

taxes associated therewith (the "Motion"). Further, the Debtor respectfully requests that the Court direct financial institutions to honor all checks or electronic fund transfer requests issued to or on behalf of the Debtor's employees, regardless of whether the checks or fund transfer requests were issued before or after the Petition Date.

2. The Debtor has, or will have, on deposit sufficient funds in its bank accounts to satisfy all the subject prepetition employee obligations. Accordingly, the payroll banks will not be prejudiced by an Order directing them to honor the Debtor's checks or fund transfer requests with respect to such amounts.

3. As set forth below, granting the Debtor the relief requested in the Motion is crucial to the Debtor's ability to continue to provide quality healthcare without interruption.

Jurisdiction and Venue

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§1334 and 157(b). This is a "core" proceeding pursuant to 28 U.S.C. §§157(b)(2)(A), (M) and (O).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§1409(a).

Background

6. On August 15, 2007 (the "Petition Date"), the Debtor filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of New Jersey (the "Court").

7. The Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. An Official Committee of Unsecured Creditors has not yet been appointed in this case.

9. Barnert Hospital is a 256-bed acute care hospital located at 680 Broadway, Paterson, New Jersey which serves the communities of Bergen and Passaic counties. Barnert Hospital was founded in 1908. Barnert Hospital's dedicated and diverse staff delivers the best possible health care to a multi-cultural community treating over 6,500 in-patients and 112,000 outpatients per year.

10. The Debtor has approximately 635 full time employees and its physicians and medical staff engage in a broad range of specialties. The Barnert Occupational Health Center provides diagnosis and treatment of work-related issues related to asbestos and hazardous waste, hearing loss, employment physicals, and injury prevention. Centers for pain management, sleep disorders, and breast health supplement the trauma facilities of the hospital. Outreach services include the Family and Child Education project operated in conjunction with the Paterson Public School District, with an eye toward prevention of health problems particularly among economically disadvantaged populations. Additional information concerning the Debtor's background and the events leading up to the chapter 11 filing may be found in the Affidavit of Peter J. Betts In Support Of Debtor's First-Day Motions filed concurrently herewith.¹

Relief Requested

11. The Debtor employs approximately 635 full-time employees on whom it relies to care for patients and ensure the smooth operation of the hospital. By this Motion, the Debtor seeks authority to honor, in the ordinary course of its business, certain obligations to its full-time and part-time employees, and its physicians and medical staff, who work directly for the Debtor (the "Employees") (as opposed to those who are employed by third-party staffing agencies)

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Betts Affidavit.

owed as of the Petition Date. The Debtor also seeks an Order allowing it to continue, in its sole discretion, all employee benefits in effect as of the Petition Date.

12. Granting the requested relief will minimize the personal hardship the Debtor's Employees and their families will suffer if those obligations are not honored as a result of the Chapter 11 filing, and maintain employee morale at this critical time and enhance the likelihood that the Debtor's Employees will remain with the Debtor as needed through the Chapter 11 proceeding.

13. The Debtor remits salary to its Employees on a bi-weekly basis in arrears. Specifically, the Debtor remits payroll checks to Employees on every other Friday. Each payroll represents the approximately fourteen (14) day period ending the Saturday prior to the payroll date. The Debtor's bi-weekly payroll, including benefits, is approximately \$1,425,000.

14. In addition, in the ordinary course of their duties on the Debtor's behalf, various Employees may, from time to time, incur certain business expenses for which they are customarily reimbursed by the Debtor (the "Expense Reimbursement Obligations"). The Expense Reimbursement Obligations typically include travel, entertainment and meal expenses.

15. Given the timing of the Debtor's petition, the payroll obligations for the pay periods payable on August 17, 2007 (the "Postpetition Payroll") will constitute prepetition obligations of the Debtor. In addition, certain salary checks issued prior to the Petition Date (the "Prepetition Payroll") may not have been presented or cleared the banking system before the Petition Date. The Debtor seeks an Order authorizing payment of the Prepetition Payroll, to the extent any payroll checks have not cleared as of the Petition Date, and the Postpetition Payroll, and all related obligations such as expenses, other ordinary employee benefits, and all taxes associated therewith (the Prepetition Payroll and Postpetition Payroll shall be referred to,

collectively, as the “Payroll Obligations”).²

16. To the extent necessary, the Debtor also requests entry of an Order directing financial institutions to honor all outstanding checks and electronic wire transfer requests evidencing the Payroll Obligations. The amount to be paid to each employee for the prepetition period will not exceed the \$10,950 priority limit contained in section 507(a)(4) of the Bankruptcy Code.

