

**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 AUTHORIZING THE DEBTORS TO: (I) CONTINUE
INSURANCE COVERAGE ENTERED INTO PREPETITION AND SATISFY
PREPETITION OBLIGATIONS RELATED THERETO; (II) RENEW,
AMEND, SUPPLEMENT, EXTEND, OR PURCHASE INSURANCE POLICIES;
(III) HONOR THE TERMS OF THE PREMIUM FINANCING AGREEMENTS
AND PAY PREMIUMS THEREUNDER; AND (IV) ENTER INTO NEW PREMIUM
FINANCING AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS
(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, 363, 503, 1107(a), 1108, and 1112(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*,

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.

as amended (the “Bankruptcy Code”) 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”) authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto; (ii) renew, amend, supplement, extend, or purchase Insurance Policies (as defined below); (iii) honor the terms of the Premium Financing Agreements (as defined below) and pay premiums thereunder; and (iv) enter into new Premium Financing Agreements in the ordinary course of business. In support of this Motion, the Debtors rely on the *Declaration of Daniel Lauffer In Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “Lauffer Declaration”) filed concurrently with this Motion 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(b). 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, 363, 503, 1107(a), 1108, and 1112(b) 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 request entry of the proposed Orders authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto; (ii) renew, amend, supplement, extend, or purchase Insurance Policies (as defined below); (iii) honor the terms of the Premium Financing Agreements (as defined below) and pay premiums thereunder; and (iv) enter into new Premium Financing Agreements in the ordinary course of business.

THE INSURANCE POLICIES AND RELATED PAYMENT OBLIGATIONS

7. In the ordinary course of business, the Debtors maintain approximately twenty (20) insurance policies that are administered by various third-party insurance carriers (collectively, the “Insurance Carriers”). These policies provide coverage for, among other things, the Debtors’ property, general liability, medical professional liability, automobile liability, excess umbrella liability, directors’ and officers’ liability, network privacy and security liability,

employer's liability and flood insurance (collectively, the "Insurance Policies"). A schedule of the Insurance Policies is attached hereto as Exhibit C.²

8. The aggregate annual premium for the Insurance Policies is approximately \$2.7 million, not including applicable taxes and surcharges, deductibles, broker fees and other fees and expenses.

9. The Debtors finance premiums for certain of their Insurance Policies (collectively, the "Financed Policies") because it is not economically advantageous for the Debtors to pay the premiums on the Financed Policies, in full, on a lump-sum, quarterly, or monthly basis. Accordingly, in the ordinary course of business, the Debtors finance the premiums on the Financed Policies pursuant to certain premium financing agreements (the "Premium Financing Agreements"). In consideration for payment of the Debtors' insurance premiums on account of the Financed Policies, the Premium Financing Agreements require the Debtors to pay an initial down payment, followed by periodic payments.

10. The aggregate amount of the premiums for the Financed Policies is approximately \$897,000 per year. As of the Petition Date, the aggregate unpaid obligations due under the Premium Financing Agreements is approximately \$245,000. By this motion, the Debtors request authority to pay up to approximately \$330,000 in the aggregate, on account of prepetition amounts outstanding under the non-financed Insurance Policies and the Premium Financing Agreements, as such premiums become payable, and to continue honoring all obligations thereunder on a post-petition basis in the ordinary course of business.

11. The Debtors' obligations under the Premium Financing Agreements are secured by all sums payable to the applicable Debtor under the Financed Policies, including, among other

² The Debtors may have additional Insurance Policies that are not reflected on Exhibit C. The omission of a particular Insurance Policy on Exhibit C is not intended to exclude that policy from the coverage of this Motion or any order entered in connection with this Motion.

things, any gross unearned premiums and any payment on account of loss that results in a reduction of unearned premiums in accordance with the terms of the Financed Policies.

12. If the Debtors were unable to continue honoring their obligations under the Premium Financing Agreements, the non-debtor counterparties may seek relief from the automatic stay to terminate the Financed Policies to recoup their losses. The Debtors could then be required to obtain replacement insurance on an expedited basis and likely at significant cost to their estates. The Debtors likely would face great hardship if they were required to obtain replacement insurance and pay a lump-sum premium for the Financed Policies in advance. Even if the Financed Policies were not terminated, any interruption in the Debtors' payments could have a severe, adverse effect on the Debtors' ability to finance premiums for future policies.

