



*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><b>In re:</b></p> <p><b>THOMAS HEALTH SYSTEM, INC., et al.</b></p> <p><b>Debtors<sup>1</sup></b></p>	<p>Chapter 11</p> <p>Case No. 20-20007 (FWV)</p> <p>(Jointly Administered)</p> <p>Related to Docket No. 12</p>
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**FINAL ORDER: (A) FINDING UTILITIES ADEQUATELY ASSURED OF FUTURE PERFORMANCE; (B) ENJOINING UTILITIES FROM ALTERING, REFUSING, DISCONTINUING OR INTERFERING WITH UTILITY SERVICE; AND (C) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCE**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an interim order (the “Interim Order”) and a final order (the “Final Order”), pursuant to section 366 of the Bankruptcy Code, and this Court having entered the Interim Order on January 15, 2020 granting the Motion on an interim basis [Doc. No. 80], (i) determining that the Debtors’ proposed offer of deposits, as set forth in the Motion, provides Utility Companies with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code, (ii) approving procedures for resolving requests by Utilities for additional or different assurances beyond those set forth in the Motion, and (iii) prohibiting the Utility Companies from altering, refusing or discontinuing any Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors’

<sup>1</sup> 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).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion

proposed adequate assurance, as more fully described in the Motion, the Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334(b); (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interest of the Debtors, their estates and creditors; (iv) proper and adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore, it is hereby

**ORDERED** that:

1. The relief requested in the Motion is hereby GRANTED on a final basis as set forth herein.

2. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for utility services (collectively, the “Utility Services”) rendered by utilities (as that term is used in section 366 of the Bankruptcy Code, the “Utility Companies”) to the Debtors after the Petition Date.

3. The Debtors shall provide a deposit (the “Adequate Assurance Deposit”) in an amount equal to two weeks of Utility Service (less any deposit then held by such Utility Company), calculated as a historical average over the past twelve (12) months, to each Utility Company that requests such a deposit in writing in accordance with the Adequate Assurance Procedures; provided that such Utility Company is not currently paid in advance for its services.

4. The Utility Companies, whether under direct relationship with the Debtors or through the Debtors’ landlords or service agencies, including but not limited to the Utility Companies identified on Exhibit C to the Motion, as may be supplemented by the Debtors from time to time by the filing of a notice with the Court (a “Supplemental Notice” and, together with

Exhibit C to the Motion, as may be so supplemented from time to time, the “Utilities List”), are prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors, or requiring additional adequate assurance of payment other than the Adequate Assurance Deposit (and, in conjunction with the Debtors’ ability to pay for Utility Services in the ordinary course of business, the “Proposed Adequate Assurance”), except in compliance with the following procedures (the “Adequate Assurance Procedures”):

(a) The Debtors will serve by overnight mail a copy of the Interim Order, which contains the proposed Adequate Assurance Procedures, to each of the Utility Companies identified on Exhibit C to the Motion within three business days after entry of the Interim Order by the Court.

(b) Any Utility Company requesting payment of an Adequate Assurance Deposit must send to (i) the Debtors, Thomas Health System, Inc., 4605 MacCorkle Avenue SW, South Charleston, WV, 25309, Attn: Aaron Alexander and (ii) proposed counsel to the Debtors, Whiteford,, Taylor & Preston, LLP, 200 First Avenue, 3<sup>rd</sup> Floor, Pittsburgh, PA 15222, Attn: Michael J. Roeschenthaler, email: mroeschenthaler@wtplaw.com, and 10 S. Jefferson Street, Suite 1110, Roanoke, VA 24011, Attn: Brandy M. Rapp, email: brapp@wtplaw.com (together, the “Request Parties”) a written request (a “Deposit Request”) that names the Utility Company and includes payment instructions for the Adequate Assurance Deposit, so that it is received on or before 4:00 p.m. (prevailing Eastern time) on the date that is twenty (one) 21 days from the entry of the Interim Order (the “Adequate Assurance Deposit Request Deadline”).

(c) Upon the receipt of a Deposit Request, the Debtors shall provide the requesting Utility Company with the corresponding Adequate Assurance Deposit; provided that such Utility Company is not currently paid in advance for its Utility Services. Any Utility Company that is currently paid in advance for its Utility Services shall continue to be so paid in the ordinary course of business.

