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Proposed Attorneys to Debtor in Possession
Nathan and Miriam Barnert Memorial
Hospital Association d/b/a Barnert Hospital
David J. Adler (DA-0048)
John G. Loughnane (JL-8040)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	:	Chapter 11
	:	
NATHAN AND MIRIAM BARNERT	:	
MEMORIAL HOSPITAL ASSOCIATION,	:	Case No. 07-21631 (DHS)
d/b/a BARNERT HOSPITAL,	:	
	:	
Debtor.	:	
	:	
	:	

**DEBTOR’S AMENDED APPLICATION IN SUPPORT OF MOTION
FOR AN INTERIM ORDER AUTHORIZING THE DEBTOR TO MAINTAIN
ITS EXISTING BANK ACCOUNTS AND CONTINUE USING ITS
EXISTING BUSINESS FORMS AND CASH MANAGEMENT SYSTEMS**

TO: HONORABLE JUDGE OF THE
UNITED STATES BANKRUPTCY COURT

Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Hospital, the
within debtor and debtor-in-possession (the “Debtor” or “Barnert Hospital”), by and through its
proposed counsel, McCarter & English, LLP, respectfully represents:

INTRODUCTION

1. By the Amended Application (the “Application”), the Debtor seeks entry of an
interim Order (i) authorizing the Debtor to maintain certain existing bank accounts and to

continue using its existing business forms and cash management systems for a period of sixty (60) days following the Petition Date (defined below) to and including October 15, 2007, and (ii) restraining any and all creditors from enforcing any writ of execution against the Accounts (defined below) absent request for appropriate relief from this Court. As set forth below, granting the Debtor the relief requested in the Application is crucial to the Debtor's ability to operate its business during this Chapter 11 proceeding without interruption.

2. The Court has jurisdiction over the Application 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) and (0).

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

BACKGROUND

4. On August 15, 2007 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"). Since the Petition Date, the Debtor has remained in possession of its assets and continued management of its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. 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.

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

7. 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. Barnet 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.

8. The Debtor has approximately 635 full time employees and its physicians and medical staff encompass 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 (the "Betts Affidavit").¹

9. The Debtor maintains five (5) bank accounts for use in its operations. A schedule of the Debtor's bank accounts (the "Accounts") is attached as Exhibit A.

10. In addition, to control the Debtor's operations effectively, the Debtor currently maintains a comprehensive cash management system that is reviewed and monitored by, among others, the Debtor's internal accounting staff. Specifically, the Debtor maintains the following five (5) accounts with Columbia Bank ("Columbia") (i) credit card account (#02421578); (ii)

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

operating account (#024216696); (iii) payroll account (#024227511); (iv) wire account (#024228758); and (v) transit account (#030000470) (collectively, the “Operating Account”).

11. On July 23, 2007, Phoenix Healthcare, Inc. (“Phoenix”) obtained a Final Judgment against the Debtor in the amount of \$548,683.37. On or about July 27, 2007, Phoenix caused a Writ of Execution to be served on Columbia Bank, where the Debtor maintains its Operating Account. The Operating Account is presently restrained as a result of the Writ of Execution.

12. On May 25, 2007, AMN Healthcare, Inc. (“AMN Healthcare”), obtained Summary Judgment against the Debtor in the amount of \$144,792.25. Upon information and belief, AMN Healthcare has obtained Writs of Execution, and is in the process of levying on the Debtor’s assets.

13. As described in the First Day Affidavit, certain other creditors may also be in the process of obtaining Writs of Execution. To the extent that Phoenix, AMN Healthcare, or any other creditor has obtained a levy on any of the Debtor’s assets within the 90-day period prior to the Petition Date, the Debtor reserves its rights of avoidance and recovery with respect thereto.

RELIEF REQUESTED AND BASIS THEREFOR

14. By this Application, the Debtor seeks an interim Order authorizing its continued use, for a period of sixty (60) days following the Petition Date, to and including October 15, 2007, of (a) the Debtor Accounts and excusing the Debtor from opening new debtor-in-possession accounts and (b) the Debtor's existing business forms and cash management systems. In addition, the Debtor requests an interim Order restraining any and all creditors from enforcing any writ of execution against the Accounts absent request for appropriate relief from this Court.