13. Continuation of the Debtors' Insurance Policies, and entry into new insurance policies, is essential to the preservation of the value of the Debtors' business and operations. Moreover, in many instances, insurance coverage is required by the regulations, laws, and contracts that govern the Debtors' commercial activities, including the Office of the United States Trustee's requirement that a debtor maintain adequate coverage given the circumstances of its chapter 11 case. Accordingly, to ensure uninterrupted coverage, the Debtors request authority to maintain their existing Insurance Policies, pay any prepetition obligations related thereto, honor their obligations under the Premium Financing Agreements, and enter into new Insurance Policies in the ordinary course of business. In addition, to the extent that the Premium Financing Agreements expire during the course of the Chapter 11 Cases, the Debtors seek authority to renew their Premium Financing Agreements without further Court approval. The Debtors respectfully submit that renewal of the Premium Financing Agreements falls squarely within their ordinary course of business and, but for the constraints of section 364 of the Bankruptcy Code, the

Debtors would not need the Court's prior approval to renew the Premium Financing Agreements. To reduce the administrative burden, as well as to confirm their ability to satisfy one of their obligations of operating as debtors in possession, the Debtors seek the Court's authority now to renew the Premium Financing Agreements when and as necessary in the Debtors' business judgment.

14. Pursuant to the Insurance Policies, the Debtors may be required to pay various deductibles or retention amounts (the "Insurance Deductibles"), depending upon the type of claim and insurance policy involved. Under certain policies, the Insurance Carriers may pay claimants and then invoice the Debtors for any Insurance Deductible. In such situations, the Insurance Carriers may have prepetition claims against the Debtors. While the Debtors are not aware of any Insurance Deductibles that are due and owing as of the Petition Date, the Debtors seek authority to honor any amounts owed to the Insurance Carriers to ensure uninterrupted coverage under their Insurance Policies.

15. 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.

BASIS FOR RELIEF

A. Continuing the Insurance Policies and Paying all Insurance Obligations is Required by the Bankruptcy Code and Necessary to Preserve the Value of the Debtors' Estates

16. The nature of the Debtors' businesses makes it essential for the Debtors to maintain their Insurance Policies on an ongoing and uninterrupted basis. The non-payment of any premiums, deductibles or related fees under the Insurance Policies could result in one or more of the Insurance Carriers terminating or declining to renew their insurance policies or

refusing to enter into new insurance policies with the Debtors in the future. If any of the Insurance Policies lapse without renewal, the Debtors could be exposed to substantial liability for personal and/or property damages, to the detriment of all parties in interest.

17. Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). In addition, in many instances, the coverage provided under the Insurance Policies is required by the regulations and laws that govern the Debtors’ commercial activities. Moreover, pursuant to the terms of many of their leases and financing agreements, the Debtors are obligated to remain current with respect to certain of their primary Insurance Policies.

18. Finally, as directed by the Office of the United States Trustee for the Southern District of West Virginia (the “U.S. Trustee”), debtors in chapter 11 cases are required to maintain appropriate insurance coverage customarily carried “in business in which the debtor is engaged.” *See Chapter 11 Guidelines*, Office of the U.S. Trustee. Accordingly, the Debtors believe it is essential to their estates and consistent with the Bankruptcy Code and the U.S. Trustee Operating Guidelines that they continue to satisfy all obligations related to the Insurance Policies and have the authority to supplement, amend, extend, renew, or replace their Insurance Policies as needed, in their judgment, without further order of the Court.

B. Satisfying Obligations Under the Insurance Policies in the Ordinary Course of Business Is Warranted.

19. 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 pre-petition 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. 174, 175 (Bankr. S.D.N.Y. 1989). “Under 11 U.S.C. § 105 the court can permit pre-plan payment of a pre-petition 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).

20. In a long line of well-established cases, federal courts have consistently permitted post-petition 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, 285– 86 (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 pre-petition 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).

21. 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 pre-petition 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).

22. 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. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

23. 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”).

24. 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).

25. 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 *all* of the Debtors’ creditors will benefit if the requested relief is granted. Additionally, any prepetition amounts that the Debtors may pay in respect of the Insurance Policies are extremely small in light of the size of the Debtors’ estates and benefits to be derived therefrom. Therefore, the Debtors submit that the continuation of the Insurance Policies and the payment of all prepetition and post-petition obligations arising thereunder are essential to preserve the Debtors’ assets and protect against unknowable losses.

C. The Court Should Authorize the Debtors to Honor and Renew their Premium Financing Agreements.

26. Payment of prepetition premiums and amounts owing under the Premium Financing Agreements is necessary and appropriate and may be authorized under sections 105(a)

and 363(b) of the Bankruptcy Code. Moreover, pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured post-petition debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. *See, e.g., In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (stating that with respect to post-petition credit, courts “permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties”); *In re Simasko Prod. Co.*, 47 B.R. 444, 448–49 (D. Colo. 1985) (authorizing interim financing agreement where debtor’s business judgment indicated financing was necessary and reasonable for benefit of estate). As discussed above, the Debtors believe that continuing to perform under the Premium Financing Agreements on a post-petition basis is in the best interests of their estates. Moreover, in light of their financial circumstances, alternative insurance premium finance companies may not be willing to provide insurance premium financing to the Debtors on attractive market terms on a post-petition basis. Simply put, it is critical for the Debtors to continue to perform under their existing Premium Financing Agreements.

D. Cause Exists to Authorize the Debtors’ Financial Institutions to Honor Checks and Electronic Funds Transfer

27. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business. In addition, under the Debtors’ cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Insurance Policies, as applicable. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests the Court has not authorized will be made inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

**REQUESTED RELIEF SATISFIES BANKRUPTCY RULE
6003 NECESSITY FOR IMMEDIATE RELIEF**

28. 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” In order for the Debtors to maintain their operations in compliance with various legal and contractual obligations, the Debtors must be able to continue their Insurance Policies without disruptions. In sum, if the Debtors are not permitted to continue their ordinary business operations by continuing to pay the insurance obligations as they become due, and to reassure the Insurance Carriers that authority has been granted to honor all such claims, the Debtors could suffer immediate and irreparable harm. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003.

NOTICE

29. 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 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); (l) all insurance carriers listed on Exhibit C and

(m) 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

30. 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

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

RESERVATION OF RIGHTS

32. 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 obligation under an Insurance Policy 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. To the extent any Insurance Policy or related agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not, at this time, seek to assume the same. Accordingly, if the Court authorizes the payments described above, such payments should not be deemed to constitute post-petition assumption, reaffirmation

or adoption of the programs, policies or agreements as executory contracts pursuant to section 365 of the Bankruptcy Code.

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 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) Related to Docket No.

INTERIM ORDER AUTHORIZING THE DEBTORS TO: (I) CONTINUE INSURANCE COVERAGE ENTERED INTO PREPETITION AND SATISFY PREPETITION OBLIGATIONS RELATED THERETO; (II) RENEW, AMEND, SUPPLEMENT, EXTEND, OR PURCHASE INSURANCE POLICIES; (III) HONOR THE TERMS OF THE PREMIUM FINANCING AGREEMENTS AND PAY PREMIUMS THEREUNDER; AND (IV) ENTER INTO NEW PREMIUM FINANCING AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS

Upon the motion (the “Motion”)¹ of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of interim and final orders pursuant to sections 105, 363, 503, 1107(a), 1108, and 1112(b) of the Bankruptcy Code, authorizing the Debtors to: (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto; (ii) renew, amend, supplement, extend, or purchase Insurance Policies; (iii) honor the terms of the Premium Financing Agreements and pay premiums thereunder; and (iv) enter into new Premium Financing Agreements in the ordinary course of business; 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 continue the Insurance Policies, and, in their sole discretion, pay and honor any prepetition amounts outstanding under, or post-petition obligations related to, the Insurance Policies in the ordinary course of business and to pay any prepetition amounts due in connection therewith.
3. The Debtors are authorized, but not directed, to renew, amend, supplement, extend, or purchase insurance policies, and to enter into premium financing agreements as necessary, to the extent that the Debtors determine, in their sole discretion, that such action is in the best interest of their estates.

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

4. The Debtors are authorized, but not directed, to pay any Insurance Deductibles in the ordinary course of business without further Court order.

5. The Debtors are, in their sole discretion, authorized to honor their obligations under the Premium Financing Agreements without interruption and in accordance with the same practices and procedures as were in effect prior to the commencement of the Debtors' Chapter 11 Cases.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Order, whether presented prior to, on or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any Insurance Policies.

8. 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.

9. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Debtors' Insurance Policies.

10. To the extent any Insurance Policies or related agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Order nor any payments made in accordance with this Order shall constitute the post-petition assumption or reaffirmation of those Insurance Policies or related agreements under section 365 of the Bankruptcy Code.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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 Order shall be immediately effective and enforceable upon its entry.

17. 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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-AND-

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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) Related to Docket No.

FINAL ORDER AUTHORIZING THE DEBTORS TO: (I) CONTINUE INSURANCE COVERAGE ENTERED INTO PREPETITION AND SATISFY PREPETITION OBLIGATIONS RELATED THERETO; (II) RENEW, AMEND, SUPPLEMENT, EXTEND, OR PURCHASE INSURANCE POLICIES; (III) HONOR THE TERMS OF THE PREMIUM FINANCING AGREEMENTS AND PAY PREMIUMS THEREUNDER; AND (IV) ENTER INTO NEW PREMIUM FINANCING AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS

Upon the motion (the “Motion”)¹ of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of interim and final orders pursuant to sections 105, 363, 503, 1107(a), 1108, and 1112(b) of the Bankruptcy Code, authorizing the Debtors to: (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto; (ii) renew, amend, supplement, extend, or purchase Insurance Policies; (iii) honor the terms of the Premium Financing Agreements and pay premiums thereunder; and (iv) enter into new Premium Financing Agreements in the ordinary course of business; 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 continue the Insurance Policies, and, in their sole discretion, pay and honor any prepetition amounts outstanding under, or post-petition obligations related to, the Insurance Policies in the ordinary course of business and to pay any prepetition amounts due in connection therewith.
3. The Debtors are authorized, but not directed, to renew, amend, supplement, extend, or purchase insurance policies, and to enter into premium financing agreements as

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

necessary, to the extent that the Debtors determine, in their sole discretion, that such action is in the best interest of their estates.

4. The Debtors are authorized, but not directed, to pay any Insurance Deductibles in the ordinary course of business without further Court order.

5. The Debtors are, in their sole discretion, authorized to honor their obligations under the Premium Financing Agreements without interruption and in accordance with the same practices and procedures as were in effect prior to the commencement of the Debtors' Chapter 11 Cases.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the Debtors under this Order, whether presented prior to, on or after the Petition Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any Insurance Policies.

8. 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.

9. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Debtors' Insurance Policies.

10. To the extent any Insurance Policies or related agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Order nor any payments made in accordance with this Order shall constitute the post-petition assumption or reaffirmation of those Insurance Policies or related agreements under section 365 of the Bankruptcy Code.

11. 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.

12. 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.

13. 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 Order shall be immediately effective and enforceable upon its entry.

14. 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 C

Schedule of Insurance Policies

Carrier	Policy Number	Policy Period	Type of Coverage
The Travelers Indemnity Company of CT	P-630-9K110012-TCT-19	4/1/2019- 4/1/2020	Commercial Property Package
The Travelers Indemnity Company of America	BA-9M063986-19-43-G	4/1/2019- 4/1/2020	Commercial Automobile
The Travelers Indemnity Company of America	BA-9M063986-19-43-G4/1	4/1/2019- 4/1/2020	Garagekeepers
Mag Mutual Insurance Company	WCV000641702	4/1/2019- 4/1/2020	Workers Compensation
Endurance American Specialty Insurance Company	HLC10014499400	4/1/2019- 4/1/2020	Excess Liability
National Union Fire Insurance Company of Pittsburgh, PA	014625291	6/15/2019- 6/15/2020	Management Liability Package
Endurance American Insurance Company	MPX30001123400	06/15/2019- 06/15/2020	First Layer Excess Management Liability
Travelers Casualty and Surety Company of America	107106599	6/15/2019- 6/15/2020	Excess Directors & Officers and Employment Practices Liability
National Union Fire Insurance Company of Pittsburgh, PA	014681478	6/15/2019- 6/15/2020	Excess Side A
Underwriters at Lloyd's, London	W1F034190301	6/15/2019- 6/15/2020	Network Privacy and Security Liability
Federal Insurance Company	6404-33-41	4/15/2019- 4/15/2022	Business Travel Accident
West Virginia Mutual Insurance Company	PL002061	3/1/2019- 3/1/2020	Medical Professional Liability Employed Physicians of Thomas Memorial Hospital
Federal Insurance Company	9906-24-29	4/15/2019- 4/15/2022	Business Travel Accident
Ohio Farmers Insurance Company	5848259	01/01/2019- 01/01/2020	License Bond Skilled Nursing Unit
American Bankers Insurance Company of Florida	60100545162019	1/19/2019- 1/19/2020	Flood - 400 Court St.
American Bankers Insurance Company of Florida	60100545152019	1/19/2019- 1/19/2020	Flood - 500 Donnelly St.

American Bankers Insurance Company of Florida	60100545142019	1/19/2019- 1/19/2020	Flood - 333 Laidley St.
West Virginia Mutual Insurance Company	PL002645	4/1/2019- 4/1/2020	Medical Professional Liability
Sentinel Insurance Company, Limited	40 SBA PM8061 SA	7/16/2019- 7/16/2020	Businessowners Package

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