(d) Any Utility Company desiring additional adequate assurance of a deposit, prepayment, or form otherwise different from the Proposed Adequate Assurance must, on or prior to the Adequate Assurance Deposit Deadline, serve on the Request Parties a request (an “Additional Assurance Request”), which must be in writing and set forth (i) the amount and form of additional assurance payment requested, (ii) the location for which the Utility Services are provided and the relevant account numbers, (iii) the Debtors’ payment history for the most recent twelve (12) months, (iv) a list of any deposits, prepayments or other security currently held by the Utility Company on account of the Debtors, (v) a description of any prior material payment delinquency or irregularity and (vi) an explanation of why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of payment. Any request for additional adequate assurance filed before entry of this Final Order shall be deemed to be an Additional Assurance Request.

(e) If any Additional Assurance Requests are timely submitted, the Debtors shall have twenty one (21) days from the Adequate Assurance Deposit Request Deadline (the “Resolution Period”) to negotiate with any such Utility Company to resolve such Utility Company’s request for additional assurance of payment.

(f) The Debtors may, in their discretion, after consultation with the Bond Trustee and the Official Committee of Unsecured Creditors, resolve and settle any Additional Assurance Request by mutual agreement with the Utility Company and without further order of the Court. The Debtors shall not be required to provide a Utility Company that submits an Additional Assurance Request with an Adequate Assurance Deposit until such Additional Assurance Request is resolved.

(g) For any other Utility Company that timely submits an Additional Adequate Assurance Request for which the Debtors are not able to reach a consensual resolution during the Resolution Period, the Debtors will request a hearing to determine the adequacy of assurance of payment with respect to such Utility Company (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.

(h) Pending resolution of a Utility Company’s Additional Assurance Request by the Court, such Utility Company shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of any unpaid charges for prepetition services.

(i) Any Utility Company that does not submit a Deposit Request or does not file an Additional Assurance Request shall be deemed to have been provided with adequate assurance of payment as required by section 366 of the Bankruptcy Code, shall have waived any and all rights to seek additional or different adequate assurance during the course of these chapter 11 cases and shall be prohibited from discontinuing, altering or refusing to provide Utility Services, including on account of unpaid charges for prepetition Utility Services, during the pendency of these proceedings.

5. This Final Order shall be binding on all Utility Companies, regardless of whether or when a Utility Company was added by Supplemental Notice; provided, however, that the Adequate Assurance Deposit Request Deadline shall be extended for any Utility Company first listed in such Supplemental Notice to the date that is twenty one (21) days from the date that such Supplemental Notice is filed, and the Resolution Period with respect to such Additional Assurance Request will be twenty one (21) days after receipt of such Additional Assurance Request.

6. Each Utility Company shall be deemed to have adequate assurance of payment unless and until (a) the Debtors, in their sole discretion, agree to a Deposit Request or an Additional Assurance Request or agree to alternative adequate assurance of payment with the Utility Company or (b) this Court enters an order requiring that additional adequate assurance of payment be provided.

7. Each Utility Company shall, within fourteen (14) days after the earlier of (i) the effective date of a plan of reorganization or a plan of liquidation in these chapter 11 cases or (ii) cessation of such Utility Company's services to the Debtors, return any Adequate Assurance Deposit to the Debtors. In no event shall any Utility Company be entitled to keep any Adequate Assurance Deposit to the extent such Adequate Assurance Deposit, when taken together with any other deposit held by such Utility Company, exceeds the aggregate value of such Utility Company's allowed administrative and priority claims in these cases.

8. Nothing herein constitutes a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utilities List.

9. The Debtors shall serve a copy of this Final Order upon each of the Utility Companies identified on Exhibit C to the Motion by first-class mail, postage prepaid and (b) post

this Final Order on the Debtors' case information website <https://omnimgt.com/ThomasHealthSystem>.

10. The Debtors shall (a) serve a copy of any Supplemental Notice upon each of the Utility Companies identified in such Supplemental Notice by overnight mail and (b) post any Supplemental Notice on the Debtors' case information website <https://omnimgt.com/ThomasHealthSystem>.

11. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

12. Nothing, other than as expressly set forth herein, in this Final Order or the Motion shall be deemed to constitute (a) the post-petition assumption, reaffirmation or adoption of any agreement pursuant to section 365 of the Bankruptcy Code, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, or (c) a waiver of any rights, claims or defenses of the Debtors.

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. Any period of time prescribed or allowed by this Final Order shall be computed in accordance with Bankruptcy Rule 9006.

15. This Court shall retain exclusive Jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Final Order.

Presented By:

/s/ Brandy M. Rapp

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**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:**

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TOTAL: 2