15. Upon filing its Chapter 11 proceeding, the Debtor became bound by the Operating Guidelines and Reporting Requirements for Chapter 11 Cases (the "Operating Guidelines") established by the Office of the United States Trustee for the District of New Jersey (the "UST"). Pursuant to the Operating Guidelines, the Debtor's "failure to comply with the operating and/or reporting requirements . . . may result in the dismissal or conversion of this case to a case under Chapter 7 of the Bankruptcy Code." The Operating Guidelines state that, upon filing a Chapter 11 petition, a debtor:

must immediately close all of [their] existing bank accounts and open new bank accounts which must be (i) designated as debtor in possession accounts ("DIP Accounts") and (ii) maintained subject to the following conditions:

a. All money of the bankruptcy estate must be deposited in the DIP Accounts...

Operating Guidelines, p.1, ¶ 2.

16. If the Debtor was required to immediately open all new bank accounts and alter its existing cash management system, there likely would be a disruption in the Debtor's ability to collect and disburse funds in the ordinary course of its operations. Such a disruption would

negatively impact the Debtor's ability to make a smooth transition into Chapter 11 and would have a detrimental effect upon the Debtor's operations.

17. The Debtor respectfully requests that the Court enter an interim Order authorizing its continued use of the Accounts, rather than opening new debtor-in-possession accounts, for a period of sixty (60) days following the Petition Date to and including October 15, 2007. The Debtor also requests that this Court enter an interim Order authorizing it to continue its prepetition cash management system, described above, for a period of sixty (60) days following the Petition Date to and including October 15, 2007. Granting this relief will facilitate a smooth and orderly transition of the Debtor's operations into Chapter 11 and minimize the disruption of its business affairs and the Debtor's ability to adequately serve patient interests.

18. In addition to maintaining, on an interim basis, the cash management system that has been in place for several years, the Debtor requests that, as a way of minimizing expense to the Debtor's estate, it be authorized to continue to use its correspondence and business forms including, but not limited to, invoices, purchase orders, checks, letterhead, envelopes and other business forms (collectively, the "Business Forms"), substantially in the forms existing immediately before the Petition Date, without reference to its status as a debtor-in-possession for a period of sixty (60) days following the Petition Date to and including October 15, 2007.

19. If the Debtor is not permitted to maintain and utilize its cash management systems and continue to use its existing Business Forms on an interim basis, the Debtor and its estate will be prejudiced by: (a) the resulting disruption in the ordinary financial affairs and business operations of the Debtor; (b) a delay in the administration of its estate; and (c) the unnecessary cost to the estate to set up, on an expedited basis, new systems and print new business forms.

20. Finally, writs of execution are unenforceable against the Debtor's Accounts pursuant to section 362 of the Bankruptcy Code, which provides an automatic stay prohibiting collection activities. Section 362 provides, in pertinent part, that "[e]xcept as provided in subsection (b) of this section, a petition filed . . . operates as a stay, applicable to all entities, of . . . (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a). The Bankruptcy Code defines "property of the estate" broadly to include all "legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Funds in the Accounts are property of the Debtor's estate. See In re LPM Corp., 269 B.R. 217, 220-21 (9th Cir. B.A.P. 2001) (finding funds in account property of the estate, which remained subject to automatic stay, notwithstanding writ of execution to enforce judgment for past due rent).

21. Sections 362(a) protects property of the estate from any act to obtain possession unless a specific exception to the automatic stay applies under section 362(b). 11 U.S.C. § 362(b); In re LPM Corp., 269 B.R. at 211 ("If Congress intended enforcement of a . . . money judgment to be excepted from the automatic stay, then it would have provided for such an exception under section 362(b)"). Absent an express exception to the automatic stay, creditors are required "to proceed in an orderly way by requesting relief from the automatic stay." Id. at 222; see also 11 U.S.C. § 362(d) (authorizing bankruptcy court to lift the automatic stay "for cause"). Therefore, neither Phoenix nor any other judgment creditor may enforce a writ of execution against the Accounts absent request for appropriate relief from this Court.