17. The Debtor submits that the relief the Debtor seeks herein is authorized pursuant to section 363(b)(1) of the Bankruptcy Code, which provides that “ trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” The relief sought by the Motion is further justified by the Court’s broad equitable powers under section 105 of the Bankruptcy Code. See In re G-I Holdings, Inc., 327 B.R. 730, 740 (Bankr. D.N.J. 2005) (Court’s equitable power is derived from and limited by section 105).

18. Section 105(a) of the Bankruptcy Code empowers the Bankruptcy Court to “[i]ssue any order, process or judgment that is necessary or appropriate to carry out the provisions of . . .“ the Bankruptcy Code. As one court observed:

The ability of a Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept. It was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C. & S.W.R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882) and is commonly referred to as either the “doctrine of

² In addition, in the ordinary course of business, the Debtor’s Employees accrue vacation, sick and personal days (“Accrued Days”). The Debtor also seeks authority to honor, in its sole discretion, the prepetition Accrued Days by allowing their Employees to utilize earned pre petition Accrued Days during the postpetition period. This request, however, is not intended to convert the Employees’ claims for prepetition Accrued Days to administrative expense obligations of the Debtor or to obligate the Debtor in any way to compensate the Employees for prepetition Accrued Days in cash. In addition, this request is not intended to be an assumption of (or authorization to assume) any of the employee compensation, benefits or reimbursement policies, plans, or programs of the Debtor pursuant to section 365 of the Bankruptcy Code.

necessity” or the “necessity of payment” rule. This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.

In re Ionosphere Clubs, Inc., 98 B.R.174, 175-76 (Bankr. S.D.N.Y. 1989). Accord In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (quoting In re Penn Central Transp. Co., 467 F.2d 100, 102, n. 1 (3d Cir. 1972) (The “necessity of payment” doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid.”); see also, In re Just For Feet, Inc., 242 B.R. 821, 824 (D. Del. 1999) (The United States District Court of Delaware recognized the practice of courts in the Third Circuit to “use their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”).

19. Numerous courts in the United States Bankruptcy Court for the District of New Jersey have approved payment of pre-petition claims for compensation, benefits and expense reimbursements similar to the order that is being sought in the present case. See e.g., In re Beth Israel Hospital Association of Passaic, Case No. 06-16186 (NLW) (Bankr. D.N.J. July 12, 2006); In re Treasure Island, Inc., Case No. 06-10416 (NLW) (Bankr. D.N.J. Jan. 24, 2006); In re Supply King, Inc., Case No. 05-23177 (Bankr. D.N.J. Apr. 26, 2005); In re D & K Stores, Inc., Case No. 05-21445 (Bankr. D.N.J. Apr. 15, 2005); In re Megan South, Inc., Case No. 04-21293 (Bankr. D.N.J. Apr. 12, 2004); In re Megan Group, Inc., Case No. 04-21291 (Bankr. D.N.J. Apr. 8, 2004); In re GEO Specialty Chemical, Inc., Case No. 04-19148 (Bankr. D.N.J. Mar. 19, 2004); In re Congoleum Corp., Case No. 03-51524 (KCF) (Bankr. D.N.J. Jan. 7, 2004); In re Jazz Photo Corp., Case No. 03-26565 (MS) (Bankr. D.N.J. May 22, 2003).

20. Other courts also have permitted a debtor-in-possession to pay prepetition wage, salary, expense and benefit claims on the ground that payment of such claims was necessary for the operation of the Debtor's business during the chapter 11 process. See In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989) (authorizing debtor-in-possession to pay prepetition employee wages and benefits, and health, life and workers' compensation insurance premiums); Michigan Bureau of Workers' Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279 (S.D.N.Y. 1987)(approving bankruptcy court order authorizing debtor to pay certain pre-bankruptcy wages, salaries, employee reimbursement expenses and benefits, including payments on workers' compensation claims); In re Ionosphere Clubs, Inc., 98 B.R.174, 176 (Bankr. S.D.N.Y. 1989) (The United States Bankruptcy Court for the Southern District of New York authorized the debtor to pay its current employees' pre-petition wages, salaries, medical benefits and business expense claims).

21. First, if the Debtor is not authorized to pay the outstanding prepetition obligations, its Employees will endure significant hardship. Many of the Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation from the Debtor to pay their daily living expenses. If these Employees do not receive their prepetition wages, they undoubtedly will incur severe financial hardship.

22. Second, the Debtor's Employees are a critical component to the Debtor's ability to operate, continue to provide high quality health care to its patients, and to its efforts to reorganize. If the Debtor is not authorized to satisfy their prepetition payroll obligations and/or honor all ordinary employee benefits and entitlements, the Debtor's Employees undoubtedly will lose faith in the Debtor's ability to meet their postpetition obligations, and likely will leave the Debtor's employ, harming the Debtor's ability to continue to provide critical health care and

reorganize.

23. Given the importance of the employees to the Debtor's operations, and the cost and delay of retraining staff to serve the Debtor, any significant loss of their services would severely hamper the operation and management of the Debtor's business and potentially result in the severe erosion of the value of the Debtor's estate.

24. Allowing the Debtor to satisfy those obligations and honor its ordinary employee benefits and entitlements will instill confidence in the Debtor's Employees that the Debtor is in a position to satisfy, and intends to satisfy, its postpetition payroll obligations and will ensure that the Debtor has a sufficient support system to operate in and ultimately emerge from Chapter 11. Application of the "necessity of payment" doctrine here establishes that the Debtor should be authorized to honor its prepetition payroll and related obligations.

25. Granting this Motion is consistent with the policies of the Bankruptcy Code and is authorized by section 105 of the Bankruptcy Code. Few employees will continue to work for an entity that has filed a bankruptcy petition without assurance that they will be timely paid. Moreover, the payment of the Employee Obligations to the Debtor's Employees will not significantly prejudice the other creditors in these proceedings because substantially all of such unpaid amounts are entitled to priority claim status under section 507(a)(4) of the Bankruptcy Code that, in the absence of this Motion, would be paid in full under a plan of reorganization.

WHEREFORE, the Debtor respectfully requests entry of an Order authorizing the Debtor to satisfy, and directing the payroll bank (or any and all financial institutions honoring the Debtor's payroll checks) to honor, prepetition gross salaries of the Debtors' Employees and related obligations, authorizing the Debtor to honor prepetition Accrued Days, and granting such other and further relief as the Court deems appropriate.

Dated: Newark, New Jersey
August 15, 2007

McCARTER & ENGLISH, LLP,
Proposed Attorneys to Nathan and
Miriam Barnert Memorial Hospital
Association d/b/a Barnert Hospital

By: /s/ David J. Adler
David J. Adler
John G. Loughnane
Members of the Firm
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VERIFICATION

Peter J. Betts, of full age, certifies as follows:

1. I am the Interim Chief Executive Officer of Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Hospital, the within debtor and debtor-in-possession (the "Debtor"). As such, I have knowledge of the facts set forth herein, and am authorized to make this Application on the Debtor's behalf.
2. I have read the Verified Application and certify that the factual statements contained therein are true based upon my personal knowledge, information and belief.
3. I am aware that if any of the factual statements contained in the Verified Application are willfully false, I am subject to punishment.

/s/ Peter J. Betts

Peter J. Betts, LFACHE
Interim Chief Executive Officer

Dated: August 15, 2007

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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Proposed Attorneys to Nathan and Miriam Barnert

Memorial Hospital Association d/b/a Barnert

Hospital, Debtor-in-Possession

David J. Adler (DA-0048)

John G. Loughnane (JL-8040)

In the Matter of:

NATHAN AND MIRIAM BARNERT

MEMORIAL HOSPITAL ASSOCIATION d/b/a

BARNERT HOSPITAL

Debtor-in-Possession.

Case No.: 07-

Judge:

Hearing Date

**ORDER AUTHORIZING THE DEBTOR TO SATISFY, AND DIRECTING
PAYROLL BANKS TO HONOR, PREPETITION GROSS SALARIES
AND RELATED OBLIGATIONS TO THE DEBTOR'S EMPLOYEES
AND TO PAY PREPETITION PAYROLL AND WITHHOLDING TAXES
ASSOCIATED WITH THE PREPETITION PAYROLL**

The relief set forth on the following pages, number two(2) through four(4), is hereby

ORDERED.

