

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

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

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS: (I) AUTHORIZING DEBTORS TO MAINTAIN EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEM; (II) GRANTING ADMINISTRATIVE EXPENSE STATUS FOR INTERCOMPANY CLAIMS; AND (III) WAIVING THE REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE (*Expedited Consideration Requested*¹)

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), 345(b), 363(c)(1), and 364 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the “Bankruptcy Code”) for the entry of interim and final orders, substantially in the

¹ 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.

form attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order”, respectively, and collectively the “Orders”) (i) authorizing the Debtors to maintain existing bank accounts and business forms and to continue to use their existing cash management system; (ii) granting administrative expense priority to intercompany claims, and (iii) waiving the requirements of section 345(b) of the Bankruptcy Code. 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), 345(b), 363(c)(1), and 364 of the Bankruptcy Code.

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.

RELIEF REQUESTED

6. By this Motion, the Debtors seek entry of the Interim Order and the Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B (i) authorizing the Debtors to maintain existing bank accounts (and, together with any accounts opened after the Petition Date, the "Bank Accounts") located at various banks and financial institutions (collectively, the "Banks") and business forms and continue to use their existing cash management system (the "Cash Management System"), (ii) granting administrative expense priority to intercompany claims, and (iii) waiving the requirements of section 345(b) of the Bankruptcy Code.

A. The Debtors' Bank Accounts and Cash Management System

7. As of the Petition Date, in the ordinary course of business, the Debtors utilize the Cash Management System to collect, concentrate, and disburse funds generated by the Debtors' operations. In order to lessen the disruption caused by the bankruptcy filings and maximize the value of their estates in the Chapter 11 Cases, it is vital for the Debtors that they maintain their system of managing cash.

8. As part of their Cash Management System, the Debtors maintain separate Bank Accounts that are held by Debtors Thomas Health System, Inc. ("THS"), Herbert J. Thomas Memorial Hospital Association ("Thomas Memorial"), Charleston Hospital, Inc. ("Saint Francis"), and THS Physician Partners, Inc. ("THSPP").

9. As of the Petition Date and in the ordinary course of business, THS maintains seven (7) separate Bank Accounts, including three (4) Bank Accounts at Huntington Bank (“Huntington”) (Acct. Nos. X1122, X1216, X1229 and X1288) and three (3) Bank Accounts at UMB Bank (“UMB”) (Acct. Nos. X674.1, X674.2 and X674.3).

10. These Bank Accounts are comprised of the following separate categories:

- a. Depository Account: Huntington Acct. No. X1216 is a depository account funded by cafeteria sales from Thomas Memorial and St. Francis operations.
- b. Disbursement Accounts: (i) Huntington Acct. No. X1122 is a payroll account funded by Thomas Memorial Huntington Acct. No. X4017, St. Francis Huntington Acct. No. X1965 and THSPP Acct. No. X6866; and (ii) Huntington Acct. No. X1229 is an accounts payable account funded by Thomas Memorial Huntington Acct. No. X4017, St. Francis Huntington Acct. No. X1965 and THSPP Acct. No. X6866.
- c. Bond Accounts. The UMB Bank Accounts are various funds maintained pursuant to the Master Trust Indenture (as defined in the Lauffer Declaration). For the avoidance of doubt, the bond accounts are subject to the documents that evidence and secure the bonds and nothing herein or in any proposed Order shall modify or affect the parties’ rights with respect thereto.
- d. Investment Accounts. Huntington Acct. No. X1288 is a trust account holding investments.

11. As of the Petition Date and in the ordinary course of business, Thomas Memorial maintains seven (7) separate Bank Accounts, including four (4) Bank Accounts with Huntington (Acct. Nos. X4813, X4017, X5125 and X9609), one (1) Bank Account with Bank of America (“BOA”) (Acct. No. X4905) and two (2) Bank Accounts with Fifth Third Bank (“Fifth Third”) (Acct. Nos. X8205 and X6151).