WHEREFORE, the Debtor respectfully requests entry of the accompanying interim Order (i) authorizing it to maintain for a period of sixty (60) days following the Petition Date, to and including October 15, 2007, its Accounts and to use such Accounts on a postpetition basis, without restriction, and continue using its existing Business Forms and cash management system, (ii) restraining any and all creditors from enforcing any writ of execution against the Accounts absent request for appropriate relief from this Court, and (iii) granting such additional relief as the Court deems appropriate.

Dated: August 16, 2007
Newark, New Jersey

Respectfully submitted,

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

By: /s/ David J. Adler
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EXHIBIT A

- (i) Credit Card Account (#02421578);
- (ii) Operating Account (#024216696);
- (iii) Payroll Account (#024227511);
- (iv) Wire Account (#024228758);
- (v) Transit Account (#030000470).

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)
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In the Matter of:

NATHAN AND MIRIAM BARNERT
MEMORIAL HOSPITAL ASSOCIATION d/b/a
BARNERT HOSPITAL,
Debtor-in-Possession.

Case No. 07-21631

Judge: Steckroth (DHS)

Hearing Date: August 17, 2007
9:30 a.m. (EDT)

**INTERIM ORDER AUTHORIZING THE DEBTOR TO MAINTAIN ITS EXISTING
BANK ACCOUNTS AND CONTINUE USING ITS EXISTING
BUSINESS FORMS AND CASH MANAGEMENT SYSTEMS**

The relief set forth on the following pages, numbered two (2) through three (3), is hereby
ORDERED.

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

Case Nos. 07-21631

Caption of Order: INTERIM ORDER AUTHORIZING THE DEBTOR TO MAINTAIN
ITS EXISTING BANK ACCOUNTS AND CONTINUE USING ITS
EXISTING BUSINESS FORMS AND CASH MANAGEMENT
SYSTEMS

THIS MATTER having been brought to the Court upon the Amended Application of Nathan and Miriam Barnert Memorial Hospital Association d/b/a Barnert Hospital, the within debtor and debtor-in-possession (the “Debtor”),¹ by and through its proposed counsel, McCarter & English, LLP, upon motion for entry of an interim Order (i) authorizing the Debtor to maintain, for a period of sixty (60) days to and including October 15, 2007, its existing bank accounts set forth on Exhibit A to the Application (the “Accounts”) and continue using its existing business forms and cash management system and (ii) barring enforcement of writs of execution against the Accounts absent request for appropriate relief (the “Application”); and notice of the hearing on the Application having been provided to all parties-in-interest 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 considered the Application, the 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 Application is granted.
2. The Debtor is hereby authorized, to maintain for a period of sixty (60) days to and including October 15, 2007, in its sole discretion, the Accounts, instead of opening a debtor-in-possession account, and to use such Accounts on a post-petition basis without restriction.

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

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Debtor: NATHAN AND MIRIAM BARNERT MEMORIAL HOSPITAL
ASSOCIATION d/b/a BARNERT HOSPITAL
Case Nos. 07-21631
Caption of Order: INTERIM ORDER AUTHORIZING THE DEBTOR TO MAINTAIN
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SYSTEMS

3. The Debtor is authorized to continue using, for a period of sixty (60) days to and including October 15, 2007, its existing cash management system as described in the

Application.

4. If the Debtor opens any new bank or other accounts, it shall provide the United States Trustee with notice of same within seven (7) days thereof.

5. The Debtor is authorized to continue using, for a period of sixty (60) days to and including October 15, 2007, its existing Business Forms without alteration or change.

6. Unless the Debtor properly closes an Account or properly stops payment on a check or electronic debit, Columbia Bank shall have no duty or obligation to dishonor a pre-petition check or electronic debit presented for payment. Columbia Bank shall not be liable for the payment of any pre-petition check or electronic debit made if the Debtor does not properly close an Account or properly stop payment on a check or electronic debit.

7. Pursuant to 11 U.S.C. §362(a), any and all creditors are hereby restrained from enforcing writs of execution against the Accounts absent request for appropriate relief from this Court.

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