

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

<b>In re:</b>  <b>THOMAS HEALTH SYSTEM, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20007 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>HERBERT J. THOMAS MEMORIAL HOSPITAL ASSOCIATION,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20008 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>CHARLESTON HOSPITAL, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20009 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>THS PHYSICIAN PARTNERS, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20010 (FWV) (Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS: (A) AUTHORIZING THE DEBTORS TO PAY CERTAIN  
PREPETITION (I) WAGES, SALARIES AND OTHER COMPENSATION, (II)  
REIMBURSABLE EMPLOYEE EXPENSES, AND (III) EMPLOYEE MEDICAL  
AND SIMILAR BENEFITS; (B) CONFIRMING THAT THE DEBTORS MAY  
CONTINUE PREPETITION EMPLOYEE PROGRAMS AND PAY EMPLOYEES  
IN THE ORDINARY COURSE OF BUSINESS; AND (C) DIRECTING BANKS  
AND OTHER FINANCIAL INSTITUTIONS TO HONOR ALL RELATED  
CHECKS AND ELECTRONIC PAYMENT REQUESTS  
*(Expedited Consideration Requested)*<sup>1</sup>**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned proposed counsel, file this motion (the “Motion”) pursuant to sections 105(a),

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<sup>1</sup> The Debtors will file a motion seeking to shorten the notice for certain “first-day” motions, including this pleading, and have requested an expedited hearing on such motions at the Court’s earliest convenience.

362(d), 363(b), 507(a), 541(b) and 1129(b) of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for the entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively, and collectively the “Orders”): (a) authorizing, but not directing, the Debtors to pay certain prepetition (i) wages, salaries and other compensation, (ii) reimbursable employee expenses, and (iii) employee medical and similar benefits; (b) confirming that the Debtors may continue their prepetition employee programs and pay their employees in the ordinary course of business; and (c) authorizing and directing banks and other financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests related to the foregoing. In support of this Motion, the Debtors rely on the *Declaration of Daniel J. Lauffer in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “Lauffer Declaration”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors submit as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), 541(b) and 1129(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

## **BACKGROUND**

3. On the date hereof (hereinafter the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases (the “Chapter 11 Cases”) and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

4. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their Chapter 11 Cases.

5. A full description of the Debtors’ business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full in the Lauffer Declaration. Additional facts in support of the specific relief sought herein are set forth below.

### **I. The Debtors Employees, Programs and Benefits**

6. As of the Petition Date, the Debtors employ approximately 1,440 full-time and 250 part-time employees. The Debtors’ employees include: physicians, physician assistants, and nurse practitioners; nurses, certified nursing assistants, and other medical staff; and other employees, including administrative staff (collectively, the “Employees”).

7. The Employees perform a variety of critical functions, including operating the Debtors’ hospitals and treatment centers, providing acute, post-acute and primary care, and recruiting and training physicians and technicians. Employees also engage in various functions to manage and support the operations of the Debtors’ medical facilities, including various administrative, legal, accounting, finance, human resources, management, facilities maintenance, security and other tasks.

8. As medical facilities, the Debtors' operations require skilled, carefully trained, and often highly educated Employees to maintain the requisite levels of medical care and other services provided to the Debtors' patients. The services of these Employees are needed to ensure that the Debtor can deliver high-quality medical care to patients.

9. Given the Debtors' location, they expend significant effort training and retaining current Employees, as well as recruiting physicians, nurses, and other medical professionals. If such Employees were to terminate their employment with the Debtors - because, for example, they are not promptly paid and their benefits programs are not maintained - it would be difficult, if not impossible to timely find replacement employees. This could jeopardize patient care and the Debtors' reorganization.

10. Thus, the Employees' skills, knowledge, and understanding of the Debtors' business and operations are essential to the effective operation of the Debtors' business and to a successful reorganization of that business in a manner that maximizes the return to creditors and other parties-in-interest, while also allowing the Debtors to continue their non-profit mission of delivering high-quality health care to the people of the Charleston region.

11. Not only do the Debtors depend on their Employees, but the Employees also depend on the Debtors for wages and related benefits as well as health care. Moreover, many of Employees rely exclusively on payments from the Debtor for their basic living necessities. The vast majority of the Debtors' Employees will experience significant financial difficulties if the Debtors are not permitted to pay them the full amount of unpaid compensation, benefits, and reimbursable expenses in the ordinary course of business.

12. In order to minimize the personal hardship that the Employees will suffer if prepetition employee-related obligations are not paid by the Debtors when due, and to maintain

morale and stability in the Debtors' workforce during this critical time, the Debtors seek authority to pay and honor, in their sole discretion, certain prepetition claims for, among other things: wages, salaries and other compensation; expense reimbursement; federal and state withholding taxes and other amounts withheld (including garnishments, Employees' share of insurance premiums and taxes); health benefits; insurance benefits; workers' compensation benefits; vacation time; sick leave; life insurance; short and long-term disability coverage; and all other benefits that the Debtors have historically provided to the Employees (collectively, and as more fully described below, the "Employee Obligations") and to pay all costs incident to the foregoing.

13. Additionally, the Debtors request the right to modify, change, and discontinue any of their employee compensation programs, policies and benefits, and to implement new programs, policies and benefits in the ordinary course of business during the Chapter 11 Cases in their sole discretion without the need for further Court approval.

