Companies from Enforcing Ipso Facto Clauses or Giving Any Notice of Termination or Otherwise Modifying Any Insurance Policy Without Obtaining Relief from the Automatic Stay [Doc. No. 24]

I. Facts and Summary of Pleadings



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Background information on the Debtors is set forth in the tentative ruling on the Debtors' emergency motion for authorization to obtain secured credit and to authorize the use of cash collateral, and is not repeated here.

A. Motion to File Confidential Patient Information Under Seal

Debtors seek authorization to file confidential patient information under seal. The information to be filed under seal includes all patients who have a credit balance.

B. Motion to Maintain Insurance Program

Debtors seek authorization to (a) maintain insurance coverage levels, including authority to revise, extend, supplement, renew, or change insurance coverage as needed, (b) pay insurance premiums, self-insured retentions, broker fees and deductibles in the ordinary course of business, and (c) pay certain administrative obligations associated therewith. Debtors further seek an order preventing insurance companies from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay. Debtors make the following arguments and representations in support of the Motion:

Any disruption to payment of the Debtors' insurance obligations would prevent the Debtors from achieving their goals in this case because the Debtors may not be able to operate without maintaining their insurance coverage. Failure to pay insurance obligations will result in severe repercussions on the Debtors' ability to continue to provide patient care, and will immediately and irreparably harm patients.

The Debtors maintain insurance policies providing for coverage of, among other things:

- 1) Workers' compensation and employers liability;
- 2) Directors and officers liability;
- 3) General liability;
- 4) Professional liability;
- 5) Sexual misconduct and molestation liability;
- 6) Storage tank liability;
- 7) Commercial property liability;
- 8) Commercial automobile liability;
- 9) Helipad liability and non-owned aircraft liability.

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Significant insurance is issued to the Debtors by its captive insurer Marillac Insurance Company, Ltd. (“Marillac”). (Marillac has not sought relief under the Bankruptcy Code.)

The Debtors are required to maintain workers’ compensation insurance coverage to comply with their obligations under California law. As a practical matter, the Debtors cannot continue to provide patient care and operate a healthcare system without professional and general liability insurance, among other coverages.

II. Findings and Conclusions

A. The Motion to File Confidential Patient Information Under Seal is Granted

Bankruptcy Code §107(c) provides that the Court may, for cause, “protect an individual” with respect to the disclosure of personal information. Information that the Debtors are required to keep confidential under relevant healthcare legislation easily qualifies as information of the type that is protected under Bankruptcy Code §107(c). The Debtors’ motion to file confidential patient information under seal is GRANTED.

B. The Motion to Maintain Insurance Coverage

The Court finds that, as a practical matter, the Debtors cannot continue the operation of their Hospitals without all the types of insurance set forth in the Motion. To the extent that payments to insurance carriers are for services rendered post-petition, such payments constitute an “ordinary course of business” expense for which Court approval is unnecessary.

To the extent that insurance payments represent pre-petition indebtedness, Court approval is required. If the Debtor did not pay insurers on account of pre-petition indebtedness, it would most likely be required to obtain new insurance coverage at greater cost. Such a result would inure to the detriment of all creditors.

The Ninth Circuit has recognized that “[c]ases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts.” *Burchinal v. Central Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987). Payment of prepetition insurance premiums falls within this rationale. Accordingly, the Court is prepared to authorize the Debtors to pay prepetition insurance premiums.

The Court is also prepared to bar insurance providers from invoking any *ipso facto* clauses set forth in any of the Debtors’ insurance policies. *Ipso facto* clauses are not

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enforceable in bankruptcy, and any attempt by an insurance carrier to terminate insurance coverage absent court authorization would constitute a violation of the automatic stay.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron