

**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)

**APPLICATION TO EMPLOY AND RETAIN OMNI MANAGEMENT GROUP
AS NOTICE, CLAIMS AND SOLICITATION AGENT**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) in the above captioned chapter 11 cases (the “Chapter 11 Cases”) by and through their undersigned proposed counsel, hereby submit this application (the “Application”) pursuant to § 156(c) of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Bankr. S.D. W.Va. R 2014-1 of the Local Bankruptcy Rules for the Southern District of West Virginia (the “Local Rules”), for entry of an order authorizing and approving the retention and employment

of Omni Management Group (“Omni”) as notice, claims and solicitation agent in connection with these Chapter 11 Cases. In support of this Application, Debtors respectfully represent as follows:

JURISDICTION

1. The Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334.
2. Venue is proper under 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2).

BACKGROUND

4. On January 10, 2020 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate and maintain their business as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No trustee, examiner or creditors’ committee has been appointed in these Chapter 11 Cases.

RELIEF REQUESTED

6. By this Application, the Debtors request the entry of an order authorizing them to employ and retain Omni as its notice, claims and solicitation agent. As set forth below, Omni is particularly well-suited to provide the type of services required by the Debtors, and the Debtors believe that they would be best served by engaging Omni as their notice, claims and solicitation agent in these Chapter 11 Cases.

BASIS FOR RELIEF REQUESTED

7. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of the Bankruptcy Court, authorizes the Court to use facilities other than the Clerk’s Office for administration of bankruptcy cases:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C § 156 (c)

8. Accordingly, section 156(c) of title 28 U.S. Code empowers the Court to utilize outside agents and facilities for notice, claims, and solicitation purposes, provided the Debtors' estates pay the cost of such services.

9. The Debtors have determined that it is in the best interest of all creditors and their estates to retain Omni to assist the Debtors in these Chapter 11 Cases. The Debtors desire to retain Omni to provide such services as Omni and the Debtors deem necessary and beneficial to the Debtors and all creditors, as more fully described in the engagement letter (the "Omni Engagement Letter"), attached hereto as **Exhibit A**.

SERVICES TO BE RENDERED

10. Omni is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, balloting and other related services critical to the effective administration of these Chapter 11 Cases.

11. Omni has developed efficient and cost-effective methods to handle properly the voluminous mailings associated with the noticing, claims processing and balloting portions of Chapter 11 Cases to ensure the orderly and fair treatment of creditors, equity security holders and all parties in interest.

12. Omni will work with the Clerk's Office to ensure that such methodology conforms to all of the Court's procedures, the Local Rules of this Court and the provisions of any other orders entered by this Court.

13. Omni has substantial experience in matters of this size and complexity and has acted as the official notice, claims, and solicitation agent in many large bankruptcy cases. Further, Omni has significant experience in healthcare-related bankruptcy proceedings and understands the importance of protecting information subject to and in accordance with the Health Insurance Portability and Accountability Act ("HIPAA").

14. Specifically, Debtors seek to engage Omni to provide certain noticing, claims processing and balloting administration services including, without limitation:

- (a) Noticing. Preparing and serving a variety of documents on behalf of the Debtors in these Chapter 11 Cases, including:
 - i. Notice of the commencement of the Debtors' Chapter 11 Cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code;
 - ii. Notice of any claims bar date;
 - iii. Motions, applications and other requests for relief and related documents;
 - iv. Objections, responses and replies with respect to requests for relief;
 - v. Hearing agendas;
 - vi. Objections to claims;
 - vii. Any disclosure statements, chapter 11 plan, and all documents related thereto; and
 - viii. All notices of the filing of the documents listed above, hearings, and such other miscellaneous notices as the Debtors or the Court may deem necessary or appropriate for orderly administration of these Chapter 11 Cases.

(b) Claims Administration.