## **II. Employee Obligations**

### **A. Unpaid Compensation**

14. In the ordinary course of business, the Debtors incur payroll obligations to the Employees. Such obligations include wages and salaries.<sup>2</sup> The Debtors pay their Employees periodic payments for wages and salaries on a bi-weekly basis every other Thursday. Approximately 96% of the Employees receive their wages and salaries by direct deposit through electronic transfer of funds directly to Employees' accounts ("Direct Deposit"). On average, the Debtors have gross payroll expenses of approximately \$3,700,000 per bi-weekly pay period. The Debtors' last gross payroll for the Employees (including all employee deductions, withholding,

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<sup>2</sup> The physicians' compensation system used by Debtor THS Physician Partners, Inc. is based upon relative value units ("RVU's"), which are a measure of value used in the United States Medicare reimbursement formula for physician services. Simply stated, the more a physician works, the greater compensation the physician will receive.

and employer-paid taxes and benefits) was paid on January 9, 2020 for the pay period ending on January 4, 2020.

15. Because all of the Employees are paid in arrears, as of the Petition Date, the Employees have not been paid all of their prepetition wages and compensation. Additionally, some Employees may be entitled to compensation because: (a) discrepancies may exist between the amounts paid and the amounts that should have been paid, and (b) some checks issued to Employees prior to the Petition Date may not have been presented for payment or may not have cleared the banking system and, accordingly, have not been honored and paid as of the Petition Date (the “Uncashed Checks”).

16. The Debtors estimate that, as of the Petition Date, approximately \$1,825,000 in prepetition accrued wages, salaries, auto mileage allowances and reimbursement, allowances, and other compensation (but excluding vacation pay) earned prior to the Petition Date remains unpaid (together with the Uncashed Checks, the “Unpaid Compensation”).

17. To the best of the Debtors’ knowledge, no Employees are owed Unpaid Compensation in excess of the \$13,650 statutory priority cap imposed by sections 507(a)(4) and (5) of the Bankruptcy Code. However, out of an abundance of caution, the Debtors seek authority to pay Unpaid Compensation in excess of the statutory cap to any physician Employee. The continued employment of physicians is critical to the operation of the Debtors’ hospitals due to their unique specialization and the high revenue they generate. If the Debtors are unable to pay such physicians the entire amounts they are owed for their regular salaries, the Debtors risk having these critical Employees take their skills and services elsewhere and, as a result, losing substantial revenue.

**B. Deductions and Withholdings**

18. During each applicable pay period, the Debtors routinely deduct certain amounts from Employees' paychecks, including, without limitation: (a) garnishments, child support, and similar deductions; and (b) other pre-tax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein (such as an Employee's share of health care benefits and insurance premiums, contributions under flexible spending plans, legally ordered deductions, union dues, fees and assessments and miscellaneous deductions)(collectively, the "Deductions"). The Debtors forward the amount of Deductions to the appropriate third-party recipients. The Debtors estimate that, as of the Petition Date, all Deductions have been forwarded (or will promptly be forwarded) to the appropriate third-party recipients. However if, due to the commencement of the Chapter 11 Cases, certain Deductions that were deducted from Employees' earnings have not been forwarded to the appropriate third-party recipients prior to the Petition Date, the Debtors request authority to forward any unpaid Deductions to the appropriate third party recipients.

19. Further, the Debtors are required by law to withhold from an Employee's wages amounts related to federal, state and local income taxes, social security and Medicare taxes for remittance to the appropriate federal, state, or local taxing authority (collectively, the "Withheld Amounts"). The Debtors must then pay social security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance (collectively, the "Employer Payroll Taxes"). The total amount of Withheld Amounts and Employer Payroll Taxes (collectively, the "Payroll Taxes") remitted per payroll is approximately \$880,000.

20. Prior to the Petition Date, the Debtors withheld the appropriate amounts from Employees' earnings for the Payroll Taxes. The Debtors estimate that, as of the Petition Date, all Payroll Taxes have been forwarded to the appropriate taxing authorities through the last prepetition payroll. However if, due to the commencement of the Chapter 11 Cases, any Payroll Taxes have not yet been forwarded to the appropriate taxing authorities prior to the Petition Date, the Debtors request authority to forward any outstanding Payroll Taxes to the appropriate third parties.

**C. Honoring Checks for, and Payment of, Reimbursable Expenses**

21. Prior to the Petition Date and in the ordinary course of their business, the Debtors reimbursed Employees for certain reasonable and customary expenses incurred on behalf of the Debtors in the scope of their employment (the "Reimbursable Expenses"). The Reimbursable Expenses are paid on a biweekly basis and include reimbursements for: (a) mileage, (b) tolls, (c) attendance at conferences, (d) publication expenses, (e) telephone expenses, (f) membership dues, (g) tuition (if certain criteria are met), and (h) other business-related expenses that are paid by the Employee. The Debtors estimate that the maximum amount of post-petition requests for reimbursement of prepetition expenses, excluding tuition reimbursement (which is discussed in greater detail below), will not exceed \$28,000.

22. Reimbursable Expenses are all incurred on the Debtors' behalf and with the understanding that they will be reimbursed. Accordingly, to avoid harming Employees who may have incurred the Reimbursable Expenses, the Debtors request authority, to be exercised in their sole discretion, to: (a) continue paying Reimbursable Expenses in accordance with prepetition practices, (b) modify their prepetition policies relating thereto as they deem appropriate, and (c) pay all Reimbursable Expenses that relate to the prepetition period and are submitted to the

Debtors post-petition.

23. In addition, the Debtors issued company credit cards that certain Employees can use to pay for business related expenses. While these credit cards are paid directly by the Debtors, Employee-cardholders may be held personally liable for unpaid credit card balances. The Debtors believe it necessary to allow payment of unpaid credit card expenses incurred during the period prior to the Petition Date as part of the Reimbursable Expenses to limit any potential liability Employee-cardholders may have.

### **III. Employee Benefits**

24. The Debtors offer certain Employees the ability to participate in a number of insurance and benefits programs, including medical and dental plans, vacation time and other paid leaves of absence, retirement savings plans, flexible spending accounts, tuition reimbursement, severance benefits, worker's compensation, union contributions, life insurance and long and short-term disability insurance (collectively the "Employee Benefit Programs"). In total, the Debtors deduct approximately \$424,000 from Employees' paychecks per pay period related to the Employee Benefit Programs.

#### **A. Medical and Dental Plans**

25. The Debtors offer health insurance to Employees for medical and dental coverage (as specified below, collectively, the "Health Insurance").

(a) **Medical Plans**. The Debtors offer two (2) types of medical plans, one with a "standard" deductible, and one with a "high" deductible (collectively, the "Medical Plans"), each of which is self-administered by the Debtors. Approximately 970 Employees participate in the Medical Plan. Prescription drug coverage for

participating Employees is included in the Medical Plan, and Employees are able to fill their prescriptions at the Thomas Family Pharmacy.

(b) **Dental Plans.** The Debtors' dental plan (the "Dental Plan") is also self-insured administered through HealthSmart Dental. Approximately 1,130 Employees participate in the Dental Plan.

26. The cost to the Debtors for the Medical Plans and the Dental Plan is approximately \$413,000 per pay period. Additionally, the Debtors withhold approximately \$133,000 from Employees' paychecks each pay period for the Employees' Medical Plans and approximately \$8,400 from Employees' paychecks each pay period for the Employees' Dental Plan premiums. Additionally, as of the Petition Date, the Debtors have estimated incurred -but not reported - Health Insurance claims in the amount of approximately \$1,250,000.

27. By this Motion, the Debtors seek authority, in their sole discretion, to: (a) continue the Health Insurance for Employees in the ordinary course of business; (b) continue making the above-described contributions to such benefit programs by the Debtors; (c) continue withholding from Employees' paychecks premiums for Health Insurance; and (d) continue to pay in the ordinary course any amounts related thereto, including on account of any premiums (from withholdings and Debtors' contributions), claims amounts, and administration fees to the extent they remain unpaid as of the Petition Date.

**B. Worker's Compensation**

28. The Debtors provide worker's compensation insurance for their Employees at the statutorily-required level for each state (the "Workers' Compensation Program"). These benefits are currently provided for Employees through MAG Mutual Insurance Company ("MAG Mutual"). MAG Mutual administers and pays the Debtors' workers' compensation

claims. Premium costs are billed monthly over the course of ten (10) months per year. As of the Petition Date, no amounts are owed for the insurance policy premium.

29. For the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with their state law requirements, claim assessment, determination and adjudication must continue. The costs associated with the Workers' Compensation Program may fluctuate according to the various claims submitted.

30. By this Motion, the Debtors request authority to continue to maintain, in their sole discretion, the Workers' Compensation Program in the ordinary course of business and to pay, in their sole discretion, any and all prepetition amounts related thereto including, without limitation, any payments for workers' compensation claims, deductibles, fees owed for administrative costs, and other amounts required in connection with the Workers' Compensation Program, as such amounts become due in the ordinary course of the Debtors' business.

**C. Vacation, Sick Leave, and Other Leaves of Absence**

31. The Debtors provide vacation time, sick leave and personal days to their Employees as a paid time-off benefit ("PTO"). The amount of PTO available to a particular Employee and the rate at which such PTO accrues is generally determined by the Employee's length of employment and hours worked. Employees may carry over varying amounts of accrued but unused PTO into the next year. If an Employee ceases employment with the Debtors, the Employees' final paycheck will generally include compensation for any accrued but unused PTO.

32. The Debtors also provide paid vacation time, sick leave, and personal days (collectively, the "Paid Time") to their Employees. The amount of Paid Time available to a particular Employee and the rate at which such Paid Time accrues is generally determined by

the Employee's length of employment and hours worked. Employees may carry over accrued but unused vacation time and personal days into the next year, and may carry over accrued but unused sick leave into the next year up to set maximum amounts. If an Employee ceases employment with the Debtors, the Employees' final paycheck will include any accrued but unused vacation time. Employees may not cash out their unused Sick Leave upon termination, but can opt to apply use their accrued but unused sick leave to pay for health insurance for up to six (6) months following retirement.

33. The Debtors also allow their Employees to take certain unpaid leaves of absences for personal reasons, including family medical leaves, pregnancy, adoption and foster care leaves, military leaves, and bereavement leaves, as required by law and as determined by each department individually ("Leaves of Absence"). The Debtors also provide their Employees with paid leaves to attend jury duty or funerals.

34. The Debtors estimate that approximately \$2,600,000 of earned but unused PTO (including vacation time) has accrued as of the Petition Date.

35. By this Motion, the Debtors request that they be authorized, but not directed, to continue to honor their PTO and Paid Leave policies in the ordinary course of business, and to honor and pay prepetition amounts related thereto. Moreover, the Debtors anticipate that their Employees will utilize any accrued PTO and Paid Leave in the ordinary course of business, which will not create any material cash flow requirements beyond the Debtors' normal payroll obligations.

**D. Tuition Reimbursement**

36. The Debtors offer tuition reimbursement to eligible employees (the "Tuition Reimbursement Program"). This benefit is available to Employees who work more than 16 hours

per week and have been employed by the Debtors for more than one (1) year, with a maximum annual reimbursement of \$1,500 per Employee. In order for tuition to be reimbursed for any particular class, the Employee must obtain a minimum of a “B” for graded classes, and “P” for pass/fail classes. The Debtors estimate that approximately \$6,400 of unpaid Tuition Reimbursement will have accrued as of the Petition Date.

37. By this Motion, the Debtors request that they be authorized, but not directed, to continue their Tuition Reimbursement Program in the ordinary course of business and to honor and pay any prepetition amounts related thereto.

**E. Additional Employee Benefits**

**a. Life Insurance and Long and Short-Term Disability Benefits**

38. The Debtors provide Employees with primary life insurance coverage (the “Life Insurance”) through the Cigna Life Insurance Company (“Cigna”). Such Employees are also offered the opportunity to purchase supplemental and dependent life insurance (the “Supplemental Life Insurance”) through Cigna at their own cost. The Debtors estimate that approximately 670 Employees have selected to purchase Supplemental Life Insurance. The Employee contributions are deducted on a bi-weekly basis and are transferred to Cigna by the Debtors once a month.

39. In addition, the Debtors provide Employees with long-term disability benefits through Lincoln National (the “Long-Term Disability Benefits”). The Long Term Disability benefits cover all Full-Time and Part-Time non-physician Employees.

40. Finally, the Debtors provide Employees with short-term disability benefits (the “Short-Term Disability Benefits”) through Cigna. The Short-Term Disability benefits cover all Full-Time and Part-Time Employees, including physicians.

41. The cost to the Debtors for the Life Insurance and Long-Term Disability Benefits is approximately \$18,500 per pay period. The Debtors do not believe there are any material amounts owed prepetition for Life Insurance, Long-Term Disability Benefits and Short-Term Disability Benefits.

**b. Flexible Benefit Plan**

42. The Debtors offer their Employees the ability to contribute a portion of their pre-tax compensation to health savings accounts and flexible spending accounts to pay for eligible out-of-pocket health care and dependent care costs (the “Flexible Benefit Plan”). Approximately 170 Employees participate in the health care portion of the Flexible Benefit Plan and approximately 15 Employees participate in the dependent care portion of the Flexible Benefit Plan. The administration of the Flexible Benefit Plan costs the Debtors approximately \$33,300 per month.

**c. 401(k) Plan**

43. The Debtors provide a 401(k) plan (the “401K Plan”) for eligible Employees. The Employee contributions held by the Debtors for transfer to the 401(k) Plan is approximately \$203,000 per pay period. The Debtors also offer a match to Employees’ contributions of up to six percent (6%). The amount of the match per period is approximately \$138,000.

**IV. Employment of the Debtors’ Executives**

44. The day-to-day operations of the Debtors are managed by the Debtors’ executive management team (the “Executives”). These members of the Debtors’ administration have unique and specialized knowledge and experience with respect to the Debtors’ healthcare operations and facilities. The Debtors believe that the Executives’ continued service to the

Debtors is essential to their healthcare operations, and vital to achieve a successful reorganization of the Debtors' business.

45. The following is a schedule of the Debtor's Executives, which includes their position, a description of their duties, and the compensation they receive on a monthly basis:

Executive	Description of Duties	Current Monthly Salary	Monthly Salary for Preceding Year
Daniel Lauffer President & Chief Executive Officer	Responsible for the creation, planning, implementing and integrating of strategic direction, including making major corporate decisions and managing overall operations and resources	\$41,272*	\$35,889
Brian Ulery Executive Vice President & Chief Operating Officer	Responsible for oversight of day-to-day operations, including management of physician practices, business development, human resources and ancillary services.	\$27,997*	\$27,997
Timothy Skeldon Chief Financial Officer & Senior Vice President of Finance	Responsible for management of financial status, including general accounting, budgeting, cash management, investment strategies, third-party reimbursement, managed-care negotiations, preparation of financial statements and reports, and accounting/finance supervision.	\$27,134*	\$27,134
Matthew Upton, MD Chief Medical Officer/ Chief Medical Information Officer	Responsible for oversight of effective management of medical centers, including managing clinical operations, liaising between administration and medical staff and ensuring patients receive highest standard of medical care.	\$29,897*	\$27,134
Aaron Alexander Vice President, General Counsel	Responsible for legal matters related to the entity, including advising managing and the board on legal rights and managing legal matters.	\$22,283*	\$20,399
Brian Lilly Vice President, Quality, Safety & Service Lines	Responsible for coordinating performance improvement system to optimize outcomes in areas of quality, safety and service.	\$15,125	\$13,750*
Maria Rendinell Vice President, Physician Services	Responsible for direction and supervision of medical practices in accordance with laws and guidelines.	\$14,450	\$10,808

Jennie Kahn Interim Vice President, Chief Nursing Officer	Responsible for planning, organizing and directing the overall operations of nursing/patient care services, and ensuring the competency of all nursing personnel.	\$12,631	\$12,383
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\*In addition to receiving a monthly salary, this executive is eligible to participate in the employee incentive plan.

46. The Executives also receive the following benefits: (i) participation in the 401K Plan; (ii) participation in the employee health and dental plan; (iii) term life insurance coverage; (iv) reimbursement of business memberships and expenses; and (v) paid time off.

47. In addition to their daily management duties, the Executives also have assumed incremental duties in connection with the filing of the Chapter 11 Cases, which require extensive coordination with the Debtors' bankruptcy counsel and other advisors with respect to various issues that arise in bankruptcy. Such issues, if not handled promptly and skillfully, will interrupt the Debtors' healthcare operations and erode the value of the Debtors' business.

48. Continuing to employ the Executives is in the best interests of the Debtors' estates and creditors. The success of the Chapter 11 Cases depends on the ability of the Executives to take on additional responsibilities required to manage the chapter 11 process, and at the same time, maintain the Debtors' operations in an extremely challenging environment. These endeavors are critical to maximize the recovery for all the Debtors' stakeholders, and require the continued services of the Executives.

**RELIEF REQUESTED**

49. By this Motion, the Debtors seek authority to pay and honor, in the ordinary course of business and in their sole discretion, prepetition claims and obligations related to: (a) Unpaid Compensation, (b) Uncashed Checks, (c) Deductions and Payroll Taxes, (d) Reimbursable Expenses, and (e) the Employee Benefit Programs, all as defined and described

herein. The Debtors also seek authority to retain their current Executives and continue to compensate them in the ordinary course of business.

50. In addition, the Debtors request that banks and other financial institutions be authorized and directed to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors also request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to this Motion.

51. Courts in chapter 11 cases have previously approved the same or substantially similar relief as requested herein. *See, e.g., In re Blackjewel, LLC, et al.*, No. 3:19-bk-30289 (Bankr. S.D.W.V August 8, 2019); *In re Daily Gazette Company, et al.*, No. 2:18-bk-20028 *In re Daily Gazette Company, et al.*, No. 2:18-bk-20028 (Bankr. S.D.W.V March 12, 2018); *In re Fairmont General Hospital, Inc.*, No. 1:13-bk-01054 (Bankr. N.D.W.V. October 23, 2013); *In re Geological Technologies, Inc.*, No. 3:10-bk-01448 (Bankr. N.D.W.V. July 12, 2010); *In re Bi-Lo, LLC*, No. 09-02140 (Bankr. D.S.C. March 24, 2009); *In re Lee County Community Hospital*, No. 00-02304-WSB-11 (Bankr. W.D. Va. July 26, 2000); *In re Tultex Corp.*, No. 99-03626 (Bankr. W.D. Va. December 3, 1999); *In re Federated Department Stores, Inc.*, No. 1-90-00130 (Bankr. S.D. Ohio January 15, 1990).

52. The Debtors further request that a hearing (the "Final Hearing") be scheduled as soon as practicable after the 21<sup>st</sup> day following the entry of the Interim Order to consider approval of the relief requested by the Motion on a final basis and, establish the date that is seven days prior to the Final Hearing as the deadline for parties to file objections to the Motion.

### **BASIS FOR RELIEF REQUESTED**

#### **I. Sufficient Cause Exists for the Court to Authorize the Debtors to Honor Employee Obligations**

53. The Debtors seek authority to satisfy their Employee Obligations to ensure the continued operation of the Debtors' business and to maintain the morale of their Employees, many of whom would suffer extreme personal hardship and financial difficulty if they are not paid in a timely manner. In addition, the Employee Benefit Programs are an important part of each Employee's total compensation. Any indication that the Employee Obligations may not be honored will prove detrimental to the Debtors' ability to successfully reorganize.

54. Paying prepetition wages and employee benefits will benefit the Debtors' bankruptcy estates and creditors by allowing the Debtors' business operations to continue without interruption. Indeed, the Debtors believe that without the requested relief, their Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Debtors' workforce, hindering the Debtors' ability to meet their patient obligations and their ability to successfully reorganize. The loss of valuable Employees and the resulting recruiting of new employees that would be necessary to find replacements would not only be distracting but would also be detrimental to the Debtors' patients and the community as a whole – all who rely on the Debtors' current employees. Further, if the Debtors lose valuable Employees, they will incur recruiting expenses in locating replacement workers. Accordingly, the Debtors must make every effort to retain the Employees by continuing to honor all wage, benefit, and related obligations, including the Employee Obligations and bonuses that accrued prepetition.

**A. Cause Exists to Authorize the Debtors to Pay Employee Obligations and Maintain Employee Benefit Programs**

55. Pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, an individual's claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date, and claims against the Debtors for contributions to employee benefit plans arising from services rendered within 180 days before the Petition Date, are each afforded unsecured priority status of \$13,650 per employee.

56. The Debtors believe that many of the Employee Obligations constitute priority claims under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. To the extent such Employee Obligations constitute priority claims, the Debtors are required to pay such claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B). Thus, granting the relief sought herein would only cause such Employee claims to be paid in the initial stages of the Chapter 11 Cases, rather than at the plan confirmation stage. Further, the amount by which any individual Employee claim exceeds \$13,650 is insignificant in comparison to the value that such Employee will provide to the Chapter 11 Cases and the Debtors' ongoing businesses.

57. The Debtors further submit that payment of the Employee Obligations, even where over \$13,650 for certain Employees, maintaining the Employee Benefit Programs and paying related administrative expenses is necessary and appropriate and is authorized under section 105(a) of the Bankruptcy Code pursuant to the "necessity of payment" doctrine, which "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

58. Specifically, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this

title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. “Under 11 U.S.C. § 105 the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177). Furthermore, Bankruptcy Rule 6003 permits the payment of prepetition obligations within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.”

59. Courts have consistently permitted postpetition payment of certain prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport Ry.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of . . . [crucial] business relations”); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 28586 (S.D.N.Y. 1987), *appeal dismissed* 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses and benefits). Indeed, “a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *In re Structurlite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988).

60. This “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re United Am., Inc.*, 327 B.R. 776, 782 (Bankr. E.D. Va. 2005) (acknowledging the doctrine of necessity “because otherwise there will be no reorganization and no creditor will have an opportunity to recoup any

part of its prepetition claim”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation). Several courts apply the doctrine of necessity where payment of a prepetition claim (1) is “necessary for the successful reorganization of the debtor”, (2) falls within “the sound business judgment of the debtor” and (3) will not “prejudice other unsecured creditors.” *United Am.*, 327 B.R. at 782; *see also In re Universal Fin., Inc.*, 493 B.R. 735, 739–40 (Bankr. M.D. N.C. 2013) (applying the *United American* three-part test); *In re Corner Home Care, Inc.*, 438 B.R. 122, 126 (Bankr. W.D. Ky. 2010) (same). The doctrine is frequently invoked early in a chapter 11 case, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims.

61. In addition, section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decisions to use, sell or lease assets outside the ordinary course of business must be based upon a sound business purpose. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (requiring a “good business reason” to approve a sale pursuant to section 363(b)); *In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) (“This Court follows the ‘sound business purpose’ test when examining § 363(b) sales.” (citing *In re WBQ P’ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995))); *see also In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is “a good business reason”).

62. Indeed, courts in this and other districts have consistently and appropriately been loath to interfere with corporate decisions “unless it is shown that the bankrupt’s decision was one taken in bad faith or in gross abuse of the bankrupt’s retained business discretion.” *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985) (applying the business judgment rule to a debtor’s decision to reject an executory contract), *superseded by statute on other grounds*, section 365(n), *as recognized in Mission Prod. Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1664 (2019) (“Congress’s enactment of Section 365(n) . . . addresses certain intellectual property licensing agreements.”); *see also Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (“Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence.”), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993).

63. The Debtors submit that the requested relief represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm and is justified under sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 6003. This is because any delay in paying the Employee Obligations or failure to maintain the Employee Benefit Programs and pay related administrative obligations will adversely impact the Debtors’ relationships with their Employees and could irreparably impair Employees’ morale, dedication, confidence and cooperation. The Debtors’ businesses hinge on their relationships with their patients, and the ability to provide essential medical services is vital. The Employees’ support for the Debtors’ restructuring efforts in the Chapter 11 Cases is critical to the success of those efforts. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably attend any decline in their Employees’ morale attributable to the Debtors’ failure to pay the Prepetition Employee Obligations.

64. Absent an order granting the relief requested, many Employees will undoubtedly suffer hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain of their Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors will be undermined, perhaps irreparably, by the possibility that otherwise loyal Employees will seek other employment alternatives. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

**B. Payment of the Deductions and Payroll Taxes is Appropriate Under Section 541 of the Bankruptcy Code**

65. In addition, as part of the relief requested herein, the Debtors seek authority to pay to the appropriate entities the Deductions and the Payroll Taxes. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employee's paychecks. Indeed, certain Deductions, like contributions to the Employee Benefit Programs, child support, and alimony payments are not the Debtors' property, but rather, have been withheld from Employees' paychecks on the behalf of another party. *See* 11 U.S.C. § 541(b). Moreover, the Debtors and their officers are required by federal or state laws to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. §§ 6672 and 7501(a). Further, because the Deductions and Payroll Taxes are not property of the Debtors' estates, these amounts are not subject to the normal bankruptcy prohibitions against payment. *See In re Dameron*, 155 F.3d 718, 721 (4<sup>th</sup> Cir. 1998) (quoting *Begier v. IRS*, 496 U.S. 53 (1990)). The Debtors therefore request that the Court confirm that such trust fund withholding is not property of the Debtors' estates and that the Debtors may transmit the Payroll Taxes to the proper parties in the ordinary course of business.

66. By this Motion, the Debtors do not seek to assume any executory contracts or obligations and nothing herein should be deemed to be an assumption or adoption of any

employee agreements or policies. Instead, the Debtors merely seek to take the steps they believe are necessary in order to keep their existing workforce intact and maximize the value of the bankruptcy estates, pending further decisions relevant to the contemplated reorganization. Also, pursuant to the Motion, the Debtors will retain the discretion to withhold payments contemplated by the Motion for particular Employees, and nothing in the Motion shall, in and of itself, confer upon any Employees or other parties an entitlement to administrative priority or other preferences in distribution from the Debtors' estates.

## **II. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers**

67. Under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment in respect of the prepetition claims of the Employees. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable banks and other financial institutions should be authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the prepetition claims of the Employees.

### **NECESSITY FOR IMMEDIATE RELIEF**

68. Bankruptcy Rule 6003 provides that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . . ." The Employees are integral to the Debtors' business operations and the failure to timely satisfy obligations to the Employees will jeopardize the loyalty and trust of the Employees. Further, failure to timely satisfy obligations to the Employees

may cause Employees to leave, thereby causing serious disruption to the Debtor's business operations during this critical period when the Debtors need the continued support of their Employees to allow for a successful reorganization.

69. Additionally, the vast majority of the Employees depend on their compensation, benefits, and reimbursement of their expenses to continue to pay their daily living expenses, and these Employees will suffer significant financial difficulties if the Debtors are not permitted to pay the Employees. Accordingly, the Debtors satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of the Employee obligations.