12. These Bank Accounts are comprised of the following separate categories:

- a. Depository Accounts: (i) Huntington Acct. No. X4017 is a depository account which is swept as needed into Huntington Acct. No. X4813 and THS Huntington Acct. No. X1122; (ii) Huntington Acct. No. X5125 is a depository account funded by pharmacy sales which is swept daily into

Huntington Acct No. X4017; (iii) BOA Acct. No. X4905; and (iv) Fifth Third Acct. No. X6151.

- b. Disbursement Accounts: (i) Huntington Acct. No. X4813 is an accounts payable account funded by Huntington Acct No. X4017; and (ii) Fifth Third Acct. No. XXXXXX8205 is a patient refund/clearing account.
- c. Pension Account: Huntington Acct. No. X9609 contains funds maintained pursuant to the Pension Plan (as defined in the Lauffer Declaration).

13. As of the Petition Date and in the ordinary course of business, Saint Francis maintains five (5) separate Bank Accounts, including two (2) Bank Accounts with Huntington (Acct. Nos. X1965 and X1952), one (1) Bank Account with BOA (Acct. No. X8250) and two (2) Bank Accounts with Fifth Third (Acct. Nos. X8197 and X6144).

14. These Bank Accounts are comprised of the following separate categories:

- a. Depository Accounts. (i) Huntington Acct. No. X1965 is a depository account which is swept as needed into THS Huntington Acct. No. X1122; (ii) BOA Acct. No. X8250; and (iii) Fifth Third Acct. No. X6144.
- b. Disbursement Accounts. (i) Huntington Acct. No. X1952; and (ii) Fifth Third Acct. No. X8197 is a patient refund/clearing account.

15. As of the Petition Date and in the ordinary course of business, THSPP maintains one (1) Bank Account with Huntington (Acct. No. X6866). Huntington Acct. No. X6866 is a depository account funded by patient funds and is swept as needed into THS Huntington Acct. No. X1122.

16. A list of the Debtors' Bank Accounts is attached hereto as Exhibit C. Each of the Bank Accounts are maintained at stable financial institutions. Moreover, most of the accounts are maintained at Banks are included on the United States Trustee for the Southern District of West Virginia's list of approved depositories.

17. The Cash Management System maintained by the Debtors has been designed to:
(i) provide an efficient method of collecting, transferring and disbursing funds; (ii) establish

procedures and controls necessary to account for funds in an accurate manner; and (iii) facilitate meeting the Debtors' financial obligations. The Debtors maintain current and accurate accounting records of daily cash transactions, and submit that preservation of their Cash Management System will prevent undue disruption to the Debtors' business operations, while protecting the Debtors' cash for the benefit of their estates. All funds received or disbursed for each entity are properly reflected on that Debtors' books and records.

B. The Debtors' Existing Business Forms

18. In the ordinary course of their business, the Debtors use a variety of checks and other pre-printed business forms (collectively, the "Business Forms"). Because of the nature and scope of the Debtors' business operations and the number of suppliers of goods and services with whom the Debtors transact business on a regular basis, it is important that the Debtors be permitted to continue to use their Business Forms without alteration or change.

C. Intercompany Transactions

19. Prior to the Petition Date, the Debtors engaged in certain intercompany transactions with each other in the ordinary course or business (collectively, the "Intercompany Transactions"), primarily related to processing payroll and other operating expenses, sharing of personnel, leasing of real property, etc..

20. In addition, certain of the Debtors' funds may become intermingled as a result of their Cash Management System, as described above. These costs are reconciled through Intercompany Transactions.

21. The Debtors maintain records of transfers of cash and can trace and account for all such Intercompany Transactions and true up any such amounts owed by each Debtor entity at the end of each month. The Debtors will continue to maintain such records, including records of

all current intercompany accounts receivable and payable. If the Intercompany Transactions were discontinued, the Cash Management System and related administrative controls would be significantly disrupted, to the detriment of the Debtors' operations.

BASIS FOR RELIEF REQUESTED

22. The Office of the United States Trustee (the "U.S. Trustee") has established operating guidelines for debtors-in-possession to facilitate the administration of chapter 11 cases (the "U.S. Trustee Guidelines"). These guidelines provide that chapter 11 debtors must: (a) close all existing bank accounts and open new debtor-in-possession bank accounts; (b) establish a single debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (c) maintain a separate debtor-in-possession account for cash collateral; and (d) acquire new checks for all debtor-in-possession accounts which bear the designation "Debtor-In-Possession," the bankruptcy case number, and the type of account. For the reasons set forth herein, the Debtors submit that it is appropriate for the Court to grant the Debtors a waiver of the requirements of the U.S. Trustee' Guidelines to the extent they prohibit the Debtors from continuing to utilize their existing Cash Management System.

A. The Debtors Should be Granted Authority to Maintain Their Existing Bank Accounts

23. The Debtors seek a waiver of the requirements of the U.S. Trustee Guidelines to the extent they require that the Debtors open new bank accounts and close their existing Bank Accounts. Such requirements likely would cause substantial disruption in the Debtors' business and would impair the Debtors' reorganization efforts. As explained herein, the Debtors' Bank Accounts are critical elements of an established Cash Management System that the Debtors must maintain in order to ensure the uninterrupted operation of their businesses. Thus, to

ensure as smooth a transition into chapter 11 as possible, the Debtors submit that it is imperative that they be permitted to continue to maintain their existing Bank Accounts.

24. Accordingly, the Debtors request that their existing Bank Accounts be deemed debtor-in-possession accounts and that the maintenance and continued use of such accounts, in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period, be authorized.

25. Bankruptcy courts have recognized that, in complex chapter 11 cases, strict enforcement of the requirement that a debtor in possession close its bank accounts and open new bank accounts in accordance with the U.S. Trustee Guidelines does not serve the rehabilitative purpose of chapter 11.

B. The Continued Use of the Debtors' Cash Management System is Essential to the Debtors' Ongoing Operations and Restructuring Efforts

26. Furthermore, the Debtors hereby seek authority to continue using their current centralized, integrated Cash Management System. The Debtors' Cash Management System provides significant benefits to the Debtors, including the ability to (a) control corporate funds centrally, (b) ensure availability of funds when necessary, and (c) reduce administrative expenses by enabling the movement of funds among relevant entities. Accordingly, it is essential that the Debtors be permitted to continue to consolidate the management of their cash and transfer monies from entity to entity as necessary and appropriate to continue the operation of their businesses.

27. Moreover, it would be very time consuming, difficult and costly for the Debtors to establish an entirely new system of accounts and a new cash management system, and doing so would disrupt the Debtors' relationships with their key suppliers. For example, if the Debtors were required to open separate accounts as debtors in possession and rearrange their Cash Management System, it would necessitate closing and re-opening approximately twenty-one (21)

bank accounts. The attendant delays from opening new accounts, revising cash management procedures and instructing patient and other payers to redirect payments would negatively impact the Debtors' ability to operate their businesses. Under the circumstances, maintenance of the Cash Management System is essential and clearly in the best interest of the Debtors' estates. Furthermore, preserving the "business as usual" atmosphere and avoiding the unnecessary and costly distractions that would inevitably be associated with any substantial disruption in the Cash Management System will facilitate the Debtors' efforts in chapter 11.

28. The Debtors' Cash Management System includes the necessary accounting controls to enable the Debtors, as well as other interested parties in these cases, to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable. The Debtors will continue to maintain detailed records reflecting all transfers of funds.

29. Section 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. *See In re Dornier Aviation (North Am.), Inc.*, Case Nos. 02-82003 (SSM) 02-82004 (SSM), 2002 WL 31999222, at *7-8 (Bankr. E.D. Va. Dec. 18, 2002) (citing *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992)); *see also Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997); *Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (S.D.N.Y. 1997). Included within the purview of section 363(c) is a debtor's ability to continue the "routine transactions" necessitated by a debtor's cash management system.

Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtors seek authority under section 363(c)(1) of the Bankruptcy Code to continue the collection, concentration, disbursement and investment of cash pursuant to their Cash Management System described above.

30. The Court may also exercise its equitable powers to grant the relief requested therein. 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). Continuing the Debtors’ Cash Management System without interruption is vital to the Debtors’ reorganization efforts. In particular, an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied sub nom. Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 510 U.S. 1110 (1994); *see also In re US Airways, Inc.*, Case No. 04-13819 (SSM) (Bankr. E.D. Va. Sept. 14, 2004); *In re NTELOS, Inc.*, Case No. 03-32094 (DOT) (Bankr. E.D. Va. Mar. 4, 2003). The requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1113-14 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”).

31. The Cash Management System is the complex mechanism whereby the Debtors are able to deposit their revenues and pay their obligations, without which the Debtors’ operations would be severely disrupted. It is well within the Court’s equitable power under section 105(a) to approve the continued use of the Cash Management System.

C. Any Post-Petition Intercompany Transactions Should be Accorded Administrative Expense Priority

32. As mentioned above, the Debtors can ascertain, trace and account for all transactions in the Cash Management System and will continue to do so post-petition. To ensure that each individual Debtor will not fund, at the expense of its creditors, the operations of another entity, the Debtors respectfully request that, pursuant to sections 364(a), 503(b) and 507(a)(2) of the Bankruptcy Code, that post-petition Intercompany Transactions (if any) against one entity by another entity, as a result of ordinary course transactions through the Cash Management System, be accorded administrative expense status priority.

33. The Bankruptcy Code provides a debtor in possession the freedom to obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense without notice and a hearing. 11 U.S.C. § 364(a); *see also In re Amdura Corp.*, 75 F.3d at 1453; *In re Lite Coal Mining Co.*, 122 B.R. 692, 695 (Bankr. N.D.W. Va. 1990).

D. The Debtors Should be Authorized to Use Their Existing Business Forms

34. As described above, in the ordinary course of business, the Debtors use numerous varieties of Business Forms. To avoid disruption of their Cash Management System and unnecessary expense, the Debtors request that they be authorized to continue to use their Business Forms substantially in the forms existing immediately before the Petition Date, without reference to their status as debtors-in-possession.

35. In the absence of such relief, the Debtors will be required to bear a potentially significant administrative burden and expense to replace their existing Business Forms, which the Debtors respectfully submit is unwarranted and likely will have little or no attendant benefit to their estates or creditors under the facts of the Chapter 11 Cases.

36. Because parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors-in-possession, changing business forms would be unnecessary and unduly burdensome.

E. The Banks Should be Authorized to Continue to Treat, Service and Administer the Bank Accounts in the Ordinary Course of Business

37. The U.S. Trustee Guidelines require that all receipts and all disbursements of estate funds must be made by check with a notation representing the reason for the disbursement. Accordingly, the Debtors request that the Court grant relief from the U.S. Trustee Guidelines to the extent they require the Debtors to make all disbursements by check.

38. Specifically, the Debtors seek entry of an order granting the Banks authority to continue to treat, service and administer the Bank Accounts as accounts of the respective Debtor as a debtor in possession without interruption and in the usual and ordinary course, and to receive, process and honor and pay any and all post-petition checks, drafts, wires or automated clearing house transfers ("ACH Transfers") drawn on the Bank Accounts by the holders or makers thereof, as the case may be, to the extent the Debtors have good funds standing to their credit with such Bank.

39. Notwithstanding anything to the contrary in any other order of this Court, the Debtors request that the Banks be authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires or ACH Transfers should be honored or dishonored consistent with any order of this Court and governing law, whether such checks, drafts, wires or ACH Transfers are dated prior to, on or subsequent to the Petition Date. Pursuant to the relief requested in this Motion, the Banks shall not be liable to any party on account of (a) following the Debtors' instructions or representations as to any order of this Court, (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition

check or item to be honored or (c) an innocent mistake made despite implementation of reasonable item handling procedures.

40. The Debtors further request that any payment from a Bank Account at the request of the Debtors made by a Bank prior to the Petition Date (including any ACH Transfer such Bank is or becomes obligated to settle), or any instruments issued by such Bank on behalf of any Debtor pursuant to a “midnight deadline” or otherwise, be deemed to be paid prepetition, whether or not actually debited from such Bank Account prepetition.

F. The Deposit and Investment Requirements of Section 345(b) of the Bankruptcy Code Should be Waived

41. Under section 345(a) of the Bankruptcy Code, debtors are authorized to deposit or invest the money of a bankruptcy estate in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). To the extent such deposits or investments are not “insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code requires that a debtor obtain from the entity with which the money is deposited (i) a bond in favor of the United States secured by the undertaking of an adequate corporate surety, or (ii) a deposit of certain governmental securities. 11 U.S.C. § 345(b).

42. Section 345(b) of the Bankruptcy Code also provides that it is within the Court’s discretion to extend or waive these investment requirements “for cause.” 11 U.S.C. § 345(b); *see also* 140 Cong. Rec. H10752-01 (October 4, 1994) (section 345(b) investment guidelines may be “*wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, [but] can work to needlessly handcuff larger, more sophisticated debtors.*”) (emphasis

added). In determining whether “cause” is present, courts consider a “totality of the circumstances” test utilizing the following factors:

- (a) The sophistication of the debtor’s business;
- (b) The size of the debtor’s business operations;
- (c) The amount of investments involved;
- (d) The bank ratings (Moody’s and Standard and Poor) of the financial institutions where debtor-in-possession funds are held;
- (e) The complexity of the case;
- (f) The safeguards in place within the debtor’s own business of insuring the safety of the funds;
- (g) The debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) The benefit to the debtor;
- (i) The harm, if any, to the estate; and
- (j) The reasonableness of the debtor’s request for relief from § 345(b) requirements in light of the overall circumstances of the case.

In re Serv. Merch. Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (citations omitted).

43. Here, cause exists to grant a waiver of the requirements of section 345(b) of the Bankruptcy Code for several reasons. First, the Bank Accounts are held at large institutions with strong bank ratings. Second, the Debtors’ business operations are large and sophisticated. And third, the Bankruptcy Cases are complex and the Debtors, as discussed above, will derive a significant benefit from continuing to use their current accounts. Therefore, the Court may grant a waiver of the section 345(b) requirement.

44. The Debtors further request that a hearing (the “Final Hearing”) be scheduled as soon as practicable after the 21st 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.

NECESSITY FOR IMMEDIATE RELIEF

45. 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” If the Debtors are not permitted to continue to use their Cash Management System in its current form, it would cause immediate and irreparable harm by causing operational chaos, hindering the Debtors’ ability to pay for goods and services received post-petition or otherwise approved by this Court, and disrupting the collection of receivables. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003, and the Court should authorize the Debtors’ continued use of the Cash Management System.

NOTICE

46. 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

47. 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

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

RESERVATION OF RIGHTS

49. 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. 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 that the Court enter (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 and proper.

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**

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

INTERIM ORDER: (I) AUTHORIZING DEBTORS TO MAINTAIN EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEM; (II) GRANTING ADMINISTRATIVE EXPENSE STATUS FOR INTERCOMPANY CLAIMS; AND (III) WAIVING THE REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE

Upon the motion (the “Motion”)¹ of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an interim and a final order, pursuant to sections 105(a),

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

345(b), 363(c)(1), and 364 of the Bankruptcy Code, (i) authorizing the Debtors to maintain existing bank accounts and business forms and continue to use their existing cash management system, (ii) granting administrative expense priority to the Debtors' intercompany claims, and (iii) waiving the requirements of section 345(b) of the Bankruptcy Code; the Court finds that: (a) it has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (d) the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; (e) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (f) upon the record of the hearing on this Motion, if any, 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 and empowered, but not directed, to continue to maintain, operate and make transfers under their Cash Management System.
3. The Debtors are authorized and empowered, but not directed, to continue to maintain the Bank Accounts with the same names and account numbers as existed immediately prior to the Chapter 11 Cases.
4. Any requirement to establish separate accounts for tax payments is waived.
5. The Debtors are authorized to deposit funds in and withdraw funds from the Bank Accounts by all usual means, including, but not limited to, checks, wire transfers, electronic funds transfers, ACH Transfers and other debits, and to otherwise treat the prepetition Bank Accounts for all purposes as debtor in possession accounts.

6. The Debtors are authorized to direct the Banks and the Banks are authorized and directed to pay all obligations in accordance with this or any separate order of this Court.

7. All Banks with which the Debtors maintain the Bank Accounts are authorized and directed to continue to maintain, service and administer the Bank Accounts. Notwithstanding anything to the contrary in any other order of this Court, the Banks (a) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires or ACH Transfers should be honored or dishonored, consistent with any order of this Court and governing law, whether such checks, drafts, wires or ACH Transfers are dated prior to, on or subsequent to the Petition Date, and whether the Banks believe the payment is or is not authorized by an order of this Court and (b) have no duty to inquire as to whether such payments are authorized by an order of this Court.

8. The Banks shall not be liable to any party on account of (a) following the Debtors' instructions or representations as to any order of this Court, (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored or (c) an innocent mistake made despite implementation of reasonable item handling procedures.

9. The Debtors are authorized to continue to use their existing Business Forms, including without limitation their existing check stock, which forms shall not be required to include the legend "Debtor in Possession" or other similar legend.

10. All intercompany claims incurred in the ordinary course of business arising from post-petition intercompany transactions shall be, and hereby are, accorded administrative expense status pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

11. Any payment from a Bank Account at the request of the Debtors made by a Bank prior to the Petition Date (including any ACH Transfer such Bank is or becomes obligated to

settle), or any instruments issued by such Bank on behalf of any Debtor pursuant to a “midnight deadline” or otherwise, shall be deemed to be paid prepetition, whether or not actually debited from the Bank Account prepetition.

12. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion.

13. 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.

14. The requirement that the Debtors comply with section 345(b) of the Bankruptcy Code is hereby waived.

15. 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 Order empower but do not direct the Debtors to effectuate any of the payments specified herein.

16. 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); (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); and (d) counsel to any official committee appointed in these cases.

17. 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.

18. Notwithstanding the relief granted in this 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.

19. 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.

20. 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.

21. 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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EXHIBIT B

Proposed Final Order

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

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

FINAL ORDER: (I) AUTHORIZING DEBTORS TO MAINTAIN EXISTING BANK ACCOUNTS AND BUSINESS FORMS AND CONTINUE TO USE EXISTING CASH MANAGEMENT SYSTEM; (II) GRANTING ADMINISTRATIVE EXPENSE STATUS FOR INTERCOMPANY CLAIMS; AND (III) WAIVING THE REQUIREMENTS OF SECTION 345(b) OF THE BANKRUPTCY CODE

Upon the motion (the “Motion”)¹ of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order, pursuant to sections 105(a), 345(b), 363(c)(1), and 364 of the Bankruptcy Code, (i) authorizing the Debtors to maintain existing bank accounts and business forms and continue to use their existing cash management system, (ii) granting administrative expense priority to the Debtors’ intercompany claims, and (iii) waiving the requirements of section 345(b) of the Bankruptcy Code, and this Court having entered the Interim Order on _____, 2020 granting the Motion on an interim basis (Docket No. _____), the Court finds that: (a) it has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (c) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (d) the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; (e) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (f) upon the record of the final hearing on this Motion, 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 and empowered, but not directed, to continue to maintain, operate and make transfers under their Cash Management System.
3. The Debtors are authorized and empowered, but not directed, to continue to maintain the Bank Accounts with the same names and account numbers as existed immediately prior to the Chapter 11 Cases.
4. Any requirement to establish separate accounts for tax payments is waived.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