- i. Maintaining an official claims register in the Debtors' Chapter 11 Cases by docketing all proofs of claims and proofs of interest in a database;
- ii. Maintaining copies of all proofs of claim and proofs of interest filed in these Chapter 11 Cases;
- iii. Updating the official claims register in accordance with Court orders;
- iv. Implementing necessary security measures to ensure the completeness and integrity of the claims register, including the protection of any information subject to HIPAA;
- v. Transmitting to the Clerk's office a copy of the claims register as requested;
- vi. Maintain an up-to-date mailing list for all entities that have filed proofs of claim or proofs of interest and make such list available upon request to the Clerk's office or any party in interest;
- vii. Providing access to the public for examination of copies of the proofs of claim and proofs of interest filed in these Chapter 11 Cases.
- viii. Recording all transfers of claims pursuant to Rule 3001(e) of the Bankruptcy Rules and, if directed to do so by the Court, provide notice of such transfers as required by Bankruptcy Rule 3001(e); and
- ix. Establishing a case website with case information, including key dates, service lists and free access to the case docket within three days of docketing.

(c) Balloting Service. Acting as balloting agent, which may include some or all of the following services:

- i. Printing ballots and coordinating the mailing of solicitation packages (i.e., ballots, disclosure statement and chapter 11 plan) to all voting and non-voting parties and providing a certificate or affidavit of service with respect thereto;
- ii. Establishing a toll-free "800" number to receive and answer questions regarding voting with respect to any chapter 11 plan;
- iii. Receiving ballots at a post office box, inspecting ballots for conformity to voting procedures, date stamping and numbering ballots consecutively and tabulating and certifying the results; and,

- iv. Preparing voting reports by plan class, creditor or shareholder and amount for review and approval by the Debtors and their counsel.

15. In addition to the foregoing services, Omni will provide such other noticing, claims processing, balloting, and related administrative services as the Debtors or Clerk's office may request from time to time, including but not limited to, such functions related to: (1) the Debtors' schedules, statements of financial affairs and master creditor lists, and any amendments thereto; and (2) the processing and reconciliation of claims.

OMNI'S DISINTERESTEDNESS

16. Although Debtors do not propose to retain Omni under Section 327 of the Bankruptcy Code, Omni has nonetheless conducted a conflicts analysis and, to the best of its knowledge and except to the extent disclosed in the Declaration of Paul Deutch, Senior Vice President (the "Deutch Declaration"), attached hereto as **Exhibit B**, Omni neither holds nor represents an interest adverse to the Debtors' estates nor has a connection to the Debtors, their creditors, or their related parties.

17. Should Omni discover any new relevant facts or relationships bearing on matters described herein during the period of its retention, Omni will use reasonable efforts to file promptly a supplement affidavit.

PROFESSIONAL COMPENSATION

18. The fees to be charged by Omni in connection with these Chapter 11 Cases are set forth in the Omni Engagement Letter. Debtors respectfully submit that Omni's rates for its services in connection with the notice, claims processing and balloting services are competitive and comparable to the rates charged by their competitors for similar services.

19. Debtors submit that the fees and expenses incurred by Omni are administrative in nature and, therefore, should not be subject to the standard fee application procedures for professionals. Specifically, Debtors request authorization to compensate Omni on a monthly basis, in accordance with the terms and conditions set forth in the Omni Engagement Letter, upon Omni's submission to the Debtors of monthly invoices summarizing in reasonable detail the services rendered and expenses incurred in connection with services provided by Omni to the Debtors.

20. Prior to the filing of the case, Debtors paid Omni a retainer of \$5,000.00.

21. In the event this case is converted to a case under Chapter 7 of the Bankruptcy Code, Debtors request that Omni continue to be paid for its services until the claims filed in this case have been completely processed, and that if claims agent representation is necessary in the converted Chapter 7 Case, Omni would continue to be paid in accordance with Section 156(c) of title 28 of the U.S. Code.

WHEREFORE, Debtors, respectfully request that the Court enter an order: (a) authorizing the employment and retention of Omni on the terms and conditions set forth in this Application; and (b) granting such other and further relief as this Court deems just and proper.

Dated: January 10, 2020

WHITEFORD TAYLOR & PRESTON LLP

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-AND-

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*Proposed Local Counsel to the Debtors and
Debtors-in-Possession*



August 12, 2019

Daniel Lauffer
President and CEO
Thomas Health System, Inc., *et al.*
4605 Maccorkle Avenue SW
South Charleston, WV 25309

Re: Omni Management Group Retention letter

Mr. Lauffer:

This letter (the "Agreement") will acknowledge that you have requested Omni Management Group, Inc. ("Omni") to provide services to Thomas Health System, Inc. and certain of its affiliates and subsidiaries (collectively, the "Companies") in preparation of, and in connection with, the Companies' potential joint chapter 11 filing. Omni will make itself available to the Companies, *as requested*, for the purposes of assisting the Companies with pre- and post-petition case administration matters including data entry, preparation and management of the creditor matrix, preparation of schedules of assets and liabilities and statements of financial affairs, claims management, noticing, plan solicitation and tabulation, distribution, the development and maintenance of a virtual data room, the development and maintenance of an informational website, and any other services as may be requested by the Companies.

The services to be rendered by Omni will be billed at rates ranging from \$25.00 to \$155.00 per hour as per the attached rate sheet. Rates are adjusted annually on January 2nd of each year and are subject to increases not to exceed ten (10%) percent per annum. Increases greater than ten (10%) percent per annum will be discussed with you, and be subject to your prior approval, before becoming effective.

For all such services rendered, we require a \$5,000 retainer. All charges will be on a portal to portal basis plus out-of-pocket expenses. Omni shall be compensated on a monthly basis for those services performed by Omni during the preceding calendar month. Invoices are payable within 7 days of receipt by the Companies.

Each of Omni and the Companies, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all nonpublic records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

Daniel Lauffer
August 12, 2019
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The parties understand that the software programs and other materials furnished by Omni pursuant to this Agreement and/or developed during the course of this Agreement by Omni are the sole property of Omni. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Companies agree not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement. The Companies further agree that any ideas, concepts, know-how or techniques relating to data processing or Omni's performance of its services developed during the course of its Agreement by Omni shall be the exclusive property of Omni. Upon the Companies' request at any time or times while this Agreement is in effect, Omni shall immediately deliver to the Companies and/or the Companies' retained professionals, at the Companies' expense, any or all of the non-proprietary data and records held by Omni pursuant to this Agreement, in the form requested by the Companies.

This Agreement is terminable at will by the parties hereto upon thirty (30) days written notice. Notwithstanding the foregoing, either party may terminate this Agreement immediately upon written notice in the event of a breach by the other party. In the event that this Agreement is terminated, regardless of the reason for such termination, Omni shall cooperate with the Companies to maintain an orderly transfer of all records, data and information and record keeping functions, and shall provide all necessary staff, services and assistance required for an orderly transfer. The Companies agree to pay for such services in accordance with Omni's then existing prices for such services.

Please acknowledge the above by signing and returning a copy of this letter. Should you have any questions regarding the above, please do not hesitate to call me.

Sincerely,

Paul H. Deutch
Senior Vice President

THOMAS HEALTH SYSTEM, INC., ET AL.

Date: 9/23/2019

By: [Signature]
Daniel Lauffer, President and CEO

Enc.

cc: Michael J. Roesenthaler, Esq.
Daniel Schimizzi, Esq.
Marc Beilinson
Brian Osborn



THOMAS Health System
APPROVED AS TO LEGAL FORM

By: ABH
Date: 9/23/2019

EXHIBIT B
Declaration

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**DECLARATION OF PAUL DEUTCH IN SUPPORT OF DEBTORS'
APPLICATION TO EMPLOY OMNI MANAGEMENT GROUP AS
NOTICE, CLAIMS AND SOLICITATION AGENT**

I, Paul Deutch, hereby state that the following is true to the best of my knowledge, information and belief.

1. I am a Senior Vice President of Omni Management Group ("Omni") and I am authorized to make and submit this declaration on behalf of Omni.

2. I submit this declaration (the "Declaration") in support of the Debtor's Application to Employ and Retain Omni Management Group as Notice, Claims and Solicitation Agent (the

“Application”) filed in the Debtors’ chapter 11 bankruptcy cases (the “Chapter 11 Cases”) in accordance with the terms and conditions set forth in the Application.

3. Except as noted, the facts set forth in this Affidavit are personally known to me and, if called as a witness, I could and would testify thereto.

4. Omni is well qualified to assist the Debtor in the Bankruptcy Case by acting as it’s the notice, claims and solicitation agent. Omni has a well established reputation as a notice, claims and solicitation firm across the country.

5. The compensation arrangement described in the Application and the engagement letter attached thereto as Exhibit A (the “Omni Engagement Letter”) is consistent with and typical of arrangements entered into by Omni and other comparable firms with respect to rendering similar types of services for clients such as the Debtors.

6. An integral component of the compensation arrangement between Debtors and Omni was Omni’s willingness to accept the compensation terms set forth in the Omni Engagement Letter.

7. Except as otherwise indicated in the Application, Omni intends to comply with all requirement of the Court with respect to the payment of compensation as set forth in the Omni Engagement Letter, in accordance with applicable provisions of the United States Code, 11 U.S.C. §§ 101 et seq. as amended (the “Bankruptcy Code”), the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules for the United States Bankruptcy Court for the Southern District of West Virginia (the “Local Rules”), and the procedures established by order of this Court for compensation of professionals.

8. To the best of my knowledge and belief, neither I, nor Omni, holds or represents any interest adverse to the Debtors' estates, and Omni will not represent any other entity in connection with these Chapter 11 Cases.

9. Omni is not a creditor of the Debtors.

10. I am not aware of any current representation or engagement of Omni of any client that creates a conflict in the representation of the Debtors in these Chapter 11 Cases. If, upon review of the final list of creditors and interested parties in the case, Omni determines that it has a connection with such person or entity related to the Debtors' Chapter 11 Cases, Omni will make further disclosure thereof.

11. Omni has not provided professional services to the Debtors in any capacity that was adverse or potentially adverse to the Debtors.

12. Omni has not provided professional services to the officers or directors of the Debtors in any capacity.

13. Omni has not provided professional services to any of the Debtors' counsel, ordinary course professionals, or professionals of other parties in interest in connection with or related to these Chapter 11 Cases.

14. Omni does not provide and has not provided professional services to the Debtors' lenders in connection with these Chapter 11 Cases.

15. Omni does not provide and has not provided professional services to the Debtors' unsecured creditors in connection with these Chapter 11 Cases or otherwise.

16. Omni does not provide and has not provided professional services to any other significant parties in interest in connection with these Chapter 11 Cases.

17. Based on the information available to me, I believe that Omni is a “disinterested person” as that term is defined in section 101(14) of title 11 of the United States Code and holds no interest adverse to the Debtors and there estates for the matters for which Omni is to be employed by the Debtors.

18. To the best of my knowledge and belief, and except as described herein, neither I nor Omni nor any officer or director of Omni have any connection or relationship with the Debtors, their creditors, or any other parties in interest in this case (or their attorneys or accountants) that would conflict with the scope of Omni’s employment or would create any interest adverse to the Debtors’ estates or any other parties in interest.

19. Omni has had and will continue to represent clients in matters unrelated to these Chapter 11 Cases and has had and will continue to have relationships in the ordinary course of business with certain professionals in connection with matters unrelated to these Chapter 11 Cases.

20. There is no services agreement or understanding between Omni and any other person or entity for sharing of compensation received for services rendered by Omni in connection with these Chapter 11 Cases.

21. There is no services agreement or understanding between Omni and any other person or entity for sharing of compensation received for services rendered by Omni in connection with these Chapter 11 Case.

22. Omni intends to keep both the Court and the United States Trustee aware of any potential conflict that could arise as part of this engagement.

I hereby declare under penalty of perjury that, to the best of my knowledge, and after reasonable inquiry, the foregoing is true and correct.

Omni Management Group

By: /s/ Paul Deutch
Paul Deutch
Senior Vice President