

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

MIAMI INTERNATIONAL MEDICAL CENTER, LLC<sup>1</sup>  
d/b/a THE MIAMI MEDICAL CENTER,

Case No. 18-12741-LMI  
Chapter 11

Debtor.

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**DEBTOR'S MOTION FOR AN ORDER AUTHORIZING  
PAYMENT OF PREPETITION CLAIMS OF CRITICAL VENDORS**  
**Expedited Hearing Requested**

Miami International Medical Center, LLC d/b/a The Miami Medical Center (the “*Debtor*”), by and through undersigned counsel, pursuant to 11 U.S.C. §§ 105(a) and 363, files this motion (the “*Motion*”) seeking the entry of an Order authorizing the Debtor to pay the prepetition claims of certain vendors that are critical to the operation of the Debtor’s business. In support of this Motion, the Debtor respectfully represents as follows:

**I. Jurisdiction**

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334 and 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are Sections 105(a) and 363 of the Bankruptcy Code, Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Local Rule 9013-1(I).

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<sup>1</sup>The Debtor’s current mailing address is 5959 NW 7 St, Miami, FL 33126 and its EIN ends 4362.

## **II. Procedural Background**

4. The Debtor is operating its business and managing its affairs as a debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtor is a regional acute care hospital that provided a limited suite of medical services from its opening in February 2016 until it voluntarily requested conversion of its operating license to inactive status from the State of Florida Agency for Health Care Administration (AHCA) in October 2017. Since its shutdown in October 2017, the Debtor has not had any patients under its care.

6. No trustee, examiner, or statutory committee has been appointed.

7. On March 9, 2018, the Debtor filed its Motion for Entry of Interim and Final Orders (a) Authorizing Debtor in Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. 364(c) and (d) and Fed.R.Bankr.P. 4001(c); and (b) Scheduling Final Hearing [ECF No. 9], which requests Court approval of a DIP Loan as set forth therein (the “*DIP Loan*”).

## **III. Relief Requested and Basis Therefor**

### **A. Pre-Petition Critical Vendor Claims**

8. The Debtor seeks authority to pay the pre-petition claims of certain vendors that are critical to the Debtor’s maintenance of the hospital property. These vendors are for maintenance of the hospital and are:

<b>Critical Vendor</b>	<b>Amounts to be Paid</b>	<b>Critical Services</b>
Prestige Elevator	\$5,630.04	Maintenance repairs, and monthly inspection of the elevators.
Rovy Repairs	\$14,394.68	Maintenance , inspection and repairs of the hospital generators and transfer switch

Chemtreats	\$5,617.50	Monthly water treatment to boiler and cooling towers
MegaSouth Electric	\$29,625.00	Annual feeder breaker exercise test
Florida Green Light	\$29,210.00	Maintenance and repair of the AIR HANDLE UNIT, RTU, Cooling tower, Ice machine, and Kitchen refrigerators
Affordable Environmental	\$11,400.00	Semi-annual grease trap cleaning and lift station
Miami Elevators Inspection	\$600.00	Hospital elevators inspector
<b>TOTAL</b>	<b>\$96,477.22</b>	

(collectively, the “*Critical Vendors*”). The Debtor deems these vendors to be critical to the maintenance of the hospital property. If payment of the claims of the Critical Vendors, the amounts of which are set forth above (collectively, the “*Critical Vendor Claims*”) are not paid, the Critical Vendors will terminate the services they provide to the Debtor and the condition of the hospital may be jeopardized. The maintenance of the hospital is dependent upon the Critical Vendors. The Debtor believes that payment of the Critical Vendor Claims is fair and reasonable for the services provided.

**B. Authority for Relief Requested**

9. Section 363(b)(1) of the Bankruptcy Code provides: "The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent the abuse of process.

11 U.S.C. § 105(a). Section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutory fiat or under equitable common law principles.

10. A bankruptcy court's use of its equitable powers to "authorize the payment of a prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). This equitable common law principle "was first articulated by the United States Supreme Court in *Miltenberger v. Logansport, C. & SW R. Co.*, 106 U.S. 286 (1882) and is commonly referred to as either the 'doctrine of necessity' or the 'necessity of payment rule.'" *Ionosphere Clubs*, 98 B.R. at 175-76; *see also In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) ("Certain prepetition claims by employees and trade creditors . . . may need to be paid to facilitate a successful reorganization.") (citing 11 U.S.C. § 105(a)).

11. Federal courts have consistently permitted postpetition payment of prepetition obligations where necessary to preserve the going-concern value of a Debtor's business, thereby facilitating reorganization. *See, e.g., Miltenberger v. Logansport, Crawfordsville and Southwestern Ry. Co.*, 106 U.S. 286, 311 (1882); *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 (3d Cir. 1972); *Just For Feet*, 242 B.R. 821 at 825 (D. Del. 1999) ("The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of prepetition claims when such payment is necessary for the survival during Chapter 11.").

12. The Third Circuit, in *In re Lehigh & New England Railway Co.*, described the doctrine as follows:

[T]he ‘necessity of payment doctrine’ . . . [permits] immediate payment of claims of creditors where those creditors will not supply services or materials essential to the conduct of the business until their prepetition claims shall have been paid.

657 F.2d 570, 581 (quoting *In re Penn Central Transp. Co.*, 467 F.2d 100, 102, n.1 (3rd Cir. 1972)). While the “necessity of payment” doctrine originally developed in the context of railroad reorganizations under the Bankruptcy Act, it has been applied in nonrailroad bankruptcies. *See In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a prepetition unsecured creditor, debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

13. In *Dudley v. Mealey*, 147 F.2d 268 (2d Cir. 1945), *cert. denied*, 325 U.S. 873, 65 S. Ct. 1415, 80 L.Ed. 1991 (1945), Judge Learned Hand, in applying the necessity of payment doctrine, stated:

Let it [a hotel] once be shut down, and it will lose much of its value. . . . Some priority [the tradesmen supplying the hotel prepetition] may be essential to preservation of the business during that period as it is later.