#### **NOTICE**

70. The Debtors, with the assistance of their proposed claims and noticing agent, will use their reasonable best efforts under the exigent circumstances of these Chapter 11 Cases to provide notice of this Motion by overnight mail, email and/or fax to: (a) the Office of the United States Trustee for the Southern District of West Virginia; (b) the Office of the United States Attorney for the District of West Virginia; (c) the creditors appearing on the Debtors' consolidated list of top 30 unsecured creditors; (d) the Internal Revenue Service; (e) any local, state, or federal agencies that regulate the Debtors' businesses; (f) the Bond Trustee and counsel of record; (g) Huntington Bank; (h) United Bank; (i) Bank of America; (j) Fifth Third Bank; (k) all parties requesting notices pursuant to Bankruptcy Rule 2002(f); and (l) all known secured creditors. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

### **REQUEST FOR WAIVER OF STAY**

71. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

### **NO PREVIOUS REQUEST**

72. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

### **RESERVATION OF RIGHTS**

73. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' right to dispute any such claim, or an approval or assumption of any agreement or contract under section 365 of the Bankruptcy Code. The Debtors expressly reserve the right to contest any claim with respect to an Employee Obligation in accordance with applicable non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute and/or contest such claim.

WHEREFORE, the Debtors respectfully request entry of (a) the Interim Order, substantially in the form attached hereto as **Exhibit A**, and (b) the Final Order, substantially in the form attached hereto as **Exhibit B**, granting the relief requested herein and such other and further relief as is just.

DATED: January 10, 2020

Respectfully Submitted

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**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

<b>In re:</b>  <b>THOMAS HEALTH SYSTEM, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20007 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>HERBERT J. THOMAS MEMORIAL HOSPITAL ASSOCIATION,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20008 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>CHARLESTON HOSPITAL, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20009 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>THS PHYSICIAN PARTNERS, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20010 (FWV) (Joint Administration Requested)

**INTERIM ORDER: (A) AUTHORIZING THE DEBTORS TO PAY CERTAIN  
PREPETITION (I) WAGES, SALARIES AND OTHER COMPENSATION, (II)  
REIMBURSABLE EMPLOYEE EXPENSES, AND (III) EMPLOYEE MEDICAL  
AND SIMILAR BENEFITS; (B) CONFIRMING THAT THE DEBTORS MAY  
CONTINUE PREPETITION EMPLOYEE PROGRAMS AND PAY EMPLOYEES  
IN THE ORDINARY COURSE OF BUSINESS; AND (C) DIRECTING BANKS  
AND OTHER FINANCIAL INSTITUTIONS TO HONOR ALL RELATED  
CHECKS AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the “Motion”)<sup>1</sup> of the above-captioned debtors (collectively, the “Debtors”) for the entry of interim and final orders: (a) authorizing the Debtors to pay certain prepetition (I) wages, salaries, bonuses, and other compensation, (II) reimbursable employee expenses, and (III) employee medical and similar benefits; (B) confirming the Debtors may continue prepetition employee programs and pay employees in the ordinary course of business; and (C) directing banks and other financial institutions to honor all related checks and electronic payment requests, it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefore, it is hereby

**ORDERED** that:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to honor and pay the Employee Obligations in accordance with the Debtors’ stated policies and prepetition practices, including, but not limited to, prepetition amounts owed in connection with Unpaid Compensation and Uncashed Checks.
3. The Debtors are authorized, but not directed, to continue to allocate and distribute the Deductions and the Payroll Taxes in accordance with the Debtors’ stated policies and prepetition practices.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion

4. The Debtors are authorized, but not directed, to pay, upon entry of this Interim Order, the Reimbursable Expenses in accordance with the Debtors' stated policies and prepetition practices.

5. The Debtors are authorized, but not directed, to honor the Employee Benefit Programs, make any necessary contributions to such programs, and pay any unpaid premium, claim, or amount owed as of the Petition Date, including, but not limited to, honoring; (a) the Medical Plans and Dental Plan; (b) the Workers' Compensation Program; (c) PTO (including vacation time), Paid Time, Leaves of Absence; (d) Tuition Reimbursement Program; (e) Life Insurance and Supplemental Life Insurance; (f) Long Disability Benefits and Short-Term Disability Benefits; (g) Flexible Benefit Plan; and (h) 401K Plan.

6. For the avoidance of doubt, no individual Employee, other than a physician Employee, shall receive any payment hereunder in excess of the cap imposed by Sections 507(a)(4) and (a)(5), as applicable.

7. In accordance with this Interim Order and any other order of this Court, the Debtors are authorized, but not directed, to pay all processing fees associated with, and all costs incident to, payment of the Employee Obligations, Uncashed Checks, Unpaid Compensation, Employee Benefit Programs and the Reimbursable Expenses.

8. The Debtors may, in their sole discretion, continue their prepetition Employee Benefit Programs in the ordinary course of business and pay any amounts owed with respect thereto in the ordinary course of business.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and that all such banks and financial institutions are authorized to

rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

10. The Debtors are authorized to re-issue any check or electronic payment that originally was given in payment of any prepetition amount authorized to be paid under this Interim Order and is not cleared by the applicable bank or other financial institution.

11. The Debtors are authorized, but not directed, to continue to employ and compensate their Executives post-petition in the ordinary course of business and in accordance with the Debtors' policies and prepetition practices.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion. Authorizations given in this Interim Order empower, but do not direct, the Debtors to effectuate any of the payments specified herein.

13. The Final Hearing shall be held on \_\_\_\_\_, 2020 at \_\_\_\_m. (prevailing Eastern Time). Any objections or responses to entry of the proposed Final Order shall be filed with the Clerk of this Court on or before 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_.  
\_\_ 2020, and served on the following parties: (a) the Office of the United States Trustee, 300 Virginia Street East, Room 2025, Charleston, West Virginia 25301; (b) proposed counsel to the Debtors, Whiteford Taylor & Preston, LLP, 200 First Avenue, Third Floor, Pittsburgh, PA 15222, Attn: Michael J. Roeschenthaler, Esq. ([mroeschenthaler@wtplaw.com](mailto:mroeschenthaler@wtplaw.com)); (c) proposed co-counsel for the Debtors, Frost Brown Todd, LLC, 500 Virginia Street East, Suite 1100, Charleston, WV 25301, Attn: Jared M. Tully, Esq. ([jtully@fbtlaw.com](mailto:jtully@fbtlaw.com)); and (d) counsel to any official committee appointed in these cases.