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Debtor: NATHAN AND MIRIAM BARNERT MEMORIAL HOSPITAL
ASSOCIATION d/b/a BARNERT HOSPITAL

Case No. 07-

Caption of Order: ORDER AUTHORIZING THE DEBTOR TO SATISFY, AND
DIRECTING PAYROLL BANKS TO HONOR, PREPETITION
GROSS SALARIES AND RELATED OBLIGATIONS TO THE
DEBTOR'S EMPLOYEES AND TO PAY PREPETITION
PAYROLL AND WITHHOLDING TAXES ASSOCIATED WITH
THE PREPETITION PAYROLL

THIS MATTER having been opened to the Court upon the Motion of Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Hospital, as debtor and debtor-in-possession herein (the "Debtor"), by and through its proposed counsel, McCarter & English, LLP, for an Order authorizing the Debtor to satisfy, and directing any and all financial institutions to honor, payroll for prepetition gross salaries, commissions and related obligations to the Debtor's employees and to pay prepetition payroll and withholding taxes associated with the prepetition payroll (the "Motion"); and good and sufficient notice of the hearing on the Motion having been given in accordance with the Order regarding Application for Expedited Consideration of First Day matters previously entered by the Court, as evidenced by the Affidavit of Service filed with the court; and the Court having held a hearing on the date hereof, and having considered the moving papers, opposition thereto, if any, and the arguments of counsel; and good cause appearing for the entry of this Order;

IT IS ORDERED as follows:

1. The Debtor is hereby authorized and empowered, but not directed, in its sole and absolute discretion, on a case by case basis, to satisfy in the ordinary course of business the

(Page 3)

Debtor: NATHAN AND MIRIAM BARNERT MEMORIAL HOSPITAL
ASSOCIATION d/b/a BARNERT HOSPITAL
Case No. 07-
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Debtor's prepetition gross salaries, commissions and related obligations to their Employees¹ (including the reimbursement of ordinary course expenses), the payment of ordinary course employee benefits, related payroll and withholding taxes, and alimony, child support and garnishment obligations (the "Payroll Obligations").

2. The Debtor is hereby authorized and empowered, but not directed, in its sole and absolute discretion, on a case by case basis, to honor its Employees earned prepetition vacation, sick and personal days (the "Accrued Days") by allowing the Employees to use, in the Debtor's sole discretion, all or portions of their Accrued Days postpetition in the ordinary course. Notwithstanding the foregoing, nothing herein shall be construed to create or impose any administrative expense liability on the Debtor with regard to the Accrued Days or to obligate the Debtor to compensate its employees for Accrued Days in cash.

3. The relief granted herein shall not be deemed an assumption or an authorization to assume any of the employee compensation, benefits or reimbursement policies, plans, or programs of the Debtor pursuant to section 365 of the Bankruptcy Code.

¹ Capitalized terms herein have the same meaning as ascribed to them in the Motion unless otherwise defined herein.

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Debtor: NATHAN AND MIRIAM BARNERT MEMORIAL HOSPITAL
ASSOCIATION d/b/a BARNERT HOSPITAL

Case No. 07-

Caption of Order: ORDER AUTHORIZING THE DEBTOR TO SATISFY, AND
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4. Any and all financial institutions honoring the aforementioned obligations to the Debtor's employees and sales representatives are authorized and directed to receive, process, honor and pay all checks, drafts and automatic clearing house and wire transfers drawn on the Debtor's bank accounts to the extent authorized herein and directed by the Debtor, whether presented, drawn or issued before or after the commencement of the Debtor's bankruptcy case for payment by the holder thereof, provided that sufficient funds, whether deposited prior to or subsequent to the Petition Date, are available to fund the relevant bank accounts to cover and permit payment thereof.

5. The Debtor is hereby authorized (consistent with this Order) to issue postpetition checks (or electronic fund transfers) in payment of prepetition Payroll Obligations covered by a check that is dishonored or rejected as a consequence of the commencement of this bankruptcy case.

6. The amount of payments to any one Employee on account of Payroll Obligations shall not exceed \$10,950.

7. The Debtor's proposed counsel shall serve a copy of this Order on all parties-in-interest by regular mail with seven (7) days hereof.