*Dudley*, 147 F.2d 268, 271.)

14. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay certain critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. Such authority is derived from section 363(b)(1) of the Bankruptcy Code. “Satisfaction of a pre-petition debt in order to keep ‘critical’ supplies flowing is a use of property other than in the ordinary course of administering an estate in bankruptcy under section 363(b)(1) of the Bankruptcy Code.” *In re Tropical Sportswear Int’l*

*Corp.*, 320 B.R. 15, 17 (Bankr. M.D.Fla. 2005) (quoting *In re Kmart Corp.*, 359 F.3d 866, 872 (7th Cir. 2004)).<sup>1</sup>

15. There is ample precedent for the post-petition satisfaction of the specific types of prepetition claims described in the Motion. For example, bankruptcy courts have granted debtors relief substantially similar to that sought by the instant Motion. See *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“This Court often permits the payment of pre-petition wages so that the debtors-in-possession may maintain an effective work force . . . .”); *In re Eagle -Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payments of prepetition claims where “the payment is necessary to avert a serious threat to the Chapter 11 process”); *Pension Benefit Guaranty Corp. v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 159 B.R. 730, 737 (Bankr. W.D. Pa. 1993) (approving payment of prepetition employee wage claims).

16. Specifically, an order authorizing the payment of pre-petition amount to critical vendors is appropriate if (a) the payments are necessary to the reorganization process; (b) a sound business justification exists in that the critical vendor(s) refuse to continue to do business with the debtor absent being afforded critical vendor status; and (c) the disfavored creditors are at least as well off as they would have been had the critical vendor order not been entered. *In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 17 (Bankr. M.D. Fla. 2005).

17. Payment of the amount due to the Critical Vendors is vital to the Debtor’s continued maintenance of the hospital property. The Critical Vendors will not provide

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<sup>1</sup>The Seventh Circuit decision in *In re Kmart Corp.*, 359 F.3d. 866 (7th Cir. 2004) is not binding on this Court and is clearly distinguishable from this case. Here, the Debtors seek authority to pay specific creditors specific amounts to avoid the serious threat of deterioration of the hospital property which would be detrimental to the Debtor’s sale efforts.

maintenance services without payment of the balance of prepetition amounts, and therefore a sound business justification exists for the relief requested.

18. Moreover, there will be no prejudice to unsecured creditors resulting from the Court's authorization of the requested payments to the Critical Vendors requested herein. Such payments are absolutely essential to the Debtor's continued maintenance of the hospital property. Authorizing the Debtor to pay the Critical Vendors will benefit both favored and disfavored creditors and the entire estate.

19. Under the "necessity of payment" doctrine articulated in the above-cases, the selective payment of a prepetition claim is manifestly warranted. It is critical to the Debtor's reorganization efforts that the Debtor pay the Critical Vendor Claims in the amounts set forth herein.

20. Any payment contemplated herein shall be consistent with any order(s) authorizing the use of the DIP Loan.

#### **IV. Conclusion**

21. If the requested relief is not granted, the Debtor's hospital may be significantly -- and perhaps irreparably -- undermined. If the Motion is denied, the Debtor's continued maintenance of the hospital property may suffer immediate and substantial interruptions before the Debtor has the opportunity to attempt a sale. Accordingly, for all of the reasons set forth herein, the relief requested in the Motion should be granted.

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**WHEREFORE**, the Debtor respectfully requests that the Court enter an order in the form attached hereto as **Exhibit A**, (i) granting the relief requested in this Motion; (ii) authorizing the Debtor to pay the Critical Vendor Claims as set forth on Exhibit A, and (iii) granting such other relief as the Court deems just and proper.

s/ Peter D. Russin

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d/b/a THE MIAMI MEDICAL CENTER,

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**ORDER GRANTING DEBTOR'S MOTION  
FOR AN ORDER AUTHORIZING PAYMENT OF  
PREPETITION CLAIMS OF CRITICAL VENDORS**

**THIS MATTER** came before the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2018 at \_\_\_\_\_ .m. upon the *Debtor's Motion for an Order Authorizing Payment of PrePetition Claims of Critical Vendors* (the "Motion") [ECF No. \_\_\_\_] (the "**Motion**"), filed by Miami International Medical Center, LLC d/b/a The Miami Medical Center (the "**Debtor**"). The Court, having considered the Motion, finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue is proper before this Court pursuant to 28 U.S.C. § 1408; (c) this matter is core pursuant to 28 U.S.C. § 157(b)(2); (d) notice of the Motion

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and the hearing thereon was sufficient under the circumstances; and (e) the Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein, it is accordingly:

**ORDERED AND ADJUDGED** as follows:

1. The Motion is **GRANTED**.
2. The Debtor is authorized, but not directed, to pay the claims of the Critical Vendors<sup>2</sup> identified in the Motion, to satisfy the Critical Vendor Claims. The Critical Vendors will continue to provide the Debtor with the same services they provided to the Debtor prior to the Petition Date upon payment of the Critical Vendor Claims.
3. The Court shall retain jurisdiction over this matter to provide for such additional and further relief necessary to enforce the terms and conditions of this Order.

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**Submitted By:**

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**Copies Furnished To:**

Peter D. Russin, Esquire, is directed to serve copies of this Order on all parties in interest and to file a Certificate of Service.

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<sup>2</sup> Capitalized terms used herein shall have the meanings ascribed in the Motion.