14. In the event no objections to entry of the proposed Final Order are timely received, the Court may enter the proposed Final Order without need for the final hearing.

15. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission regarding the validity or amount of any claim against the Debtors; (b) a waiver of the Debtors' rights to subsequently dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law.

16. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and limited by any orders in the Chapter 11 Cases authorizing the use of cash collateral and the budget described therein.

17. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

18. The notice of the relief requested in the Motion satisfies Bankruptcy Rule 6004(a) and, pursuant to Bankruptcy Rule 6004(h), the terms and provisions of this Interim Order shall be immediately effective and enforceable upon its entry.

19. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Presented By:

/s/ Brandy M. Rapp

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10034739

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

<b>In re:</b>  <b>THOMAS HEALTH SYSTEM, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20007 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>HERBERT J. THOMAS MEMORIAL HOSPITAL ASSOCIATION,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20008 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>CHARLESTON HOSPITAL, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20009 (FWV) (Joint Administration Requested)
<b>In re:</b>  <b>THS PHYSICIAN PARTNERS, INC.,</b>  <b>Debtor.</b>	Chapter 11  Case No. 20-20010 (FWV) (Joint Administration Requested)

**FINAL ORDER: (A) AUTHORIZING THE DEBTORS TO PAY CERTAIN  
PREPETITION (I) WAGES, SALARIES AND OTHER COMPENSATION, (II)  
REIMBURSABLE EMPLOYEE EXPENSES, AND (III) EMPLOYEE MEDICAL  
AND SIMILAR BENEFITS; (B) CONFIRMING THAT THE DEBTORS MAY  
CONTINUE PREPETITION EMPLOYEE PROGRAMS AND PAY EMPLOYEES  
IN THE ORDINARY COURSE OF BUSINESS; AND (C) DIRECTING BANKS  
AND OTHER FINANCIAL INSTITUTIONS TO HONOR ALL RELATED  
CHECKS AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the “Motion”)<sup>1</sup> of the above-captioned debtors (collectively, the “Debtors”) for the entry of interim and final orders: (a) authorizing the Debtors to pay certain prepetition (I) wages, salaries, bonuses, and other compensation, (II) reimbursable employee expenses, and (III) employee medical and similar benefits; (B) confirming the Debtors may continue prepetition employee programs and pay employees in the ordinary course of business; and (C) directing banks and other financial institutions to honor all related checks and electronic payment requests, it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having entered the Interim Order on \_\_\_\_\_, 2020 granting the Motion on an interim basis (Docket No. \_\_\_\_\_), and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefore, it is hereby

**ORDERED** that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to honor and pay the Employee Obligations in accordance with the Debtors’ stated policies and prepetition practices, including, but not limited to, prepetition amounts owed in connection with Unpaid Compensation and Uncashed Checks.

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion

3. The Debtors are authorized, but not directed, to continue to allocate and distribute the Deductions and the Payroll Taxes in accordance with the Debtors' stated policies and prepetition practices.

4. The Debtors are authorized, but not directed, to pay, upon entry of this Interim Order, the Reimbursable Expenses in accordance with the Debtors' stated policies and prepetition practices.

5. The Debtors are authorized, but not directed, to honor the Employee Benefit Programs, make any necessary contributions to such programs, and pay any unpaid premium, claim, or amount owed as of the Petition Date, including, but not limited to, honoring; (a) the Medical Plans and Dental Plan; (b) the Workers' Compensation Program; (c) PTO (including vacation time), Paid Time, Leaves of Absence; (d) Tuition Reimbursement Program; (e) Life Insurance and Supplemental Life Insurance; (f) Long Disability Benefits and Short-Term Disability Benefits; (g) Flexible Benefit Plan; and (h) 401K Plan.

6. For the avoidance of doubt, no individual Employee, other than a physician Employee, shall receive any payment hereunder in excess of the cap imposed by Sections 507(a)(4) and (a)(5), as applicable.

7. In accordance with this Interim Order and any other order of this Court, the Debtors are authorized, but not directed, to pay all processing fees associated with, and all costs incident to, payment of the Employee Obligations, Uncashed Checks, Unpaid Compensation, Employee Benefit Programs and the Reimbursable Expenses.

8. The Debtors may, in their sole discretion, continue their prepetition Employee Benefit Programs in the ordinary course of business and pay any amounts owed with respect thereto in the ordinary course of business.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and that all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

10. The Debtors are authorized to re-issue any check or electronic payment that originally was given in payment of any prepetition amount authorized to be paid under this Final Order and is not cleared by the applicable bank or other financial institution.

11. The Debtors are authorized, but not directed, to continue to employ and compensate their Executives post-petition in the ordinary course of business and in accordance with the Debtors' policies and prepetition practices.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion. Authorizations given in this Final Order empower, but do not direct, the Debtors to effectuate any of the payments specified herein.

13. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission regarding the validity or amount of any claim against the Debtors; (b) a waiver of the Debtors' rights to subsequently dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law.

14. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and limited by any orders in the Chapter 11 Cases authorizing the use of cash collateral and the budget described therein.

15. The notice of the relief requested in the Motion satisfies Bankruptcy Rule 6004(a) and, pursuant to Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

16. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Presented By:

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