



Frank W. Volk
Frank W. Volk
United States District Judge

Dated: February 25th, 2020

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

<p>In re:</p> <p>THOMAS HEALTH SYSTEM, INC., et al.</p> <p>Debtors¹</p>	<p>Chapter 11</p> <p>Case No. 20-20007 (FWV)</p> <p>(Jointly Administered)</p> <p>Related to Docket No. 6</p>
---	---

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

Upon the motion (the “Motion”)² of the above-captioned debtors (collectively, the “Debtors”) for the entry of interim and final orders: (A) authorizing the Debtors to pay certain prepetition (I) wages, salaries, bonuses, and other compensation, (II) reimbursable employee expenses, and (III) employee medical and similar benefits; (B) confirming the Debtors may continue prepetition employee programs and pay employees in the ordinary course of business; and (C) directing banks and other financial institutions to honor all related checks and electronic payment requests, it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; the Court having jurisdiction to consider the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Thomas Health System, Inc. (0674); Herbert J. Thomas Memorial Hospital Association (4900); Charleston Hospital, Inc. (2692); and THS Physician Partners, Inc. (5947).

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion

Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having entered the Interim Order on January 15, 2020 granting the Motion on an interim basis [Doc. No. 78], and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to honor and pay the Employee Obligations in accordance with the Debtors' stated policies and prepetition practices, including, but not limited to, prepetition amounts owed in connection with Unpaid Compensation and Uncashed Checks subject to paragraph 6 herein.
3. The Debtors are authorized, but not directed, to continue to allocate and distribute the Deductions and the Payroll Taxes in accordance with the Debtors' stated policies and prepetition practices.
4. The Debtors are authorized, but not directed, to pay, upon entry of this Final Order, the Reimbursable Expenses up to an aggregate amount of \$100,000 in accordance with the Debtors' stated policies and prepetition practices; provided, however, that for Reimbursable Expenses in excess of an aggregate of \$100,000, the Debtors will consult with the Bond Trustee and the Official Committee of Unsecured Creditors (the "Committee") and, absent consent from the Bond Trustee and the Committee, shall not pay Reimbursable Expenses in excess of an aggregate of \$100,000 absent further order from this Court.

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

6. For the avoidance of doubt, and notwithstanding anything in this Final Order to the Contrary, with respect to the Debtors' prepetition obligations, (i) no payments to, on behalf of, or for the benefit of any individual Employee, other than a physician Employee, under this Final Order and any interim order shall, in the aggregate, exceed the cap set forth in Section 507(a)(4) unless the excess amount is entitled to priority under Section 507(a)(5); (ii) no contributions to any employee benefit plan under this Final Order and any interim order shall exceed the cap set forth in Section 507(a)(5); (iii) the Debtors shall not make payments in excess of the caps set forth in Sections 507(a)(4) and (5), other than payments to, on behalf of, or for the benefit of physician Employees, without further authorization from the Court; and (iv) the Debtors' financial advisors will advise the Committee's financial advisors of any payments to be made to physician Employees in excess of the caps set forth in Sections 507(a)(4) and (5) and provide such additional information regarding payments under this Final Order as the Committee's financial advisors may reasonably request.

7. In accordance with this Final Order and any other order of this Court, the Debtors are authorized, but not directed, to pay all processing fees associated with, and all costs incident

to, payment of the Employee Obligations, Uncashed Checks, Unpaid Compensation, Employee Benefit Programs and the Reimbursable Expenses.

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

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

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

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

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

13. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission regarding

the validity or amount of any claim against the Debtors; (b) a waiver of the Debtors' rights to subsequently dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (e) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law.

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

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

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

Presented By:

/s/ Brandy M. Rapp

Brandy M. Rapp (WV Bar No. 10200)
WHITEFORD TAYLOR & PRESTON LLP
10 S. Jefferson Street, Suite 1110
Roanoke, Virginia 24011
(540) 759-3577 Tel.
(540) 759-3567 Fax
brapp@wtplaw.com

Michael J. Roesenthaler (PA Id. No. 87647)
200 First Avenue, Third Floor
Pittsburgh, PA 15222
(412) 618-5601 Tel.
mroeschenthaler@wtplaw.com

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

-AND-

Jared M. Tully, Esq. (WV Bar No. 9444)
FROST BROWN TODD, LLC
500 Virginia Street East, Suite 1100
Charleston, WV 25301
304-345-0111 (phone)
304-345-0115 (fax)
jtully@fbtlaw.com

Ronald E. Gold, Esq. (Ohio Bar No. 0061351)
Douglas L. Lutz, Esq. (Ohio Bar No. 0064761)
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202
513-651-6800 Telephone
513-651-6981 Facsimile
rgold@fbtlaw.com
dlutz@fbtlaw.com

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

10695481

Notice Recipients

District/Off: 0425-2
Case: 2:20-bk-20007

User: jjr
Form ID: pdf001

Date Created: 2/25/2020
Total: 2

Recipients of Notice of Electronic Filing:

aty	Brandy M Rapp	brapp@wtplaw.com
aty	Daniel R. Schimizzi	dschimizzi@wtplaw.com

TOTAL: 2