5. The Debtors are authorized to deposit funds in and withdraw funds from the Bank Accounts by all usual means, including, but not limited to, checks, wire transfers, electronic funds transfers, ACH Transfers and other debits, and to otherwise treat the prepetition Bank Accounts for all purposes as debtor in possession accounts.

6. The Debtors are authorized to direct the Banks and the Banks are authorized and directed to pay all obligations in accordance with this or any separate order of this Court.

7. All Banks with which the Debtors maintain the Bank Accounts are authorized and directed to continue to maintain, service and administer the Bank Accounts. Notwithstanding anything to the contrary in any other order of this Court, the Banks (a) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires or ACH Transfers should be honored or dishonored, consistent with any order of this Court and governing law, whether such checks, drafts, wires or ACH Transfers are dated prior to, on or subsequent to the Petition Date, and whether the Banks believe the payment is or is not authorized by an order of this Court and (b) have no duty to inquire as to whether such payments are authorized by an order of this Court.

8. The Banks shall not be liable to any party on account of (a) following the Debtors' instructions or representations as to any order of this Court, (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored or (c) an innocent mistake made despite implementation of reasonable item handling procedures.

9. The Debtors are authorized to continue to use their existing Business Forms, including without limitation their existing check stock, which forms shall not be required to include the legend "Debtor in Possession" or other similar legend.

10. All intercompany claims incurred in the ordinary course of business arising from post-petition intercompany transactions shall be, and hereby are, accorded administrative expense status pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code.

11. Any payment from a Bank Account at the request of the Debtors made by a Bank prior to the Petition Date (including any ACH Transfer such Bank is or becomes obligated to settle), or any instruments issued by such Bank on behalf of any Debtor pursuant to a “midnight deadline” or otherwise, shall be deemed to be paid prepetition, whether or not actually debited from the Bank Account prepetition.

12. The Debtors are authorized to open any new bank accounts or close any existing Bank Accounts as they may deem necessary and appropriate in their sole discretion.

13. 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.

14. The requirement that the Debtors comply with section 345(b) of the Bankruptcy Code is hereby waived.

15. 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 Order empower but do not direct the Debtors to effectuate any of the payments specified herein.

16. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this 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.

17. 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.

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

Presented By:

/s/ Brandy M. Rapp

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EXHIBIT C

Bank Accounts

BANK ACCOUNTS

Bank Name	Account Number	Type of Account, i.e. Operational, etc.
<u>THS Accounts</u>		
Huntington Bank	X1122	Payroll
Huntington Bank	X1216	Depository
Huntington Bank	X1229	AP
Huntington Bank	X1288	Trust Account Holding Investments
UMB	X674.1	Bond Trust - Interest Fund
UMB	X674.2	Bond Trust - Principal Fund
UMB	X674.3	Bond Trust - Debt Service Reserve Fund
<u>St. Francis Hospital Accounts</u>		
Huntington Bank	X1965	Depository
Huntington Bank	X1952	AP
Bank of America	X8250	Depository
Fifth Third Bank	X8197	AP-Patient Refund/Clearing
Fifth Third Bank	X6144	Depository
<u>Thomas Memorial Accounts</u>		
Huntington Bank	X4813	AP
Huntington Bank	X4017	Depository
Huntington Bank	X5125	Depository (Family Pharmacy)
Huntington Bank	X9609	Frozen Pension Account
Bank of America	X4905	Depository
Fifth Third Bank	X8205	AP-Patient Refund/Clearing
Fifth Third Bank	X6151	Depository
<u>THSPP Account</u>		
Huntington Bank	X6866	Depository